

118TH CONGRESS
2D SESSION

S. 4066

To improve Federal technology procurement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2024

Mr. PETERS (for himself and Mr. CRUZ) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To improve Federal technology procurement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Improvement
5 in Technology Procurement Act” or the “FIT Procure-
6 ment Act”.

7 **SEC. 2. FINDINGS.**

8 Congress makes the following findings:

9 (1) The Government Accountability Office
10 (GAO) has conducted a trend analysis of Govern-

1 ment-wide contracting for each of the last several
2 fiscal years. These analyses show that the Federal
3 dollars obligated through contracts has been steadily
4 increasing.

5 (2) Contract spending accounts for more than
6 80 percent of the Federal information technology
7 budget.

8 (3) Spending on information security, software,
9 cloud computing, data center solutions and services,
10 software as a service, and artificial intelligence tech-
11 nologies is projected to grow significantly.

12 (4) Rapid technological developments and in-
13 creased Government demand create a need for a
14 Federal acquisition workforce with an understanding
15 of technology and related procurement consider-
16 ations.

17 (5) Federal agencies are challenged to shorten
18 the procurement cycle to meet agency technology re-
19 quirements. Technology acquired through procure-
20 ments that take years from requirements develop-
21 ment to implementation may be obsolete by the time
22 it is fielded.

23 (6) While Federal contracting dollars are in-
24 creasing year over year, and the number of new
25 business applications filed is at an all-time high, the

1 number of Federal contractors receiving contract
2 awards is shrinking. This trend could impair the
3 Federal Government's access to innovative commer-
4 cial technologies.

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

7 (1) **ACQUISITION WORKFORCE.**—The term “ac-
8 quisition workforce” means employees of an execu-
9 tive agency who are responsible for procurement,
10 contracting, program or project management that
11 involves the performance of acquisition-related func-
12 tions, or others as designated by the Chief Acquisi-
13 tion Officer, senior procurement executive, or head
14 of the contracting activity.

15 (2) **ADMINISTRATOR.**—The term “Adminis-
16 trator” means the Administrator for Federal Pro-
17 curement Policy.

18 (3) **CROSS-FUNCTIONAL.**—The term “cross-
19 functional” means a structure in which individuals
20 with different functional expertise or from different
21 areas of an organization work together as a team.

22 (4) **EXECUTIVE AGENCY.**—The term “executive
23 agency” has the meaning given the term in section
24 133 of title 41, United States Code.

1 (5) EXPERIENTIAL LEARNING.—The term “ex-
2 periential learning” means on-the-job experiences or
3 simulations that serve to enhance workforce profes-
4 sional skills.

5 (6) INFORMATION AND COMMUNICATIONS
6 TECHNOLOGY.—The term “information and commu-
7 nications technology”—

8 (A) has the meaning given the term in sec-
9 tion 4713 of title 41, United States Code; and

10 (B) includes information and communica-
11 tions technologies covered by definitions con-
12 tained in the Federal Acquisition Regulation,
13 including definitions added after the date of the
14 enactment of this Act by the Federal Acquisi-
15 tion Regulatory Council pursuant to notice and
16 comment.

17 (7) RELEVANT COMMITTEES OF CONGRESS.—
18 The term “relevant committees of Congress” means
19 the Committee on Homeland Security and Govern-
20 mental Affairs of the Senate and the Committee on
21 Oversight and Accountability of the House of Rep-
22 resentatives.

23 **SEC. 4. ACQUISITION WORKFORCE.**

24 (a) EXPERIENTIAL LEARNING.—Not later than 18
25 months after the date of the enactment of this Act, the

1 Federal Acquisition Institute shall incorporate experiential
2 learning into the Federal Credentials Program, the Fed-
3 eral Acquisition Certification-Contracting Officer's Rep-
4 resentative (FAC-COR) Program, and the Federal Acqui-
5 sition Certification for Program and Project Managers
6 (FAC-P/PM) Program, or any successor programs.

7 (b) TRAINING ON INFORMATION AND COMMUNICA-
8 TIONS TECHNOLOGY ACQUISITION.—

9 (1) IN GENERAL.—Not later than 18 months
10 after the date of the enactment of this Act, the Fed-
11 eral Acquisition Institute, in coordination with the
12 Administrator, the Administrator of General Serv-
13 ices, the Federal Chief Information Officer, the
14 Chief Information Officers Council, and the United
15 States Digital Service, and in consultation with oth-
16 ers as determined to be appropriate by the Director
17 of the Federal Acquisition Institute, shall develop
18 and implement or otherwise provide a cross-func-
19 tional information and communications technology
20 acquisition training program for acquisition work-
21 force members involved in acquiring information and
22 communications technology. The training shall—

23 (A) include learning objectives related to
24 market research, communicating with industry
25 and industry perspectives on the procurement

1 process, including how investment decisions are
2 impacted by Government communication and
3 engagement, developing requirements, acquisi-
4 tion planning, best practices for developing and
5 executing outcome-based contracts, and source
6 selection strategy, evaluating proposals, and
7 awarding and administering contracts for infor-
8 mation and communications technology;

9 (B) include learning objectives that provide
10 a basic understanding of key technologies Fed-
11 eral agencies need, such as cloud computing, ar-
12 tificial intelligence and artificial intelligence-en-
13 abled applications, and cybersecurity solutions;

14 (C) include learning objectives that encour-
15 age the use of commercial or commercially
16 available off-the-shelf (COTS) technologies to
17 the greatest extent practicable;

18 (D) include case studies of lessons learned
19 from Federal information and communications
20 technology procurements and contracts, and re-
21 lated matters as deemed relevant by the Direc-
22 tor of the Federal Acquisition Institute;

23 (E) include experiential learning opportu-
24 nities, and opportunities to practice acquisition
25 teaming involving collaboration of team mem-

1 bers with varied relevant domain expertise to
2 complete acquisition-related tasks, including
3 tasks with accelerated timelines;

4 (F) include continuous learning rec-
5 ommendations and resources to keep the skills
6 of acquisition workforce members current, in-
7 cluding tools that help adopt or adapt the use
8 of innovative acquisition practices or other flexi-
9 ble business practices commonly used in com-
10 mercial buys;

11 (G) be made available to acquisition work-
12 force members designated by a Chief Acquisi-
13 tion Officer, senior procurement executive, or
14 head of the contracting activity to participate in
15 the training program; and

16 (H) inform executive agencies about
17 streamlined and alternative procurement meth-
18 ods for procurement of information and com-
19 munications technology, including—

20 (i) simplified procedures for certain
21 commercial products and commercial serv-
22 ices in accordance with subpart 13.5 of the
23 Federal Acquisition Regulation, prize com-
24 petitions under the America COMPETES
25 Reauthorization Act of 2010 (Public Law

1 111–358), commercial solutions opening
2 authorities as provided in section 5 of this
3 Act or under separate authority, competi-
4 tive programs that encourage businesses to
5 engage in Federal research or research and
6 development with the potential for com-
7 mercialization, and joint venture partner-
8 ships;

9 (ii) innovative procurement techniques
10 designed to streamline the procurement
11 process and lower barriers to entry, such
12 as use of oral presentations and product
13 demonstrations instead of lengthy written
14 proposals, appropriately leveraging per-
15 formance and outcomes-based contracting,
16 and other techniques discussed on the
17 Periodic Table of Acquisition Innovations
18 or other similar successor knowledge man-
19 agement portals; and

20 (iii) information on appropriate use,
21 examples and templates, and any other in-
22 formation determined relevant by the Ad-
23 ministrator to assist contracting officers
24 and other members of the acquisition

1 workforce in using the procedures de-
2 scribed in clauses (i) and (ii).

3 (2) REPORT.—Not later than 2 years after the
4 date of the enactment of this Act, the Director of
5 the Federal Acquisition Institute shall provide to the
6 relevant committees of Congress, the Chief Acquisi-
7 tion Officers Council, and the Chief Information Of-
8 ficers Council—

9 (A) a report on the Director's progress in
10 developing and implementing or otherwise pro-
11 viding the information and communications
12 technology acquisition training described in
13 paragraph (1); and

14 (B) a list of any congressionally mandated
15 acquisition training that the Director deter-
16 mines to be outdated or no longer necessary for
17 other reasons.

18 (3) DURATION.—The training program shall be
19 updated as appropriate as technology advances, but
20 at least every 2 years after implementation, and of-
21 fered for a minimum of 7 years following the date
22 of implementation of the training program.

23 (c) ACQUISITION WORKFORCE TRAINING FUND.—

24 (1) FINDING.—Congress finds that the Acquisi-
25 tion Workforce Training Fund should be utilized in

1 order to ensure that the Federal acquisition work-
2 force—

3 (A) continues to adapt to fundamental
4 changes in Federal Government acquisition of
5 property and services; and

6 (B) acquires new skills and knowledge to
7 enable it to contribute effectively in the chang-
8 ing environment of the 21st century.

9 (2) INCREASED CREDITS TO FUND.—Section
10 1703(i)(3) of title 41, United States Code, is amend-
11 ed by striking “Five percent” and inserting “Seven
12 and a half percent”.

13 (d) HARMONIZATION OF ACQUISITION WORKFORCE
14 TRAINING REQUIREMENTS.—The responsibility for the re-
15 quirement in subsection (b)(1) of section 2 of the AI
16 Training Act (Public Law 117–207; 41 U.S.C. 1703 note)
17 is reassigned from the Director of the Office of Manage-
18 ment and Budget to the Administrator of General Serv-
19 ices.

20 **SEC. 5. INNOVATIVE PROCUREMENT METHODS.**

21 (a) EXPANSION OF COMMERCIAL SOLUTIONS OPEN-
22 ING AUTHORITY.—Section 880 of the National Defense
23 Authorization Act for Fiscal Year 2017 (Public Law 114–
24 328; 41 U.S.C. 3301 note) is amended—

1 (1) in the section heading, by striking “**PILOT**
2 **PROGRAMS FOR AUTHORITY TO ACQUIRE IN-**
3 **NOVATIVE COMMERCIAL PRODUCTS**” and insert-
4 ing “**PROGRAMS FOR AUTHORITY TO ACQUIRE**
5 **INNOVATIVE COMMERCIAL PRODUCTS AND**
6 **COMMERCIAL SERVICES**”;

7 (2) in subsection (a)—

8 (A) in paragraph (1), by inserting “and
9 commercial services” after “commercial prod-
10 ucts”;

11 (B) in paragraph (2), by adding at the end
12 the following new subparagraph:

13 “(C) The head of an executive agency ap-
14 proved for the program, on a temporary or per-
15 manent basis, by the Director of the Office of
16 Management and Budget.”; and

17 (C) in paragraph (3), by adding at the end
18 the following new subparagraph:

19 “(C) An executive agency approved for the
20 program by the Director of the Office of Man-
21 agement and Budget.”;

22 (3) by amending subsection (d) to read as fol-
23 lows:

24 “(d) GUIDANCE.—The head of an agency shall issue
25 guidance for the implementation of the program under

1 this section within that agency. Such guidance shall be
2 issued in consultation with the Office of Management and
3 Budget and shall be posted for access by the public. The
4 guidance shall also include requirements for each general
5 solicitation to be posted publicly through a means that
6 provides access to the notice of general solicitation
7 through the System for Award Management or subsequent
8 Government-wide point of entry, with classified solicita-
9 tions posted to the appropriate Government portal.”;

10 (4) by amending subsection (e) to read as fol-
11 lows:

12 “(e) REPORTING AND DATA COLLECTION.—The
13 head of an agency shall report information on contracts
14 made using procedures under this section to the Office of
15 Management and Budget as determined by the Director
16 of the Office of Management and Budget. The Adminis-
17 trator for Federal Procurement Policy shall collect and
18 analyze data on the use of the authority under this section
19 for the purposes of—

20 “(1) developing and sharing best practices;

21 “(2) gathering information on the implementa-
22 tion of the authority and related policy issues; and

23 “(3) informing the Committee on Homeland Se-
24 curity and Governmental Affairs of the Senate and
25 the Committee on Oversight and Accountability of

1 the House of Representatives on the use of the au-
2 thority.”;

3 (5) in subsection (f)—

4 (A) in paragraph (1)(B), by striking “;
5 and” and inserting a semicolon;

6 (B) by redesignating paragraph (2) as
7 paragraph (3); and

8 (C) by inserting after paragraph (1) the
9 following new paragraph:

10 “(2) the term ‘executive agency’ has the mean-
11 ing given the term in section 133 of title 41, United
12 States Code; and”;

13 (6) by striking subsection (g); and

14 (7) by striking “pilot” each place it appears.

15 (b) CLERICAL AMENDMENT.—The table of contents
16 in section 2(b) of such Act and the table of contents pre-
17 ceding subtitle A of title VIII of such Act are each amend-
18 ed by striking the item relating to section 880 and insert-
19 ing the following new item:

“Sec. 880. Programs for authority to acquire innovative commercial products,
commercial technologies, and commercial services using general
solicitation competitive procedures.”.

20 (c) INCREASE IN SIMPLIFIED ACQUISITION THRESH-
21 OLD.—

22 (1) FINDING.—Congress finds that the thresh-
23 old under which agencies may use simplified acquisi-
24 tion procedures to reduce costs, improve opportuni-

1 ties for qualified businesses, promote efficiency and
2 economy, and avoid unnecessary burdens for agen-
3 cies and their contractors should be updated.

4 (2) AMENDMENT.—

5 (A) IN GENERAL.—Section 134 of title 41,
6 United States Code, is amended by striking
7 “\$250,000” and inserting “\$500,000”.

8 (B) AUTHORITY TO APPLY PROVISIONS
9 BELOW THE THRESHOLD.—The Federal Acqui-
10 sition Regulatory Council may apply a provision
11 that would not otherwise be applicable below
12 the threshold as amended by subparagraph (A)
13 upon a written determination that it would not
14 be in the best interest of the Federal Govern-
15 ment to exempt contracts and subcontracts in
16 amounts not greater than such amended thresh-
17 old from such provision, such as for national se-
18 curity reasons.

19 (d) MULTIPLE AWARD SCHEDULE PROGRAM COM-
20 PETITIVE PROCEDURES.—

21 (1) FINDING.—Congress finds that the competi-
22 tion standard established by the Administrator of
23 General Services for the multiple award schedule
24 program of the General Services Administration
25 should be updated and made consistent with the

1 competition standard for other procurement meth-
2 ods, such as simplified acquisitions and negotiated
3 procurements. The term “best value” is defined in
4 the Federal Acquisition Regulation as meaning the
5 expected outcome of an acquisition that, in the Gov-
6 ernment’s estimation, provides the greatest overall
7 benefit in response to the requirement.

8 (2) AMENDMENTS.—

9 (A) CIVILIAN CONTRACTS.—Section
10 152(3)(B) of title 41, United States Code, is
11 amended to read as follows:

12 “(B) contracts and orders under such pro-
13 gram result in the award of best value products
14 and services for the Federal Government;”.

15 (B) DEFENSE CONTRACTS.—Section
16 3012(3)(B) of title 10, United States Code, is
17 amended to read as follows:

18 “(B) contracts and orders under such pro-
19 gram result in the award of best value products
20 and services for the Federal Government;”.

21 (3) GUIDANCE.—The Federal Acquisition Regu-
22 latory Council shall provide guidance to Federal
23 agencies on appropriate use of the best value com-
24 petition standard for the multiple award schedule
25 program as part of the implementing regulations

1 promulgated in connection with the amendments
2 made by paragraph (2).

3 (e) ADVANCES FOR COMMERCIAL TECHNOLOGY SUB-
4 SCRIPTIONS AND TENANCY.—

5 (1) FINDING.—Congress finds that the author-
6 ity to make advance payments should be updated for
7 purposes of enabling the most cost-effective acquisi-
8 tion of cloud computing, data center solutions and
9 services, and other information and communications
10 technology acquired on a subscription, reservation,
11 or tenancy basis.

12 (2) AUTHORITY TO PAY ADVANCES.—Section
13 3324(d) of title 31, United States Code, is amend-
14 ed—

15 (A) in paragraph (1)(C), by striking “;
16 and” and inserting a semicolon;

17 (B) in paragraph (2)—

18 (i) by inserting “or commercially
19 available content” after “publication”; and

20 (ii) by striking the period at the end
21 and inserting “; and”; and

22 (C) by adding at the end the following new
23 paragraph:

24 “(3) charges for information and communica-
25 tions technology subscriptions, reservations, or ten-

1 ancy, which means the sharing of computing re-
2 sources in a private or public environment, including
3 cloud environments, for which the ordering agency
4 defines appropriate access and security standards.”.

5 **SEC. 6. INCREASING COMPETITION IN FEDERAL CON-**
6 **TRACTING.**

7 (a) USE OF PAST PERFORMANCE.—Not later than
8 1 year after the date of the enactment of this Act, the
9 Administrator shall issue guidance, including examples
10 and templates where appropriate, on—

11 (1) when a wider range of projects, such as
12 commercial or non-government, as well as Govern-
13 ment projects, should be accepted as relevant past
14 performance, in order to have increased competition
15 among eligible firms with capability to perform a re-
16 quirement, such as a requirement without much
17 precedent;

18 (2) a means by which an agency may validate
19 non-government past performance references, such
20 as by requiring an official of an entity providing
21 past performance references to attest to their au-
22 thenticity and by providing verifiable contact infor-
23 mation for the references; and

24 (3) use of alternative evaluation methods other
25 than past performance that may be appropriate for

1 a requirement without much precedent, such as dem-
2 onstrations and testing of technologies as part of the
3 proposal process.

4 (b) ENSURING A CAPABLE FEDERAL VENDOR
5 BASE.—

6 (1) WORKING GROUP.—Not later than 90 days
7 after the date of the enactment of this Act, the Ad-
8 ministrator shall convene a working group or an ap-
9 propriate existing body (in this section referred to as
10 the “working group”), to make recommendations to
11 address the Federal Government’s shrinking vendor
12 base and related matters.

13 (2) MEMBERSHIP.—The working group con-
14 vened under paragraph (1) shall be chaired by the
15 Administrator or a designee of the Administrator
16 and include, at a minimum, representatives from the
17 following departments and agencies:

18 (A) The General Services Administration.

19 (B) The Department of Homeland Secu-
20 rity.

21 (C) The Department of Commerce.

22 (D) The Department of Defense.

23 (E) The Department of Health and
24 Human Services.

25 (F) The Small Business Administration.

1 (G) Any other agencies or organizations as
2 determined appropriate by the Administrator.

3 (3) CONSULTATION.—The working group shall
4 obtain input from the public, including from the
5 APEX Accelerators program (formerly known as
6 Procurement Technical Assistance Center (PTAC)
7 network) and other contractor representatives, to
8 identify Federal procurement policies and regula-
9 tions that are obsolete, overly burdensome or restric-
10 tive, not adequately harmonized, or otherwise serve
11 to create barriers to participation in Federal con-
12 tracting or unnecessarily increase bid and proposal
13 costs.

14 (4) EXAMINATION OF ACTIONS.—The working
15 group shall consider the input obtained under para-
16 graph (3) and any other information determined to
17 be relevant by the working group to identify legisla-
18 tive, regulatory, and other actions to remove barriers
19 to qualified vendors in the procurement process, in
20 order to build the Federal vendor base, increase
21 competition, and address related matters.

22 (5) IMPLEMENTATION.—Not later than 2 years
23 after the date of the enactment of this Act, the Ad-
24 ministrator shall, in consultation with the Federal
25 Acquisition Regulatory Council, the Chief Acquisi-

1 tion Officers Council, the working group, and other
2 agencies as appropriate, implement the regulatory
3 and other non-legislative actions identified under
4 paragraph (4), as determined necessary by the Ad-
5 ministrator, to remove barriers to entry for those
6 seeking to participate in Federal Government pro-
7 curement.

8 (6) BRIEFING.—Not later than 2 years after
9 the date of the enactment of this Act, the Adminis-
10 trator shall brief the relevant committees of Con-
11 gress on the legislative actions identified under para-
12 graph (4), and the actions implemented under para-
13 graph (5).

14 **SEC. 7. INCENTIVIZING EMPLOYEE STOCK OWNERSHIP**
15 **PLANS FOR BUSINESS GROWTH.**

16 (a) PILOT PROGRAM TO USE NONCOMPETITIVE PRO-
17 CEDURES FOR CERTAIN FOLLOW-ON CONTRACTS TO
18 QUALIFIED BUSINESSES WHOLLY-OWNED THROUGH AN
19 EMPLOYEE STOCK OWNERSHIP PLAN (ESOP).—

20 (1) ESTABLISHMENT.—The Administrator may
21 expand the pilot program authorized by section 874
22 of the National Defense Authorization Act for Fiscal
23 Year 2022 (Public Law 117–81; 10 U.S.C. 3204
24 note) for Government-wide use, including by coordi-
25 nating as necessary with the Federal Acquisition

1 Regulatory Council to make related amendments to
2 the Federal Acquisition Regulation.

3 (2) FOLLOW-ON CONTRACTS.—Notwithstanding
4 the requirements of section 3301 of title 41, United
5 States Code, for purposes of carrying out a Govern-
6 ment-wide ESOP pilot program established under
7 paragraph (1), the products or services to be pro-
8 cured by an executive agency under a follow-on con-
9 tract with a qualified business wholly-owned through
10 an ESOP for the continued development, production,
11 or provision of products or services that are the
12 same as or substantially similar to the products or
13 services procured under a prior contract may be pro-
14 cured through procedures other than competitive
15 procedures if the performance of the qualified busi-
16 ness on the prior contract was rated as satisfactory
17 (or the equivalent) or better.

18 (3) LIMITATION.—A qualified business wholly-
19 owned through an ESOP may have a single oppor-
20 tunity for award of a sole-source follow-on contract
21 under this subsection, unless the senior procurement
22 executive of the executive agency awarding the con-
23 tract approves a waiver of such limitation.

24 (b) VERIFICATION AND REPORTING OF QUALIFIED
25 BUSINESSES WHOLLY-OWNED THROUGH AN EMPLOYEE

1 STOCK OWNERSHIP PLAN.—Under a pilot program estab-
2 lished under this section, the Administrator shall establish
3 procedures—

4 (1) for businesses to verify status as a qualified
5 business wholly-owned through an ESOP for the
6 purposes of this section by using existing Federal re-
7 porting mechanisms;

8 (2) for a qualified businesses wholly-owned
9 through an ESOP to certify that not more than 50
10 percent of the amount paid under the contract will
11 be expended on subcontracts, including similarly sit-
12 uated ESOPs if determined appropriate by the Ad-
13 ministrator, subject to such necessary and reason-
14 able waivers as the implementing guidance or regu-
15 lations may prescribe; and

16 (3) to record and provide to relevant commit-
17 tees of Congress upon request information on each
18 follow-on contract awarded under authority of this
19 subsection, including details relevant to the nature
20 of such contract and the qualified business wholly-
21 owned through an ESOP that received the contract.

22 (c) SUNSET.—A pilot program established under this
23 section shall expire on the date that is 5 years after the
24 date of the enactment of this Act.

○