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United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510–6200

October 5, 2016

To Members of the Commercial Information Technology Community:

One of the largest expenditures in government today is the amount spent on information technology ("IT"). The Government Accountability Office estimates that in Fiscal Year 2015, the federal government spent approximately $80 billion on IT, 76 percent or $61 billion of which was spent on the operations and maintenance of existing IT systems. Many of these existing legacy IT systems are well past their usefulness, leading federal agencies to seek to replace them with more current alternatives.

With so many legacy systems in need of replacement, IT modernization is increasingly critical to efficient and effective government services. Many agencies choose to undertake large IT investments to build entirely new systems. These efforts all too often result in IT investments that significantly exceed their initial budgets and schedules, while producing final products that do not adequately meet the needs of the agency. Furthermore, these new systems can take years to develop and implement, resulting in their being outdated before they are fully adopted by the agency. As an alternative to custom development, the Federal Acquisition Regulation ("FAR") encourages agencies to utilize existing commercial IT or non-developmental products that can meet the majority of their needs, often at a fraction of the cost.

Part 10 of the FAR, entitled "Market Research," instructs agencies to conduct market research to determine whether commercial items[1] or non-developmental items can meet the agency's requirements and to acquire those items when available. Prime contractors and subcontractors are also instructed to incorporate commercial items or non-developmental items to the maximum extent possible.[2] The Senate Finance Committee ("Committee") is a key committee of jurisdiction over entities such as the Social Security Administration, the Internal Revenue Service, and the Centers for Medicare & Medicaid Services, who collectively spend hundreds of billions on IT. In this role, the Committee is concerned that government agencies are not doing enough to fully utilize existing commercial or non-developmental options, who are all too often absent from federal IT contracts.

Given these concerns, the Committee would like to learn more about the federal IT marketplace. Specifically, the Committee is interested in whether federal agencies, to the fullest extent possible, incorporate preexisting, commercial and non-developmental IT solutions into their modernization efforts and if not, the barriers to their doing so. The Committee would also like to learn

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[1] The FAR 2.101 defines a "commercial item" as "any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and has been sold, leased, or licensed to the general public; or has been offered for sale, lease, or license to the general public." *See FAR 2.101 for the full definition.*

[2] FAR 12.101

more about ways in which agencies can improve in this area. To that end, we request your input on the following questions:

1. Do you believe that federal agencies are conducting market research in accordance with the FAR Part 10? Are they effectively identifying commercial items or non-developmental products that meet the agency's needs? If not, what changes do you believe need to be made to improve how agencies conduct market research?
2. Are you aware of any acquisitions in which agencies, either intentionally or unintentionally, exclude proposals that offer commercial and non-developmental product companies from consideration for IT contracts? If so, please describe how this was done in as much detail as possible.
3. What parts of the FAR are not being fully utilized or could be better utilized by federal agencies that would allow for a wider range of companies, such as commercial or non-developmental ones, to successfully bid for IT projects? For example, we are interested in your views and recommendations for how the scope of competition for federal IT contracts could be broadened by:
   a. increased use of commercial contracting procedures (FAR Part 12),
   b. greater use of fixed-price contracts (FAR Part 12), or
   c. changes to evaluation criteria and source selection factors in solicitations (FAR Part 15).
4. What are the barriers to commercial and non-developmental products being utilized to their fullest potential within the federal government?
5. How can federal IT contracting be reformed to improve access to IT contracts that commercial or non-developmental product companies may seek?
6. What, if any, additional changes would you recommend to the procurement process, in general, and the terms and conditions of IT solicitations, in particular, to improve competition for, and reduce the cost of, federal IT solutions?
7. What should agencies do more of, better, or differently to better ensure that they achieve desired business goals and objectives from their IT projects and contracts?

We look forward to your responses. We request that you answer on a question by question basis, indicating which question you are answering. If you have any additional information on this topic that is not covered under a specific question, but that you feel would be useful to the Committee, please include it at the end of your response. Please submit your response by Wednesday, November 2, 2016 to ITContracting@finance.senate.gov. If you have questions, please contact Kim Brandt or Lindsay Steward at (202) 224-4515.

Sincerely,

Orrin G. Hatch
Chairman