



Response of the Information Technology Industry Council and the IT Alliance for Public Sector to the Request for Comments on the Costs and Benefits of U.S. International Government Procurement Obligations and “Buy American” Policies

Introduction to ITI and ITAPS

The Information Technology Industry Council (ITI)¹ and the IT Alliance for Public Sector (ITAPS)² both appreciate the opportunity to submit these comments to the Office of the United States Trade Representative and the Department of Commerce in response to the Administration’s “Request for Comments on the Costs and Benefits to U.S. Industry of U.S. International Government Procurement Obligations for Report to the President on ‘Buy American and Hire American,’” as directed by the Presidential Executive Order on Buy American and Hire American.³

We support the Administration’s efforts to grow the U.S. economy, and we share its goals of opening markets, increasing U.S. manufacturing and services exports, creating jobs, and raising wages in the United States, and improving the U.S. climate for investment and innovation. ITI has participated in recent opportunities to share views on international barriers to public procurement impacting U.S. technology and technology-enabled companies, including through our most recent National Trade Estimates [submission](#), our [submission](#) on trade deficits of significant concern, and our [submission](#) on trade agreements violations and abuses. In Annex 1 to this submission, we have provided a set of NAICS codes that outline the types of hardware, software, and services our member companies provide to the U.S. federal government.

What is the contribution of the tech sector to the U.S. economy and U.S. exports?

The U.S. economy is increasingly reliant on information technology products and services and cross-border data flows and, therefore, benefits from a trade policy that reflects this reality. Technology companies employ over 6.9 million Americans — 5 percent of private sector employment — and account for 7.5 percent of U.S. GDP.⁴ Technology products and services drive growth and job creation in

¹ **About ITI.** The Information Technology Industry Council (ITI) is the global voice of the tech sector. As the premier advocacy and policy organization for the world’s leading innovation companies, ITI navigates the relationships between policymakers, companies, and non-governmental organizations, providing creative solutions that advance the development and use of technology around the world. Visit www.itic.org to learn more. Follow us on Twitter for the latest ITI news @ITI_TechTweets.

² **About ITAPS.** ITAPS, a division of the [Information Technology Industry Council](#) (ITI), is an alliance of leading technology [companies](#) offering the latest innovations and solutions to public sector markets. With a focus on the federal, state, and local levels of government, as well as on educational institutions, ITAPS advocates for improved procurement policies and practices, while identifying business development opportunities and sharing market intelligence with our industry participants. Visit itaps.itic.org to learn more. Follow us on Twitter [@ITAlliancePS](#).

³ <https://www.whitehouse.gov/the-press-office/2017/04/18/presidential-executive-order-buy-american-and-hire-american>.

⁴ CompTia, “Cyberstates 2017: The definitive national, state, and city analysis of the U.S. tech industry and tech workforce,” (March 2017), available at <http://www.cyberstates.org/pdf/CompTIA%20Cyberstates%202017.pdf>.



virtually every sector of the economy, enable our manufacturers, automakers, energy firms, construction firms, financial firms, healthcare providers, and other U.S. industries to increase productivity, and thus be more competitive, both at home and abroad. U.S. competitiveness, jobs in all sectors, and businesses of all types now depend on companies being able to move digital information rapidly and freely, including across borders, to support their businesses and reach customers in foreign markets.

U.S. tech companies sold over \$300 billion worth of tech goods and services to international customers last year.⁵ In 2016, U.S. companies exported an estimated \$202 billion in U.S. tech products, or about 14 percent of all manufacturing exports.⁶ Tech trailed only transportation (aviation, railroad, and shipping products) and motor vehicles (19 percent) in manufacturing exports.⁷ Exports account for approximately \$1 out of every \$4 generated in the nation's tech industry; and directly support 40 percent of tech manufacturing jobs.⁸ The top five states for tech products exports include: Texas, California, Florida, Illinois and New Jersey.⁹

Fifteen of the top 25 largest tech companies on the Forbes Global 2000 are from the United States, with eight in the top 10. Additionally, of the top 100 federal contractors in FY 2016, 45 of these contractors were IT companies. (See Annex 2). These American companies are market leaders not just in the United States, but in markets around the world, where many of the companies earn the majority of their revenue.

What is the role of government procurement in advancing federal government IT modernization and national security?

Government procurement is essential to advancing federal IT modernization efforts and providing national security. Without effective federal procurement – including the procurement of IT goods and services – achieving the IT Modernization goals set by this Administration would not be possible. Access to the most advanced, cost-effective IT is also essential to providing effective national and homeland security a time of increased global risk. Sensible government procurement policies are needed to ensure that the United States will have access to the best information technology available on the global market and that the country will not be placed at a strategic disadvantage relative to other economies that have broader technology choices

The annual appropriated federal government investment in information technology goods and services exceeds \$80 billion. Unfortunately, the vast majority of that amount is used for the sustainment of

⁵ CompTia, "U.S. Tech Industry Exported \$300 Billion in Products and Services in 2016, CompTia Analysis Finds," (May 3, 2017), *available at* [https://www.comptia.org/about-us/newsroom/press-releases/2017/05/03/u.s.-tech-industry-exported-\\$309-billion-in-products-and-services-in-2016-comptia-analysis-finds](https://www.comptia.org/about-us/newsroom/press-releases/2017/05/03/u.s.-tech-industry-exported-$309-billion-in-products-and-services-in-2016-comptia-analysis-finds).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Information Technology & Innovation Foundation, "High Tech Nation: How Technological Innovation Shapes America's 435 Congressional Districts" (Nov. 2016), *available at* http://www2.itif.org/technation-2016-report.pdf?_ga=2.23341882.1261682628.1505238860-1946629399.1490809220.



existing legacy IT systems and networks¹⁰ and is not devoted at all to modernization. Compounding that problem is the dysfunctional appropriations process that has resulted in over one hundred seven continuing resolutions (CR) in the last twenty years. Since agencies cannot expend CR dollars for new investments, including for IT modernization, they have been forced to resort to sustain what they have. Such a level of sustainment is irrational and not in the best interest of the American public. We must find a way to reengineer the way government provides services by investing in new technologies. Funding cycles, however, have only allowed for sustainment of current IT rather than investment in new technology.

For example, when agencies identify the technology they wish to acquire, they must first input that into a funding request, and subsequently into the appropriations process, and then wait for Congress to consider whether to fund the request. The length of time (potentially years) of this funding process often results in the agency is already starting from a disadvantage because it will be looking at acquiring years-old technology once funding is finally appropriated. A new means of funding agency needs, using cutting-edge technology available when the need is identified and not years-old technology, must be identified and established if Congress should ever hope to move away from the condition where agency dollars are being spent to primarily sustain IT operations, rather than update and upgrade them.

Furthermore, for years, a key element of our nation's security has been the commitment to developing and fielding new technologies faster than any other economy. In the past, the nation relied on, in large part, domestic innovation, and production. For the ICT industry, that dynamic has changed. The United States exists in a global economy with global research and development, global manufacturing, and global supply chains. These global product development and supply chain activities enable faster innovation and more efficient delivery of a wide range of goods and services and economies of scale from global production. Additionally, because rogue states and non-state actors have access to this global marketplace, they have more tools at their disposal to compete with U.S. military capabilities. Thus, to maintain the United States' national security and technological dominance, in addition to mitigating acquisition requirements unique to the federal government that drive cost in government procurement (e.g. domestic content requirements), the acquisition process should facilitate the federal government's access to the global market.

This access already occurs under the Trade Agreement Act's (TAA) current framework, which mandates that only U.S.-made or designated-country end products shall be purchased by the federal government in certain circumstances. These designated countries are our international trade partners, countries with which the U.S. has negotiated extensive bilateral and multilateral agreements that include commitments to uphold the rule of law and to provide strong protections for intellectual property rights, as well as the ability for US companies to sell their goods and services to government purchasers in trading partner nations. Continued adherence to the TAA regime would expand the nation's research and innovation base and sustain a viable government procurement process that is currently delivering the wide array of goods, services, and capabilities to meet the needs of the government mission. Moreover, government procurement agreements with these international trading partners help provide market access for U.S. exports of technology goods and services to government markets.

¹⁰ United States Government Accountability Office, *Information Technology: Federal Agencies Need to Address Aging Legacy Systems* (May 2016), available at <https://www.gao.gov/assets/680/677436.pdf>.



What does the global market for technology goods and services look like?

The technology sector continues to be one of the most robust, far-reaching industries throughout the global economy. According to one report, the global technology industry surpassed \$3.4 trillion in sales in 2016 with expected growth to over \$3.5 trillion this year.¹¹ Additionally, the sector is expected to see almost \$2.4 trillion in revenue this year for technology products and services with expected growth to \$2.65 trillion by 2020.¹² While North America (United States and Canada) makes up a large portion of IT spend, approximately 60 percent of revenues comes from outside of this region.¹³

However, much of this spend takes place in the commercial sector. For example, the financial services and manufacturing sectors are expected to generate 30 percent of IT revenues with an additional 20 percent generated from consumer purchases.¹⁴ Because of this high percentage of spend in the commercial market, the technology sector products are often tailored for the commercial market. The government sector in turn benefits from these innovations. The federal government procurement market for technology products and services is minimal when looking at the aggregate global commercial market for technology products and services. While the aggregated U.S. spend is expected to be \$920 billion this year, the government's share of this spend is just slightly over 10 percent. When compared to the overall global spend, sales to the U.S. government only account for single digit revenues for most of the technology sector. For FY 2018, the U.S. federal government has proposed to spend approximately \$ 95.7 billion on IT products and services,¹⁵ which equates to only 2.8 percent of the worldwide IT market (\$3.4 trillion). However, due to the dynamic of the size of the commercial marketplace, IT companies have been able to offer the most effective and affordable products and solutions to the government in the same way they do in the commercial world, allowing the government to get the best value from taxpayer dollars. Imposing domestic content requirements on IT procurement in the public sector will impede the government's access to these efficiencies found in the commercial marketplace.

In addition, given its small share of global IT spend, the U.S. federal market is not large enough to drive major supply chain changes, since U.S. IT companies must remain competitive in the much larger global market. Moreover, if more stringent Buy American provisions are imposed on U.S. IT suppliers with global supply chains, then the cost to the U.S. taxpayer could increase dramatically, and the U.S. Government might lose access to the latest, most innovative, and cost-effective IT solutions that are required to meet the Government's IT modernization goals.

¹¹CompTia, "IT Industry Trends Analysis 2017," (Jan. 2017), available at <https://www.comptia.org/resources/it-industry-trends-analysis-2017>.

¹²International Data Corp., "Worldwide IT Spending Forecast to Sustain Growth of More Than 3% Through 2020 Led by Financial Services and Manufacturing Industries, According to IDC," (Feb. 8, 2017), available at <https://www.idc.com/getdoc.jsp?containerid=prUS42298417>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Office of Management and Budget, Fiscal Year 2018 Budget-Information Technology, available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/ap_16_it.pdf.



Why are U.S. international government procurement obligations important for the tech sector?

Without U.S. participation in the WTO GPA or government procurement market access commitments in U.S. free trade agreements (FTAs), U.S.-based companies would have significantly fewer export opportunities for technology products and services to government procurement markets around the world and therefore less opportunities for innovation, job creation, and growth.

U.S. international government procurement obligations under the WTO GPA and almost all U.S. FTAs are critical tools for U.S. technology companies. They help to promote the adoption of state of the art technology hardware, software, and services by governments across the world. These obligations open government procurement markets to U.S.-sourced technology products and services in 61 key U.S. trading partner countries. According to the WTO, the GPA parties have opened procurement activities worth an estimated \$1.7 trillion annually to international competition (i.e. to suppliers from GPA parties offering goods, services, or construction services).¹⁶

These binding and enforceable obligations ensure that U.S. trading partners adhere to the principles of reciprocity, due process and transparency in the development and implementation of government procurement activities thus helping to keep markets open to U.S. companies. U.S. commitments in its FTAs and the WTO GPA allow ITI member companies to participate in competitive bidding processes for public sector contracts in all these markets. U.S. Federal and state commitments create procurement environments that are fair, transparent, and open to U.S. companies. While the procurement process in most countries could be more efficient, faster, and more transparent, the commitments in U.S. trade agreements ensure there is an avenue for recourse (dispute settlement) should a procurement process unfairly disadvantage U.S. companies.

ITI member companies have designed and built their supply chains to meet requirements in U.S. law, including BAA and TAA. Operations in “designated countries” permit more options to US companies in developing and executing supply chains that serve both the global market and the US federal customer. In foreign markets with which the U.S. has no international trade agreements, the existence of Buy American often becomes a barrier to public sector market access. These governments will often use Buy American as rationale for their own “buy national” policies, thus closing off access to U.S. goods and services.

As more parties join the GPA (nine WTO members are currently acceding) and if the U.S. negotiates more FTAs with government procurement obligations (at present it is only updating the North American Free Trade Agreement, which already has government procurement commitments), it opens up more markets for U.S.-based companies to offer their technology products and services. This creates economic benefits by increasing market access globally, resulting in increases to U.S. manufacturing and jobs.

¹⁶ https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm.



The greatest growth in government procurement markets in the future will be in large emerging economies, including Brazil, China, India, Indonesia, and Nigeria. For example, according to the [Peterson Institute for International Economics](#), India publicly procures 20 percent of its gross domestic product (\$2.26 trillion), which means that India spends approximately \$452 billion on government procurement. China publicly procures 2.8 percent of its gross domestic product (\$11.2 trillion), which means that China spends approximately \$313 billion on government procurement.

Unfortunately, none of these countries are GPA members, and the United States is not negotiating trade agreements with these countries. These markets require or give significant preferences to locally manufactured goods, require unnecessary additional testing and certification and/or compliance with unique national standards. Since they have not made any trade commitments regarding procurement, it is impossible to challenge these practices at the WTO.

If the United States assigned priority to opening up these procurement markets to U.S.-based technology companies and bringing these markets into the GPA, they would create new opportunities to grow the U.S. economy, create jobs, and enhance innovation in the United States. ITI believes that further diplomatic efforts to sustain and expand the global government procurement market are both warranted and necessary.

Without the U.S. adhering to its existing international government procurement obligations, these governments would have no incentive to open their procurement markets to US companies. For example, China's WTO Accession Protocol legally binds the government of China to join the GPA. To date, it has not done so for fear of losing the ability to discriminate against foreign products and services through its procurement activities. Without the United States in the GPA, China's incentive to join would vanish; despite its WTO obligation, under this scenario, China would never join the GPA. Any domestic political pressure for Brazil, India, Indonesia, and Nigeria, to join the GPA, would similarly vanish. And without the United States as a GPA member, the GPA may lose its attractiveness for the other current participants.

What are the obstacles that tech companies face in other government procurement markets?

Governments around the world, particularly in large emerging markets, still use procurement to tilt the playing field towards domestic technology companies at the expense of foreign competitors. U.S.-based technology companies face the majority of government procurement barriers in countries that are either not U.S. FTA partners or not participants in the GPA. Examples of these barriers in Brazil, China, and India are in Annex 3 to this submission.



What are the impediments to tech companies using 100% U.S. domestic content in providing goods and services to the U.S. federal, state, and local governments?

There are many challenges to creating technology products from 100% U.S. domestic content, but perhaps the greatest is that it is physically impossible to find all of the necessary materials within the United States. Consider that [modern smartphones use](#) 70 different elements – that is 83% of all stable (non-radioactive) elements from the periodic table. While it may be possible to get some high percentage of local content, it would come at a high cost to not only the U.S. government, but also businesses, consumers, and taxpayers.

Perhaps more than any other industry, technology supply chains are vast, deeply global, and exceptionally complex. Technology companies decide where each stage in their supply chain is placed based on a wide variety of criteria, including: projected demand for products and the proximity of production to those higher demand markets; the logistics and costs of transporting raw materials, components, and finished products; the costs of production in each locale; available workforce and their skill levels; and proximity to upstream and downstream elements of the supply chain.

In short, U.S.-based tech companies design their supply chains to meet global demand in a highly competitive market. Requiring higher percentages of domestic content would make American companies less competitive and increase the costs of their products, and as a practical matter may be unworkable due to the lack of domestic sources for certain materials and components. It would mean a reduction in their global share of the market and lead to a further erosion and loss of American-based manufacturing and jobs. US companies becoming less competitive overseas harms American companies, American workers, and American jobs. Put another way, to increase domestic content in American tech company products would require recapitalization of manufacturing capabilities totaling in the hundreds of billions of dollars. Little or none of that investment would be recouped because the added expense would make American companies and their goods and services too expensive to be competitive. Increasing domestic content requirements would only serve to create a slow process that would significantly increase the cost of products to Americans and reduce the competitiveness of American companies overseas, where many of our member companies derive over 60% of their revenue. Considering that U.S. government procurement is a relatively low portion of most technology companies' revenue, many would conclude that the benefit is not worth the cost and stop designing supply chains to be compliant with BAA or TAA requirements, which would deny key technologies to the US federal customer as a result. The government should strengthen its ability to tap into global innovation and not unnecessarily hinder it.

Such policies could have one of several negative effects on the U.S. technology procurement market:

- 1) The U.S. government would spend far more than the commercial market value for comparable products, resulting in increased costs to the government and diminished quality of services and capabilities of various mission areas of the government to citizens;
- 2) Companies would determine that there is not a strong business case for complying with such policies and would choose to instead exit the market, reducing choice and competition for government contracts; and/or,



- 3) Companies would only be able to comply with domestic content regulations with older generation products, reducing the technological capabilities of the federal government relative to our adversaries and other foreign governments.

What are the costs for tech companies and the government to comply with Buy American?

The Paperwork Reduction Act (PRA) defines the burden of an information collection as the “time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a federal agency,” and includes every step taken to gather the information.¹⁷ The PRA goes on to specify that the burden includes the actions taken by the company between reviewing the instructions to transmitting and disclosing the information.¹⁸ The PRA therefore requires that agencies estimate the burden of not only completing the paperwork, but also of the entire scope of activities associated with the response, including the time required to collect the information that must be reported. However, based on the data in the supporting statement for the PRA, the Government has failed to account for the full scope of the burden associated with this information-collection requirement and as such has not faithfully applied the definition of “burden” nor fully complied with its obligations under the PRA and the implementing regulations in 5 C.F.R. Part 1320.¹⁹ For example, in its supporting document, the government estimates compliance with the Buy American requirements under TAA as only costing the private sector approximately \$650,000 with an additional \$400,000 cost to the government.²⁰ Yet, these estimates do not effectively estimate and account for the burden as defined under the PRA or the realities of corporate compliance.

In calculating the hours per response (i.e., the act by a company of responding to Buy American requirements under the TAA), the government indicates that it would only take 15 minutes to read and prepare the information required for the response. This estimate is vastly underestimated as companies spend a great deal more time ensuring their compliance with these requirements, often involving outside counsel and various employees throughout the supply chain. Additionally, when calculating the cost per hour to respond to these compliance requirements, OMB estimated only \$42/hour using the rate equivalent to a GS-12 employee of \$30.81/hour with overhead added at 36.25 percent. The rate of pay for those involved in ensuring compliance, however, is often significantly higher, as the level of risk and liability inherent in errors of compliance in the government market fall subject to the False Claims Act and its treble damages penalties. Therefore, it is clear that companies spend much more on compliance, including the compensation of those involved in certifying compliance, compared to the compensation rates and other compliance costs estimated by OMB.

There are other costs, however, that are not taken into consideration when discussing the cost of compliance. For instance, there is the additional cost to the government and consumers resulting from

¹⁷ 44 U.S.C. § 3502(2).

¹⁸ *Id.*

¹⁹ See 5 C.F.R. § 1320.8 (“This review [of the information collection requirement] shall include ... [a] **specific, objectively supported** estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection.” (emphasis added)).

²⁰ Supporting Statement for Paperwork Reduction Act Submission 9000-0024, Buy American Act and Trade Agreements Certificates (Sept. 9, 2014), available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201402-9000-011.



the increased price of the goods and services that result from increased costs of production when domestic sourcing requirements are put into place. According to one report,²¹ the Government pays up to 12 percent more for goods and services as a result of the current Buy American preferences. This report estimates that this cost premium – higher prices for goods and services paid for by the U.S. federal government – increases the United States’ trade deficit by approximately \$2 billion each year. Further actions to increase domestic sourcing requirements would likely result in an increase of both of these numbers. These increased costs would also impact state and local governments and may put many IT products outside of their budget, as oftentimes they rely on federal government vehicles and pricing to source goods and services.

Additionally, there is the cost to competition in the marketplace. During the last decade as compliance requirements increased, the government marketplace experienced a downturn in the overall number of businesses that were registered to do business with the government with the number of vendors falling 23 percent from fiscal year 2001 through 2016.²² Many businesses concluded that the cost to do business with the government was too great, particularly when it did not comprise a significant share of their revenue in the first place. As a result, there is a decrease in competition between vendors, resulting in fewer products and services, less choice for mission needs, and higher prices. These conditions serve to deprive the government of the goods, services, and solutions that these vendors could provide.

For American tech companies, the compliance estimates do not take into account the enormous risk and tremendous uncertainty that exist in the current acquisition system. It could be fatal for a company to make investments in increased domestic content, only to lose the contract because they can no longer be competitive on price. Additionally, the current rules emphasize the location where a product is physically transformed into a new item and for the most part does not take into account the transformation of functionality provided by adding software. The United States has a significant competitive advantage in software development that has driven innovation and provided massive economic benefits to the United States. The emphasis on physical transformation embedded in the current rules removes the incentive for U.S. software-based companies to provide innovative solutions to the U.S. government.

How can the U.S. government encourage/promote the creation of more jobs in the U.S. through government procurement?

The U.S. government should strongly consider eliminating unilateral domestic sourcing requirements entirely, and rely on trade agreements to ensure mutual access to government markets, as such a move would spur additional job growth. One report found that eliminating such requirements would both increase the GDP by \$22 billion and create over 350,000 jobs throughout the country.²³ It is highly probable the creation of many of these jobs would occur in the technology sector. According to a recent

²¹ <http://bush.tamu.edu/psaa/capstones/2016/Buy%20America%20Final%20Report-%20Final%20Version-1.pdf>.

²² Paul Murphy, “Number of new U.S. government vendors drops to 10-year low,” BGOV (Jan. 24, 2017).

²³ <http://www.heritage.org/trade/report/buy-american-laws-costly-policy-mistake-hurts-americans>.



report, the technology sector employed 6.9 million Americans in 2016.²⁴ This report also estimated that the technology sector added over 182,000 net new jobs from 2016 to 2017, driven largely by gains in the IT services and custom software services category.

Creation of new manufacturing jobs may also result from eliminating domestic sourcing requirements. Manufacturing jobs of the past are not going to return. Even if the billions of dollars of capital investments that would be needed could be found, the manufacturing facilities they might fund would look a lot different from factories of the past as manufacturing continues to evolve to increasingly rely upon automation to populate the assembly line or manufacturing facility of the future. For example, when Brazil worked with Foxconn Technology Group to make Apple products in the country, there were promises of a new supply chain, lower prices, and new high-quality jobs.²⁵ However, these promises have not come to fruition as only a small fraction of promised jobs were created and those that were involved only low-skill assembly.²⁶ Additionally, the prices of the iPhone 5s never came down and were in fact “among the highest prices in the world and about twice what they sell for in the U.S.”²⁷

Instead of seeking to incentivize manufacturing jobs of the past through the promotion of stricter domestic purchasing preferences, the Administration should focus on developing skills for the jobs gap now, while provisioning our education and labor training efforts for the “manufacturing” innovation-focused jobs of the future.

The U.S. government should also increase spending in Research and Development (R&D) as it is widely considered the backbone of a globally competitive economy. This area of intellectual property is especially important as we face newer threats to our national security. While the U.S. continues to hold the greatest share of total R&D spending, China and other Asian countries continue to see their R&D investments grow at a significantly higher rate.²⁸ According to a recent report, however, real gains will be realized by the “vast R&D going on in the private sector.”²⁹ Many companies in the IT sector continue to be the biggest generator of new intellectual property each year. In 2016, the top ten patent recipients were from the tech industry³⁰ and much of this R&D is taking place in the U.S.³¹ Thus, in order to spur additional job growth in the tech industry, the government must invest in the development of new U.S.-generated intellectual property through R&D spending.

²⁴ CompTia, “Cyberstates 2017: The definitive national, state, and city analysis of the U.S. tech industry and tech workforce,” (March 2017), available at <http://www.cyberstates.org/pdf/CompTIA%20Cyberstates%202017.pdf>.

²⁵ Brad Haynes, “Brazil’s iPhone investment falls short on promises of jobs, lower prices,” Reuters (Apr. 13, 2015), available at <http://www.reuters.com/article/us-foxconn-brazil-apple-insight/brazils-iphone-investment-falls-short-on-promises-of-jobs-lower-prices-idUSKBNON40CP20150413>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ https://www.iriweb.org/sites/default/files/2016GlobalR%26DFundingForecast_2.pdf.

²⁹ https://section809panel.org/wp-content/uploads/2017/05/Sec809Panel_Interim-Report_May2017_FINAL-for-web.pdf.

³⁰ <http://www.networkworld.com/article/3155506/data-center/ibm-scores-most-patents-in-2016-apple-doesnt-crack-top-10.html>.

³¹ See National Science Board, SCIENCE & ENGINEERING INDICATORS 2016, Chapter 4 Research and Development: National Trends and International Comparisons, Figure 4.8, available at <https://www.nsf.gov/statistics/2016/nsb20161/#/figures>.



Conclusion

ITI and ITAPS support the efforts to increase domestic job growth and economic expansion. However, harmful domestic sourcing restrictions, particularly in the ICT sector, would be counterproductive to that goal and efforts to limit sources of contract fulfillment to domestically produced items will unnecessarily limit access to the most innovative and mission-critical technologies. Trade agreements have tremendous benefits for both the government entities that utilize the IT products and services that enter as a result of these agreements and also the American taxpayers who benefits from the commercial efficiencies that they bring. As the Administration seeks to engage in IT modernization throughout the government and strengthen our national security, we believe not recognizing the value that trade agreements bring to the government marketplace and the U.S. economy will limit the ability to accomplish these goals and put at risk the advances America has made in becoming the center of technological innovation.

We appreciate the opportunity to provide comments as the Department of Commerce and the U.S. Trade Representative conduct their assessment and we look forward to working with the Administration as it continues its efforts under the Buy American, Hire American Executive Order. Should you have any questions, please contact Eminence Griffin at egriffin@itic.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A.R. Hodgkins", written in a cursive style.

A.R. "Trey" Hodgkins, III, CAE
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A handwritten signature in black ink, appearing to read "Jonathan S. Kallmer", written in a cursive style.

Jonathan (Josh) S. Kallmer
Senior Vice President, Global Policy
Information Technology Industry Council (ITI)



Annex 1 – North American Industry Classification System (NAICS) Codes for ITI Members

NAICS CODE	NAICS DESCRIPTION
323111	COMMERCIAL PRINTING (EXCEPT SCREEN AND BOOKS)
323120	SUPPORT ACTIVITIES FOR PRINTING
325910	PRINTING INK MANUFACTURING
333244	PRINTING MACHINERY AND EQUIPMENT MANUFACTURING
333316	PHOTOGRAPHIC AND PHOTOCOPYING EQUIPMENT MANUFACTURING
333414	HEATING EQUIPMENT (EXCEPT WARM AIR FURNACES) MANUFACTURING
333415	AIR-CONDITIONING AND WARM AIR HEATING EQUIPMENT AND COMMERCIAL AND INDUSTRIAL REFRIGERATION EQUIPMENT MANUFACTURING
333999	ALL OTHER MISCELLANEOUS GENERAL PURPOSE MACHINERY MANUFACTURING
334111	ELECTRONIC COMPUTER MANUFACTURING
334112	COMPUTER STORAGE DEVICE MANUFACTURING
334118	COMPUTER TERMINAL AND OTHER COMPUTER PERIPHERAL EQUIPMENT MANUFACTURING
334290	OTHER COMMUNICATIONS EQUIPMENT MANUFACTURING
334511	SEARCH, DETECTION, NAVIGATION, GUIDANCE, AERONAUTICAL AND NAUTICAL SYSTEM AND INSTRUMENT MANUFACTURING
334512	AUTOMATIC ENVIRONMENTAL CONTROL MANUFACTURING FOR RESIDENTIAL, COMMERCIAL, AND APPLIANCE USE
336411	AIRCRAFT MANUFACTURING
336413	OTHER AIRCRAFT PARTS AND AUXILIARY EQUIPMENT MANUFACTURING
423430	COMPUTER AND COMPUTER PERIPHERAL EQUIPMENT AND SOFTWARE MERCHANT WHOLESALERS
423490	OTHER PROFESSIONAL EQUIPMENT AND SUPPLIES MERCHANT WHOLESALERS
488190	OTHER SUPPORT ACTIVITIES FOR AIR TRANSPORTATION
511199	ALL OTHER PUBLISHERS
511210	SOFTWARE PUBLISHERS
517110	WIRED TELECOMMUNICATIONS CARRIERS
517911	TELECOMMUNICATIONS RESELLERS
518210	DATA PROCESSING, HOSTING, AND RELATED SERVICES
524292	THIRD PARTY ADMINISTRATION OF INSURANCE AND PENSION FUNDS
524298	ALL OTHER INSURANCE RELATED ACTIVITIES
532420	OFFICE MACHINERY AND EQUIPMENT RENTAL AND LEASING
541330	ENGINEERING SERVICES
541360	GEOPHYSICAL SURVEYING AND MAPPING SERVICES
541511	CUSTOM COMPUTER PROGRAMMING SERVICES
541512	COMPUTER SYSTEMS DESIGN SERVICES
541513	COMPUTER FACILITIES MANAGEMENT SERVICES
541519	OTHER COMPUTER RELATED SERVICES



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541611	ADMINISTRATIVE MANAGEMENT AND GENERAL MANAGEMENT CONSULTING SERVICES
541612	HUMAN RESOURCES CONSULTING SERVICES
541613	MARKETING CONSULTING SERVICES
541614	PROCESS, PHYSICAL DISTRIBUTION, AND LOGISTICS CONSULTING SERVICES
541618	OTHER MANAGEMENT CONSULTING SERVICES
541690	OTHER SCIENTIFIC AND TECHNICAL CONSULTING SERVICES
541711	RESEARCH AND DEVELOPMENT IN BIOTECHNOLOGY
541712	RESEARCH AND DEVELOPMENT IN THE PHYSICAL, ENGINEERING, AND LIFE SCIENCES (EXCEPT BIOTECHNOLOGY)
541810	ADVERTISING AGENCIES
541820	PUBLIC RELATIONS AGENCIES
541830	MEDIA BUYING AGENCIES
541850	OUTDOOR ADVERTISING
541860	DIRECT MAIL ADVERTISING
541910	MARKETING RESEARCH AND PUBLIC OPINION POLLING
541990	ALL OTHER PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES
561210	FACILITIES SUPPORT SERVICES
561311	EMPLOYMENT PLACEMENT AGENCIES
561330	PROFESSIONAL EMPLOYER ORGANIZATIONS
561422	TELEMARKETING BUREAUS AND OTHER CONTACT CENTERS
561611	INVESTIGATION SERVICES
561920	CONVENTION AND TRADE SHOW ORGANIZERS
611420	COMPUTER TRAINING
611430	PROFESSIONAL AND MANAGEMENT DEVELOPMENT TRAINING
611699	ALL OTHER MISCELLANEOUS SCHOOLS AND INSTRUCTION
611710	EDUCATIONAL SUPPORT SERVICES
624310	VOCATIONAL REHABILITATION SERVICES
811212	COMPUTER AND OFFICE MACHINE REPAIR AND MAINTENANCE
811213	COMMUNICATION EQUIPMENT REPAIR AND MAINTENANCE



Annex 2 –IT Companies in Top 100 Federal Contractors for Fiscal Year 2016³²

Rank	Company	Rank	Company
1	Lockheed Martin Corp.	45	Pacific Architects & Engineering Inc.
2	Boeing Co.	46	KBR Inc.
3	General Dynamics Corp.	47	Jacobs Engineering Group Inc.
4	Raytheon Co.	49	Sierra Nevada Corp.
5	Northrop Grumman Corp.	51	International Business Machines Corp.
7	BAE Systems Plc	55	Space Exploration Technologies Corp.
8	United Technologies Corp.	57	Engility Holdings Inc.
10	Leidos Holdings Inc.	58	Chemonics International Inc.
11	L3 Technologies Inc.	59	ManTech International Corp.
13	Booz Allen Hamilton Holding Corp.	60	Vectrus Inc.
15	CSRA Inc.	61	CH2M Hill Cos.
16	Harris Corp.	62	CGI Group Inc.
18	Science Applications International Corp.	63	Aerospace Corp.
20	AECOM	73	Rockwell Collins Inc.
21	CACI International Inc.	74	Alion Science & Technology Corp.
22	Battelle Memorial Institute	76	Parsons Corp.
31	General Electric Co.	77	AT&T Inc.
32	General Atomics Technologies Corp.	78	Tetra Tech Inc.
34	DXC Technology Co.	81	CDW Corp.
35	Honeywell International Inc.	86	Verizon Communications Inc.
36	Fluor Corp.	88	Serco Group Plc
41	Accenture Plc.	95	World Wide Technology Holding Co.
44	Deloitte Touche Tohmatsu Ltd.	97	Carahsoft Technology Corp.

³² <https://about.bgov.com/bgov200/>.



Annex 3 – Government Procurement Barriers in U.S. Trading Partners

Brazil

The Brazilian government has a long history of implementing measures that preference local technology companies over foreign technology companies in government procurement and the economy as a whole. Primarily, Brazil provides a 10-15% procurement price preference for specified Brazilian manufactured goods over those manufactured in foreign countries with a potential additional 10% preferences for products that are certified as “fully Brazilian.” In addition, several spectrum auctions in Brazil mandated that, in order to be eligible, companies had to build their networks with a minimum level of local content and conduct their research and development (R&D) locally. Brazil also provides discriminatory tax breaks to locally produced products, a measure that was recently ruled as prohibited by a WTO dispute settlement panel. However, this decision can be appealed which could delay any implementation of modifications to the measure to 2018.

China

Chinese restrictions on ICT government procurements largely stem from its Cybersecurity Law and related implementation measures of the law. The “multi-level protection system” (MLPS) under the Cybersecurity Law is a fairly intrusive cybersecurity scheme aimed at strictly regulating public procurement and state networks. The Catalogue of Network Critical Equipment and Cybersecurity-Specific Products (Batch 1) came into force in June 2017 and identifies a wide range of products for which additional cybersecurity testing is required to be sold or supplied. The Catalogue would require disclosure of sensitive information to Chinese government agencies, and the testing itself creates onerous and unnecessary costs of operation for businesses. There are many concerning draft provisions that also require additional security assessments for government and non-government procurement, such as the draft Critical Information Infrastructure Security Protection Regulations. Under these regulations, government procurement of cybersecurity services and products would require additional cybersecurity testing and owners and operators of critical information infrastructure would be required to store data within China.

India

The Indian government has increasingly imposed strict local content and preference programs for government procurement that have led to significant barriers for U.S.-based technology companies to sell their products to the Indian government. The latest, and perhaps most expansive, example is the Department of Industrial Policy and Promotion’s (DIPP) *Public Procurement (Preference to Make in India) Order* released June 15th of this year. Whereas past public procurement rules were generally based on sectors, this order gives a 20% price preference to all procurement across the government for goods with at least 50% Indian content. This expands upon the preferences already provided to a large array of technology products under the Preferential Market Access for Government Procurement (PMA-G) program which has been administered by the Ministry of Electronics and Information Technology (MEITY) and the Department of Telecommunications (DoT). The PMA-G is currently being updated to be in line with DIPP’s new order. These programs are in addition to other procurement preferences for software products, which have limited the ability of U.S.-based software developers to sell their



products to the Indian government. These measures appear to be driven by the Prime Minister’s Office (PMO) in line with the “Make in India” and “Digital India” initiatives that were announced by Prime Minister Modi shortly after taking office. Though these initiatives espouse the need for improving Ease of Doing Business indicators and promoting investment as a tool for encouraging more local manufacturing, government officials have increasingly interpreted them to force local manufacturing, utilizing procurement preferences and minimum local content requirements.

Korea

Under the U.S.-Korea Free Trade agreement, U.S. contractors should be able to bid on contracts from 51 agencies in a \$100 billion government procurement market. There are nonetheless a number of restrictions on government procurement of IT products. For example, Korea’s Software Industry Promotion Act (SIPA) places barriers on large corporations—both foreign and domestic—from bidding directly on software contracts. Additionally, though South Korea has adopted the Common Criteria (CC), the government has imposed an additional verification scheme for internationally CC-certified information security products sold in the public sector. Common Criteria is meant to ensure a standard among products and remove the need for additional verification or certification. As purchasing Korean government agencies and public sectors are required to conduct the additional verification process, this creates a significant disincentive for government procurement of foreign information security products.