

January 20, 2016

The Honorable Anne Rung, Administrator  
Office of Federal Procurement Policy

Mr. Tony Scott, U.S. Chief Information Officer & Administrator  
Office of eGovernment and Information Technology

Office of Management & Budget  
1650 Pennsylvania Avenue, NW  
Eisenhower Executive Office Building  
Washington, DC 20503

Dear Administrators Rung and Scott:

On behalf of the Professional Services Council (PSC), I am pleased to submit comments on the proposed OMB "Category Management Policy 16-1: Improving the Acquisition and Management of Common Information Technology: Software Licensing."

PSC is the voice of the government technology and professional services industry, representing the full range and diversity of the government services sector. As a trusted industry leader on legislative and regulatory issues related to government acquisition, business and technology, PSC helps build consensus between government and industry. Our nearly 400 member companies represent small, medium, and large businesses that provide federal agencies with services of all kinds, including information technology, engineering, logistics, facilities management, operations and maintenance, consulting, international development, scientific, social, environmental services, and more. Through our Technology Council, we have provided a forum to ensure that the requisite expertise of our member companies and their employees are brought to bear on the vital information technology challenges our government faces. Together, the trade association's members employ hundreds of thousands of Americans in all 50 states.

We applaud your efforts to increase the use of enterprise software agreements and appreciate the opportunity to comment on this draft policy guidance. We hope that the following comments will further improve the value of this important document.

**ESCT.** Creating the proposed Enterprise Software Category Team (ESCT) is a good idea and including the Department of Defense (DoD), General Services Administration (GSA) and the Office of Management and Budget (OMB) on the ESCT management team will allow you to draw upon the successes and lessons learned of the DoD Enterprise Software Initiative and GSA SmartBuy and Software Center of Excellence efforts in implementing the goals of this memo. But, finding skilled representatives is more important than agency participation.

**Ensuring Agreements are in place and used.** It is important to note the distinction between two aspects of enterprise licensing agreements. First there is the issue of putting into place an agreement that leverages the government's size to get the best price possible for commercial software. Just as importantly though, is the requirement for agencies to then use these agreements to meet their

software needs. Problems have arisen in the past when either: (a) no agreement exists for an agency to use, or, (b) a company enters into a buying agreement with the government but then purchases are not directed through the licensing agreement. The “win-win” for these agreements is achieved when both of these conditions are met. While the draft guidance is very explicit about moving an agency off of an agency-specific licensing agreement in favor of a government-wide solution, it should also specifically demand that agencies that do not yet have enterprise software licensing agreements must put them into place or likewise take advantage of broader government-wide offerings. In addition, when an agreement is available, organizations must be required to use the licensing agreement. However, we also must ensure that these efforts do not adversely impact the competitive marketplace and access to new capabilities and innovation.

**Leveraging commercial best practices.** With its focus on commercial software, it is crucial that the guidance promote the adoption of commercial best practices. In the past, some agencies have demanded overly prescriptive licensing terms and unique, government-only requirements that deviate substantially from the best practices used widely in industry when creating enterprise agreements. Agencies must be encouraged to use FAR Part 12, recognizing the need for agencies to acquire commercial software using commercial licensing terms. For commercial software, the U.S. government will not be the market driver, and so the burden of government-unique requirements adds unnecessary costs and impedes the ability to rapidly put licensing agreements in place. The Office of Federal Procurement Policy (OFPP) recognized this issue in a memorandum dated December 4, 2014, noting that IT procurement is burdened and complicated by the complexity of the government procurement process and overly prescriptive, Government-unique requirements. This issue can be, in part, addressed through the requirement to use commercial terms and conditions in enterprise software agreements. And, just as commercial terms and conditions should be used, an agency should not mandate that commercial software be uniquely tailored for government-use. By contrast, GSA’s 2015 rule on software terms and conditions points in the wrong direction.

**Consumption-based buying must be encouraged.** The move to consumption-based buying and managed services—as evidenced by the emphasis on cloud computing—must also be addressed. Licensing arrangements for consumption-based buying will be handled differently than in the case of software licensing for networks and systems managed in-house. While this policy should encourage the use of licensing agreements where it makes sense, agencies must still be encouraged to migrate to cloud computing solutions or other future commercial offerings. That is, the availability of a software license for a currently deployed product/system should not preclude the migration to a cloud solution that leverages commercial market place capabilities and software-as-a-service (SaaS) offerings. We must provide and facilitate the flexibility to help agencies take advantage of innovative new technologies and solutions in an evolving cloud marketplace.

**The importance of software asset management.** Agency software asset management must be in place and reviewed to understand usage, aggregate demand and reduce the use of unlicensed or under licensed software. Effective software asset management will enable significant cost savings, reduce the risk of security vulnerabilities and ensure agency compliance with applicable laws and regulations. We support this goal.

**Single software manager.** On page 2 of the draft memo, the requirement for large agencies to have a single software manager that not only manages commercial software licenses but also manages all agency contracts that include commercial software could be a challenge and may not be essential to the solution. It’s important for the software manager to understand the requirements of the agency and ensure that software licensing agreements are in place and used, but flexibility must be provided to accommodate the reality that a large agency may buy software in multiple ways, e.g., as a part of a

managed services solution, as separate commodity buys, incorporated in an outsourced business function, etc.

When done correctly, enterprise licensing agreements can help government reduce costs and have rapid access to the best available commercial solutions. The draft policy should ensure transparency, clear understanding by both government and industry and choice within the market to meet evolving agency needs. In developing a holistic approach for the procurement, deployment, use, and maintenance of software and services, agencies must:

- Ensure the availability of software licensing agreements,
- Channel agency buying through these agreements, as appropriate,
- Adopt tools and metrics that measure actual usage to inform future decisions,
- Ensure software purchased best meets agency needs, and
- Ensure our focus goes beyond just developing agreements for software currently used to emphasize the modernization of IT systems and migration to cloud-based managed services.

Industry must also be kept fully informed of agency policy and mission needs. Transparency is as important as agency accountability. Thank you for the opportunity for PSC to provide these comments. Please feel free to contact me by email at [wennergren@pscouncil.org](mailto:wennergren@pscouncil.org) or by phone at 703-778-7557 if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'David M. Wennergren', with a long horizontal flourish extending to the right.

David M. Wennergren  
Executive Vice President, Operations & Technology