Submission of the Software & Information Industry Association in Response to the Office of Management and Budget's Request for Information on *Responsible Procurement of Artificial Intelligence in Government*

Federal Register Docket 2024-06547

April 29, 2024

The Software & Information Industry Association (SIIA) appreciates the opportunity to provide comments on the OMB's Request for Information on responsible procurement of AI in government. We commend the Administration's efforts to advance AI innovation, and we are in alignment that responsible approaches on procurement taken by government agencies is an important component of this work.

SIIA is the principal trade association for companies in the business of information. Our members include roughly 375 companies reflecting the broad and diverse landscape of digital content providers and users in academic publishing, education technology, and financial information, along with creators of software and platforms used by millions worldwide, and companies specializing in data analytics and information services. SIIA has long supported efforts by the federal government to advance proactive AI policy efforts.[1] Our association represents companies that develop and deploy these engines, as well as those who create the information that feeds environments. SIIA is uniquely positioned to provide insight on policies to encourage the federal government's responsible adoption of AI, as well as procedures designed to advance a risk-based approach to AI-related risks and opportunities.

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[1] See, e.g., SIIA, Blueprint for Government Oversight and Regulation of AI (July 2023) (https://www.siia.net/wpcontent/uploads/2023/07/Blueprint-for-Government-Oversight-and-Regulation-of-AI.FINAL-1.pdf);

SIIA, Submission to NTIA on AI Accountability (Jun. 12, 2023) (https://www.siia.net/wp-content/uploads/2023/06/SIIA-Response-toNTIA-on-AI-Accountability-Policy.pdf);

SIIA, Comments on Artificial Intelligence Export Competitiveness Submitted to the International Trade Association (Oct. 17, 2022) (https://www.siia.net/wp-content/uploads/2022/10/SIIAComments-to-ITA-2022-0007.pdf);

SIIA, Comments on Study to Advance a More Productive Tech Economy Submitted to NIST (Feb. 14, 2022) (https://www.siia.net/wp-content/uploads/2022/02/SIIA-Submission-for-NISTEmerging-Tech-Study.pdf);

SIIA, Comments on Public and Private Sector Uses of Biometric Technologies Submitted to OSTP (Jan. 14, 2022) (https://www.siia.net/wp-content/uploads/2022/01/SIIA-Submission-on-OSTP-BiometricsRFI.pdf);

SIIA, "Ethical Principles for Artificial Intelligence and Data Analytics (Sept. 15, 2017) (https://history.siia.net/Portals/0/pdf/Policy/Ethical%20Principles%20for%20Artificial%20Intelligence%20and%20Data%20Analytics%20SIIA%20Issue%20Brief.pdf?ver=2017-11-06-160346-990);

SIIA, Algorithmic Fairness (Sept. 22, 2016) (https://history.siia.net/Portals/0/pdf/Policy/Algorithmic%20Fairness%20Issue%20Brief.pdf).

We were pleased to see efforts to advance AI ethics incorporated into the OMB AI memo, such as the emphasis on risk-based frameworks, transparency, and responsible governance. These are important themes that should continue to remain at the forefront of AI regulatory discussions as the technologies and use cases evolve.

We believe the administration should continue encouraging the adoption of risk-based AI governance practices in general, as this approach is crucial in understanding AI use cases across the government. Further, we believe it is also important to recognize that the desired goals of the OMB AI memo can be achieved without reshaping the scope of the government procurement process. Existing processes for government procurement of information technologies will continue to be effective. Standards and frameworks such as the NIST AI Risk Management Framework and ISO standards should serve as a starting point when considering responsible AI procurement.[2] We believe that reliance on these existing frameworks and standards will largely apply in the context of AI technologies.

Delineating Vendor and Agency Responsibilities

Vendor and government agencies each have unique positions within the procurement ecosystem. We believe that vendors are best positioned to provide information about their AI services. In parallel, government agencies who are familiar with the intended application of the technologies are best positioned to ensure proper deployment and risk assessments. This delineation between vendors and agencies will allow for the most efficient use of resources on both ends. This is particularly the case in the context of AI being used in high-risk ways, as the developer of high-risk AI systems should be able to provide documentation as to how risks are being identified and mitigated. This is already being facilitated by our member companies that provides AI service cards, which explain the use case for which the service is intended, how machine learning is used by the service, and important considerations for responsible use.[3] With this type of transparent documentation, agencies are equipped to make informed decisions when deploying systems in a responsible manner in relation to a given use case.

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[2] See, e.g., National Institute of Standards and Technology (NIST), Artificial Intelligence (AI) Risk Management Framework (https://www.nist.gov/itl/ai-risk-management-framework)

International Organization for Standardization (ISO), Artificial Intelligence (AI) Standards (https://www.iso.org/sectors/it-technologies/ai)

[3] See, e.g., Amazon Web Services (AWS) Service Cards - Amazon Textract AnalyzeID (https://aws.amazon.com/machine-learning/responsible-machine-learning/textract-analyzeid/)

Terms and Documentation

As we noted in our comments on the OMB AI memo, we encourage OMB to provide guidance on standard terms, conditions, and intellectual property protections (IP).[4] It is important that vendors do not lose key IP protections during the contracting process, and we encourage OMB to include provisions that would prohibit agencies from disclosing to the public information that is protected by IP or is otherwise sensitive to vendors. If sensitive information is properly safeguarded, we are in support of promoting transparency within the procurement process.

Mitigating Risks and Equity Concerns

We believe the OMB can encourage agencies to take effective steps to mitigate the risk of AI tools producing harmful or illegal content and promoting equitable outcomes by leveraging existing best practices and standards. In doing so, agencies can prioritize procuring products that align with OMB's M-24-10 guidance on responsible and safe AI deployment.

Since no two agency use cases are the same, we encourage agencies to continue their engagement with a diverse set of stakeholder groups who are facilitating discussions on what would best resemble these desired principles. An increasing number of companies have developed their own sets of AI principles and guidance, which emphasize equity and minimization of potential harms within their product options. Many of SIIA's members at the forefront of AI have been leaders in advancing AI accountability and governance.[5] While there may be concerns over the unique risks posed by high-risk AI use-cases, such as automation decisions that could impact safety, health, or eligibility for benefits that support one's livelihood, we believe there should be underlying expectations that organizations have maintained safeguards to identify and mitigate concerns.

Government agencies have the ability to evaluate products that would be the best fit by engaging with vendors during the market research. This can include requesting demos, surveying and comparing options in the marketplace. OMB can encourage agencies to incorporate equity considerations into their due-diligence process as they identify the technologies it needs and the most appropriate method for procuring, deploying, and monitoring them post-award.

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[4] See, e.g., SIIA, Comments on OMB AI Memo (December 2023) (https://www.siia.net/wp-content/uploads/2023/12/SIIA-Comments-on-OMB-AI-Memo.pdf)

[5] See, e.g., Google, A Policy Agenda for Responsible Progress in Artificial Intelligence (May 2023) (https://storage.googleapis.com/gweb-uniblog-publish-prod/do); Amazon Web Services (AWS), Responsible AI Policy (September 2023) (https://aws.amazon.com/machine-learning/responsible-ai-policy/)

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The AI Executive Order marks perhaps the most significant measure to date reflecting the United States' approach to AI governance, and we appreciate the opportunity to comment on OMB's efforts to implement responsible AI across the federal government through the contracting process. We look forward to continuing to work with OMB and the Administration as this effort continues. Please direct inquiries to Bethany Abbate (babbate@siia.net) Manager, AI Policy, or Paul Lekas, SVP, Head of Global Public Policy & Government Affairs (plekas@siia.net).