



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

June 2, 2016

M-16-12

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

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SUBJECT: **Category Management Policy 16-1: Improving the Acquisition and Management of Common Information Technology: Software Licensing**

Each year, the Federal Government spends more than \$6 billion on software through more than 42,000 transactions, which results in a fragmented and inefficient marketplace. A recent report by the Government Accountability Office (GAO)¹ indicates that agencies buy and manage software licenses in a decentralized manner, struggle to create accurate inventories, often purchase unneeded capabilities, and generally do not facilitate better purchasing by sharing pricing or terms and conditions across the Government. Furthermore, most agencies do not have a designated central oversight authority to manage software agreements. This memorandum addresses these and other challenges in information technology (IT) category management, and specifically software licensing, in order to help agencies improve the acquisition and management of common IT goods and services. This memorandum follows recent Office of Management and Budget (OMB) guidance regarding new requirements for purchasing desktops and laptops.²

¹ GAO-14-413 Federal Software Licenses, Better Management Needed to Achieve Significant Savings Government-wide

² M-16-02; <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-02.pdf>

The Federal Information Technology Acquisition Reform Act (FITARA)³ and the OMB category management initiative⁴ address a number of IT management challenges by directing agencies to buy and manage common commodities – commercial and commercial-off-the-shelf (COTS) software – in a more coordinated way. To fully leverage the Government’s vast buying power and implement coordinated Government-wide purchasing and usage strategies, improvements must be made at both the agency and the Government-wide levels. Agencies need to move to a more centralized and collaborative software management approach so that they can optimize utilization of commercial and COTS software licenses and maximize the use of best-in-class⁵ software purchasing and management solutions. In parallel, Government-wide strategies are needed to reduce duplication of efforts, such as increasing the number and use of Government-wide software agreements, improving software license management practices through automated IT asset discovery tools and business intelligence software. The success of these Government-wide steps depends on the improvements that agencies make to integrate their own license management practices into the Government-wide license offerings.

As explained below, the Enterprise Software Category Team (ESCT),⁶ co-managed by the General Services Administration (GSA), the Department of Defense (DoD), and OMB, will guide the development of Government-wide software license agreements for mandatory agency use, and OMB will encourage or direct use of best-in-class existing software licensing agreements. This memorandum further requires agencies to develop implementation plans, in accordance with ESCT guidance, to address how agencies will move from their existing agreements to those mandated by the ESCT. Agencies must also justify and obtain ESCT approval to pursue new agreements that overlap or conflict with the ESCT mandated agreements.

Agency Strategies – Centralizing and Improving Software Management

FITARA provides new authorities and responsibilities that Chief Information Officers (CIOs) can use to improve their agencies’ IT management policies and practices. To improve covered agencies’⁷ software management practices, CIOs, in coordination with Chief Acquisition Officers (CAOs) and Chief Financial Officers (CFOs), must take the following steps:⁸

³ Section 837 of the National Defense Authorization Act (NDAA) for Fiscal Year 2015; <https://www.congress.gov/113/plaws/publ291/PLAW-113publ291.pdf#page=148>

⁴ <https://www.whitehouse.gov/sites/default/files/omb/procurement/memo/simplifying-federal-procurement-to-improve-performance-drive-innovation-increase-savings.pdf>

⁵ Best-in-class criteria are described in further detail in the Government-wide Category Management Guidance: https://hallways.cap.gsa.gov/Gov-wide_CM_Guidance_V1.pdf

⁶ The ESCT is a subgroup of the Category Management Leadership Council, formerly known as the Strategic Sourcing Leadership Council (SSLC). The SSLC was established under M-13-02, Improving Acquisition through Strategic Sourcing: https://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-02_0.pdf.

⁷ Agencies covered by this memorandum are those agencies listed in 31 U.S.C. § 901 (b)(1) and (b)(2).

⁸ For the purposes of this Memorandum, IT software includes the costs of commercial and commercial-off-the-shelf (COTS) software licenses (perpetual and term licenses) and maintenance (maintenance contracts, software assurance, upgrades, patches, and limited helpdesk support).

- 1) **No later than 45 days after issuance of this memo, appoint a software manager, that is responsible for managing, through policy and procedure, all agency-wide commercial and COTS software agreements and licenses.⁹ The software manager shall report to the agency CIO and will work in collaboration with the offices of the CIO, CAO, CFO, and other organizations as appropriate.** The software manager shall lead the agency-wide effort to centralize license management, implement strategies to reduce duplication, ensure the adoption of software management best practices, and participate in the ESCT when requested to support ESCT activities, among other duties. A complete list of software manager roles and responsibilities is found in Appendix A. Specific instructions for providing this information to OMB will be posted at the following URL: <https://community.max.gov/x/LhtGJw>

- 2) **Maintain a continual agency-wide inventory of software licenses, including all licenses purchased, deployed, and in use, as well as spending on subscription services (to include provisional (i.e. cloud) software as a service agreement (SaaS)).** Agencies must better understand the true usage of certain types of software.
 - No later than September 30, 2016, covered agencies shall, to the extent practicable, compile a baseline inventory of their commercial and COTS software licenses purchased, deployed, and in use.¹⁰ Agencies should leverage commercially available IT to support processes for compiling and maintaining software license inventories. Commonly used IT that enables industry best practices and standards for software license management includes: Software Asset Management (SAM) tools, Software License Optimization (SLO) tools, Continuous Diagnostics and Mitigation (CDM) tools, Continuous Monitoring as a Service (CMaaS), network management tools, and finance and accounting systems to report on software inventory, prices, and usage. This technology should automate: IT hardware and software asset discovery; IT asset inventory tracking; software inventory normalization; contract, purchase, and product use rights reconciliation; software license optimization; and SAM data sharing capabilities.

- 3) **Analyze inventory data to ensure compliance with software license agreements, consolidate redundant applications, and identify other cost-saving opportunities.**
 - The covered agency will utilize this inventory to develop a Software Management Centralization Plan that outlines how the agency's software inventory capability will be implemented and identifies the tools that will support inventory management and reporting.

⁹ Report via OMB's Integrated Data Collection (IDC), <https://community.max.gov/x/LhtGJw>

¹⁰ The Department of Defense shall continue to implement the DoD software inventory reporting plan in accordance with Section 935 of the FY2014 NDAA. The ESCT shall also provide assistance to the CIOs and CAOs, as needed, in establishing priorities or otherwise helping agencies understand where best to focus their inventory collection efforts.

- **Agencies shall develop automated, repeatable processes to aggregate software license and maintenance requirements and associated funding, as appropriate, for commercial and COTS software acquisitions. Agency CIOs, in coordination with CAOs and CFOs, must use their authority under FITARA to align all components with a centralized acquisition strategy that defines common software license and maintenance requirements across the agency. The processes should include a means to review existing software that is currently in use against the agency-approved list of software. When software is discovered that is not on the agency-approved software list, the process should include provisions for agencies to consider whether to add the product to the approved software list, or identify an approved alternative software product to replace it.**
- **Beginning November 30, 2016, and each quarter thereafter, all departments and agencies shall report to the OMB Integrated Data Collection all cost savings and cost avoidance attributable to improved software license management. Agencies shall, upon request, provide additional information to OMB regarding their software license inventory, including maintenance agreements and spend on cloud-based licenses, commercial and COTS software subscriptions, and enrollments.**

As a reminder, generally agencies should not agree to terms and conditions that prohibit the sharing of all prices, terms, and conditions for commercial and COTS software licenses with other Government entities (including posting said information to the Acquisition Gateway).¹¹ When terms or conditions are identified that seem to preclude an agency from sharing prices paid with other Federal agencies, the covered agency shall ensure removal of these terms and conditions during the negotiation process for the contract or the option period renewal.¹²

Government-wide Strategies – New Solutions for Common Software Acquisition and Management

Section 837 of FITARA requires the GSA¹³ to establish a software program, on behalf of the agencies, to reduce life-cycle cost and improve asset management practices. In support of this requirement, the Category Management Leadership Council, formerly known as the Strategic Sourcing Leadership Council, established the ESCT – which is led by OMB, DoD, and GSA – to serve as the category management lead for the IT software subcategory. The ESCT, a team of senior IT and acquisition executives, is charged with: supporting the development and implementation of a Government-wide strategy to increase the number of enterprise software

¹¹ <https://hallways.cap.gsa.gov/>

¹² For additional detail see question 6 in the Myth-Busting 2 memorandum, http://www.gsa.gov/graphics/staffoffices/OFPP_Myth-Busting2.pdf

¹³ Under Section 837 of the National Defense Authorization Act (NDAA) for Fiscal Year 2015, the Administrator of GSA “shall identify and develop a strategic sourcing initiative to enhance Government-wide acquisition, shared use, and dissemination of software, as well as compliance with end user license agreements.”; <https://www.congress.gov/113/plaws/publ291/PLAW-113publ291.pdf#page=148>

agreements;¹⁴ recommending policy changes to improve the acquisition and management of software; and, monitoring agency progress. Specifically, the ESCT will:

1. **Identify and promote existing best-in-class agreements.** In order to better leverage existing agreements that reflect best-in-class practices, the ESCT will evaluate, for approval and endorsement for Government-wide use, software agreements, including cloud-based software service, maintained by GSA's Software Category Team, DoD's Enterprise Software Initiative, and any other agency agreements identified by the ESCT.
 - Within 90 days of issuance of this policy, executive agents of Government-wide software agreements must post and maintain standard pricing and terms and conditions for the agreements on the Acquisition Gateway.¹⁵
 - Within 120 days, the ESCT will publish initial guidance on the Acquisition Gateway that identifies best-in-class software licensing agreements to include service level agreements (SLAs) and provisional (i.e. cloud) SaaS agreements and post information about software license management best practices. This information will include guidelines for standard terms and conditions to improve the Government's negotiation posture with respect to pricing or other quality considerations for use in agency-level agreements. The ESCT will review, evaluate, and revise this guidance annually, or as needed.
2. **Develop new Government-wide software agreements and reduce redundancy in software purchasing vehicles.**
 - The ESCT shall support the establishment and mandate of new Government-wide software agreements. At least two new enterprise software agreements will be in place by the end of calendar years 2016 and 2017; the ESCT will establish bi-annual targets thereafter.
 - To move agencies away from issuing redundant contracts, within 90 days, the ESCT will post on the Acquisition Gateway a new business case review process that requires agencies to obtain approval to pursue new agreements that overlap or conflict with ESCT mandated Government-wide enterprise software agreements.

As a result of these efforts, beginning in the second quarter of fiscal year 2017, the Government will gain increased visibility into the agency-reported Government-wide spend on software licenses, which will be posted to the Acquisition Gateway to further assist in the creation of new software agreements and the development of other tools.

Improving our IT commodity acquisition and management practices is a critical step in the implementation of FITARA and providing value to the taxpayers. The actions described

¹⁴ For the purposes of this Memorandum, enterprise software agreements include government-wide enterprise software licenses and government-wide blanket purchase agreements.

¹⁵ URL: <https://hallways.cap.gsa.gov/>

above will reduce duplication, improve pricing, and better leverage the Government's buying power. OMB will monitor savings and the reduction in contract duplication over time.

Additional Considerations

This memo only applies to commercial and COTS software, not custom services or the development of new software. Agencies must develop processes and guidelines to manage software consistent with OMB policies and guidance, including OMB circular A-130 and the Federal Acquisition Regulation. The processes and guidelines must also include alternative analyses in a technology neutral manner that is merit-based, and considers such factors as performance, total cost of ownership, security, privacy, Section 508 compliance, interoperability, ability to share or re-use, and availability of quality support.

If you have further questions, please contact Meredith Romley in OMB's Office of Federal Procurement Policy (OFPP) at (202) 395-4644 or mromley@omb.eop.gov.

Covered Agency Software Manager
Roles and Responsibilities

Strategic Planning

- **Employ a centralized software license management strategy that includes development of an approved list of software and an associated implementation plan. This plan should address, at a minimum, life-cycle phases, funding aggregation, and other considerations, including the use of Software-as-a-Service (SaaS).**
- **Increase use of Government-wide software license agreements and implement strategies to reduce duplication after an agency determines that a product meets a validated need, based on technical requirements. In cases where there is a mandated Government-wide or multi-agency agreement available, the software manager is responsible for ensuring utilization of such contracts unless an alternative purchasing vehicle has been approved through the ESCT business case approval process described below. Agencies may continue to use mandatory agency-wide software license agreements, including maintenance renewals, through the end of the current base or option period, as applicable.**
- **When a Government-wide solution is available and the agency wants to continue to use a mandatory agency-wide agreement instead, the covered agency will analyze terms, conditions, pricing, performance, fees, and savings provided under the agency agreement relative to the approved Government-wide agreements and document findings, and provide a business case with this information to the ESCT for approval no less than six (6) months prior to the exercise of each option. Eighteen (18) months prior to the end of the final period of performance of each of these existing agency purchasing vehicles, the covered agency must submit an implementation plan to the ESCT that outlines how the agency will transition to the Government-wide agreement. Specific instructions for the strategy will be posted on MAX initially at the following URL: <https://community.max.gov/x/LhtGJw>**

Acquisition

- **Ensure, through effective market research, that terms and conditions in agency commercial license agreements are consistent with customary practices, to the maximum extent practicable, and are negotiated to meet the agency's needs.**
- **Develop and implement a vendor management strategy that includes processes to improve relationships with suppliers and support the development of IT sourcing strategies within 120 days of the publishing of this guidance.**

Workforce

- **Ensure that the personnel involved in software license management (e.g., legal, acquisition, system administration, technical support, and users, as appropriate) are trained in relevant software management topics, such as intellectual property and software contracts, license negotiations, license compliance laws, regulations, software audits, security planning, configuration management, provisional services (i.e. SaaS), and Section 508 compliance. OMB will work with the Federal Acquisition Institute and the Defense Acquisition University to identify and develop appropriate training to facilitate this requirement.**

- **Appoint team members to support the ESCT activities, as requested.**

Other

- **Develop and implement an assessment and approval process to determine the cost and benefit of purchasing software maintenance programs, to include a means of assessing operational impacts and risks, including information security and privacy as described in Circular A-130 and other related OMB guidance.**
- **Provide information to the Acquisition Gateway on agency software contracts, including terms and conditions, and pricing, upon request by the ESCT.**

Enterprise Software Category Team
Roles and Responsibilities

- A. Develop, implement, and maintain a Government-wide strategic plan for software license acquisition that reduces the total cost of ownership, minimizes risks, improves supplier and operational performance, boosts innovation, and increases software license spend under management. At a minimum, the plan will:**
 - i. establish the best-in-class criteria standards for populating content in the software category hallways on the Acquisition Gateway;**
 - ii. standardize data collection efforts to help establish and track category performance metrics;**
 - iii. for software not yet under an Government-wide software agreement, the ESCT will determine which existing solutions are best-in-class and encourage or mandate use; and**
 - iv. develop a new business case process for agencies to request agreements outside of the Government-wide software agreements established under this effort.**

- B. Develop, prioritize, and manage the opportunities for pursuing enterprise software agreements, including, but not limited to the following actions:**
 - i. appoint executive agents to develop and manage Government-wide software agreements and other solutions, with a preference for using select existing software license acquisition vehicles if and when they meet best-in-class criteria.**
 - ii. evaluate success of software solutions based on established key performance metrics.**
 - iii. approve or deny covered agency requests for establishing agreements outside of enterprise software agreements developed under this effort.**

- C. Recommend acquisition and demand management strategies to OFCIO and OFPP for dissemination through OMB guidance.**

- D. Serve as key liaison between the software industry partners and the Federal Government.**

- E. Advocate in the CIO, CAO, and CFO communities for the adoption of enterprise software agreements and other best-in-class software license acquisition solutions.**

Summary of Deadlines and Requirements

		Immediately	45 Days	90 - 120 Days	120 Days and Beyond
Responsible Party	Federal Departments and Agencies	- Generally forbid terms and conditions that prohibit the sharing of all prices, terms, and conditions with other Government entities.	- Within 45 days, appoint an agency software manager and supporting team.	- Within 90 days of issuance of this policy, executive agents of Government-wide software agreements shall post and maintain standard pricing and terms and conditions for the agreements on the Acquisition Gateway.	- By September 30, 2016, compile a baseline inventory of the agency’s commercial and COTS software licenses purchased, deployed, and in use, using commercially available IT. - Beginning November 30, 2016, and each quarter thereafter, report to the OMB Integrated Data Collection all cost savings and cost avoidance attributable to improved software license management.
	ESCT			- Within 90 days, post on the Acquisition Gateway a new business case review process (90 days).	- Within 120 days, publish on the Acquisition Gateway initial guidance that identifies best-in-class software licensing agreements; and software license management best practices.
	GSA				- By the end of 2016 and 2017, put in place two new Government-wide software agreements, and additional agreements thereafter as identified by the ESCT.
	OMB	- Monitor savings and the reduction in contract duplication over time.	- Collect the list of covered agency software managers.		- Beginning August 31, 2016, and each quarter thereafter, analyze all cost savings and cost avoidance attributable to improved software license management.