

Summary of the FIT Procurement Act

JUNE 17, 2024

The Federal Improvement in Technology Procurement Act (FIT Procurement Act) was introduced by Senators Gary Peters (D-MI) and Ted Cruz (R-TX) in late March 2024. The purpose of the proposed legislation is to combat the shrinking number of federal contract awardees and allow the government to accelerate and streamline federal acquisitions, particularly in the technology and commercial solutions sectors. The bill makes permanent certain pilot programs that have been in operation for a while and aims to, among other things, improve the federal government's ability to purchase technology by enhancing education for the federal acquisition workforce, promoting innovative procurement methods, and advancing measures that increase competition, particularly from technology companies that have previously not been engaged in the federal marketplace. The bill pursues this goal by cutting down on acquisition obstacles, inspiring competition, and providing new opportunities for businesses to join the field of government contracting.

DISCUSSION

The bipartisan FIT Procurement Act proposes revisions to current federal procurement regulations and procedures for technology acquisition. The following notable provisions are expected to result in important permanent changes for the federal acquisition community and technology vendor base:

- **Innovative Procurement Methods and Commercial Solutions Openings:** The FIT Procurement Act establishes permanent authority to the General Services Administration (GSA) and the Department of Homeland Security (DHS) to use a competitive acquisition process, titled Commercial Solutions Openings (CSO). CSO procedures are designed to be more flexible and innovative than those currently in place. The bill would expand federal acquisition workforce training to include alternative and streamlined procurement methods, such as oral presentations and product demonstrations, instead of lengthy written proposals.
- **New Cloud Computing Subscriptions:** The FIT Procurement Act would allow a new subscription option for select acquisitions. Under the bill, agencies would have the option to acquire cloud computing, data center solutions and services, and other information and communications technology through advance purchase subscriptions
- **Best-Value Preference:** The FIT Procurement Act would require GSA multiple-award decisionmakers to complete competitive procurements on a best-value basis rather than on solely low-cost considerations. This change will affect how products and services are evaluated by the "fair and reasonable" standard under GSA Schedule

contracts, and will likely result in increased consideration and weight being given to an offeror's technical capability rather than just its proposed cost.

- **Guidance on Use of Past Performance Information:** The FIT Procurement Act requires the Administrator for Federal Procurement Policy (Administrator) to issue guidance as to when, and by what means, the government should permit bidders to include commercial or non-government projects as relevant past performance and when alternative evaluation methods other than past performance may be used in order to increase competition.^[1] This prospective guidance may have a substantial positive impact on businesses that are not already engaged in the federal space or that employ emerging technologies that the government has not previously acquired.
- **Doubling the Simplified Acquisition Threshold:** The FIT Procurement Act would double the current simplified acquisition threshold (SAT) from \$250,000 to \$500,000. This would increase the number of procurements eligible to use FAR Part 13 simplified acquisition procedures.
- **Specialized Training for Federal Buyers:** The FIT Procurement Act would implement new training requirements for federal contracting personnel. Specialized training would focus on the acquisition of emerging technology innovations like cloud services and artificial intelligence.
- **Follow-On Contracts for Companies Owned by Employee Stock Ownership Plans:** The bill permits the Administrator to incentivize companies that are wholly owned by an employee stock ownership plan (ESOP), by expanding a current Department of Defense (DOD) pilot program that authorizes the use of other than competitive procedures to issue certain follow-on contracts to such companies. The bill allows the Administrator to expand the use of the pilot program on a government-wide basis, which will permit all agencies to now issue follow-on contracts to qualified ESOP-owned businesses using other than competitive procedures "for the continued development, production, or provision of products or services that are the same as or substantially similar to the products or services procured under a prior contract" and where the performance of the qualified business on the prior contract was rated as satisfactory or better.

ADDITIONAL IMPORTANT HIGHLIGHTS FOR FEDERAL CONTRACTORS

The bipartisan nature of the FIT Procurement Act, as well as expressed support from technology trade organizations like the Information Technology Industry Council and the Professional Services Council, suggests a growing interest in reforming the federal procurement process as it relates to acquiring technology. Further, since Senator Peters serves as chairman of the Homeland Security and Government Affairs Committee, it can be reasonably expected that this bill might become a top priority of the committee and be expedited for consideration in the Senate.

Though the bill has an expressed purpose of expanding government contracting opportunities to new and smaller companies, it could also benefit traditional government contractors in the technology space. For example, the implementation of new cloud computing subscriptions and flexible CSO procedures could positively impact traditional contractors who have established records of business with the federal government.

OUR RELEVANT CAPABILITIES

Winston & Strawn LLP's Government Contracts & Grants Practice is a nationally recognized, highly regarded group of lawyers with deep experience in handling high-value, and often contentious, government contract disputes, bid protests, and claims across a broad spectrum of industries and issues. We have a wealth of experience in counseling on the FAR and developments like the FIT Procurement Act. We help contractors navigate the FAR and agency supplements to ensure compliance and address potential issues before expensive investigations, litigation, and attendant reputational damage arise.

Please contact Winston's Government Contracts & Grants team if you have questions about this legislation or its implications for your business: Lawrence Sher, Lawrence Block, Elizabeth Leavy, and William Kirkwood.

Kennedy Mackey, Summer Associate, also contributed to this blog.

[1] For example, the bill discusses the “use of alternative evaluation methods other than past performance that may be appropriate for a requirement without much precedent, such as demonstrations and testing of technologies as part of the proposal process.”

Authors

[Lawrence S. Sher](#)

[Lawrence “Larry” Block](#)

[Elizabeth Leavy](#)

[William T. Kirkwood](#)

Kennedy Mackey

Related Topics

Technology Procurement

FIT Procurement Act

Related Capabilities

Government Investigations, Enforcement & Compliance

Government Contracts & Grants

Technology, Media & Telecommunications

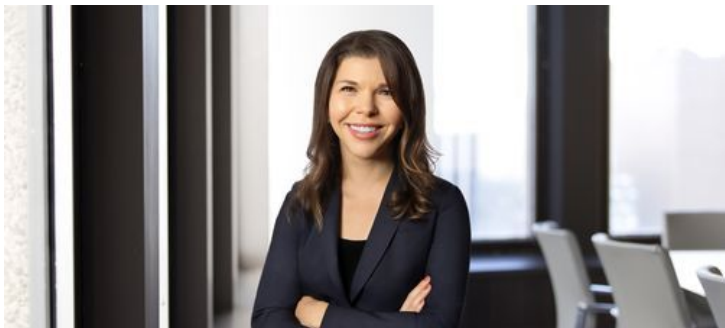
Related Professionals



[Lawrence S. Sher](#)



[Lawrence “Larry” Block](#)



Elizabeth Leavy



William T. Kirkwood

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.