APRIL 25, 2024

Want to Weigh in on the Responsible Procurement of Artificial Intelligence in Government? Now's Your Chance!

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Artificial intelligence ("AI") has already impacted virtually every industry in the United States and around the globe. The realm of federal government contracts is no exception. Considering this, the Administration has announced several measures to oversee, monitor, and regulate the use of AI, as seen in recent action taken by the Office of Management and Budget ("OMB").

On March 28, 2024, OMB issued a request for information ("RFI") on Responsible Procurement of AI in Government. According to the White House, the RFI "will collect input from the public on ways to ensure that private sector companies supporting the Federal Government follow the best available practices and requirements."

Specifically, the information collected through the RFI will inform OMB as it makes future decisions regarding how to regulate the use of AI in federal government contracts. This is particularly relevant because OMB intends to take action later this year to align federal agencies' contracts that involve AI with OMB policy while also seeking to protect the public from potential risks or harms associated with AI.

This RFI was issued concurrently with an OMB policy provided as a memorandum for the Heads of Executive Departments and Agencies titled *Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence* (the "AI M-memo"). The RFI and OMB policy together indicate that the current Administration is actively monitoring AI to the extent it may affect government contracts and government activity in general. Because the federal government is showing signs of increasing its oversight of AI use, those seeking to enter federal contracts should closely monitor OMB action related to AI

and government contracts moving forward.

Both the OMB Policy and RFI extend from the Administration's announced efforts to further the responsible use of AI following Executive Order 14110 on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence ("EO on AI"). For example, the EO on AI directed OMB, within 180 days after the circulation of the AI M-memo, to develop initial means to ensure that agency contracts involving AI comply with the guidelines in the AI M-memo and other relevant federal guidance.

The RFI seeks responses to the 10 questions listed below. However, the RFI invites individuals to offer feedback on any topic they believe may impact AI procurement by federal agencies.

Questions

Strengthening the AI Marketplace

1. How may standard practices and strategies of Federal procurement, such as Statements of Objectives, Quality Assurance Surveillance Plans, modular contracts, use of contract incentives, and teaming agreements, as well as innovative procurement practices, such as those in the Periodic Table of Acquisition Innovations, be best used to reflect emerging practices in AI procurement? Are there additional materials or resources that OMB could provide to vendors or agencies to improve alignment between agency missions and technical requirements?

2. How can OMB promote robust competition, attract new entrants, including small businesses, into the Federal marketplace, and avoid vendor lock-in across specific elements of the technology sector, including data collectors and labelers, model developers, infrastructure providers, and AI service providers? Are there ways OMB can address practices that limit competition, such as inappropriate tying, egress fees, and self-preferencing?

3. Should the Federal Government standardize assessments for the benefits and trade-offs between in-house AI development, contracted AI development, licensing of AI-enabled software, and use of AI-enabled services? If so, how?

4. How might metrics be developed and communicated to enable performance-based procurement of AI? What questions should agencies be asking vendors to determine whether AI is already being used in performance-based services contracts?

Managing the Performance and Risks of AI

5. What access to documentation, data, code, models, software, and other technical components might vendors provide to agencies to demonstrate compliance with the requirements established in the AI M-memo? What contract language would best effectuate this access, and is this best envisioned as a standard clause, or requirements-specific elements in a statement of work?

6. Which elements of testing, evaluation, and impact assessments are best conducted by the vendor, and which responsibilities should remain with the agencies?

7. What if any terms should agencies include in contracts to protect the Federal Government's rights and access to its data, while maintaining protection of a vendor's intellectual property?

8. What if any terms, including terms governing information-sharing among agencies, vendors, and the public, should be included in contracts for AI systems or services to implement the AI M-memo's provisions regarding notice and appeal (sections 5(c)(v)(D) and (E))?

9. How might agencies structure their procurements to reduce the risk that an AI system or service they acquire may produce harmful or illegal content, such as fraudulent or deceptive content, or content that includes child sex abuse material or non-consensual intimate imagery?

10. How might OMB ensure that agencies procure AI systems or services in a way that advances equitable outcomes and mitigates risks to privacy, civil rights, and civil liberties?

OMB will accept responses to the RFI now until April 29, 2024. Additional instructions on how to submit responses can be found here.

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