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Federal IT Procurement's "15 Minutes of Fame": Healthcare.gov, the Federal IT Acquisition Reform Act, and the Prospects for Significant Reform in 2014

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The U.S. government relies on information technology ("IT") in executing nearly all of its myriad responsibilities. As it does with many of its other needs, from weapons systems to pharmaceuticals, the government procures its IT from private contractors, spending approximately $80 billion annually on IT products and services. [1] Despite the critical importance of IT and the amount the government invests in it, there is general consensus that the system that the government uses to purchase IT is, at best, antiquated and inefficient. The recent delays and glitches surrounding the launch of the *Healthcare.gov* website have shined a public spotlight on the IT procurement process, underscoring both the degree to which the government relies on IT in performing its core missions and how the government's priorities can be compromised when the IT does not function effectively. [2]

Given this environment, it is not surprising that potential IT procurement reforms have attracted increased attention. The most prominent legislative proposal introduced in 2013 was the Federal Information Technology Acquisition Reform Act or FITARA. As discussed below, that bill, which was initially passed by the House of Representatives in June and debated in the Senate, would mandate a series of significant changes to the way that the government procures and manages IT. [3] Toward the end of 2013, as the focus on *Healthcar-*

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[1] *See* Steven VanRoekel, "Federal Information Technology FY 2013 Budget Priorities: Doing More With Less," at Slides 4-5, available at *http://www.whitehouse.gov/sites/default/files/omb/assets/egov_docs/2013_it_budget_rollout_20120213.pdf*.

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[2] Critics, for instance, questioned the government's source-selection process and its post-award oversight, especially as the October 1, 2013 deadline for the system to "go live" approached.

[3] In March 2013, Representatives Darrell Issa (R.-CA) and Gerry Connally (D.-VA) introduced the FITARA bill (H.R. 1232) in the House. In June 2013, the House passed FITARA as an amendment to the National Defense Authorization Act for Fiscal Year 2014 (H.R. 1960). Senators Jeanne Shaheen (D.-N.H.), Tom Carper (D.-DE), and Tom Coburn (R.-OK) later in-

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e.gov further heightened interest in IT procurement reform on Capitol Hill, it appeared that support for FITARA was gaining momentum and that the bill might be passed into law, possibly as part of the National Defense Authorization Act ("NDAA") for Fiscal Year 2014. But Congress ultimately passed the NDAA without FITARA, leaving the bill in limbo for months, until February 21, when Representative Darrell Issa, Chairman of the House Oversight and Government Reform Committee, indicated that he intended to introduce an amended version of the bill. The House passed FITARA four days later, on February 25. [4] Whether FITARA will ultimately be passed into law, however, remains uncertain.

Notwithstanding this uncertainty, or perhaps because of it, now is an opportune time to take stock of the current state of federal IT procurement and the potential for reforms in 2014 and beyond. This article addresses these subjects and is organized as follows: Section A summarizes the criticisms of the current system and provides background to explain why the environment may be ripe for substantial reform. Section B describes FITARA's key proposed reforms. Section C highlights some fundamental obstacles that could undermine legislative reform efforts such as FITARA.

A. A Climate Ripe for Change? The IT industry and many within government have long called for a fundamental overhaul of the way in which the government purchases IT. Most stakeholders agree that IT procurement must be quicker and more adaptable to allow the government to take advantage of new technologies. The following highlights the most common criticisms of the current system:

■ Critics contend that the government often does not adequately define its requirements at the outset of a procurement. The acquisition process tends to focus more on minimum specifications than on performance characteristics and is not sufficiently flexible to accommodate evolving requirements. In some cases, the government may not know how to define its needs and how to best solicit companies positioned to satisfy those needs.

■ Many critics believe that there is not sufficient dialogue between government purchasers and prospective sources within the IT industry and that the interactions that do occur are hindered by the rules that govern such communications or by the misapplication of the rules.

■ Critics observe that the federal IT budget and acquisition processes are inherently slow and involve long lead times that often do not align with the private sector's IT development cycle. As a result, it is difficult for the government to modify its requirements as new technologies and solutions become available. For this and other reasons, the IT development methodologies used predominantly in the commercial space do not translate easily to federal procurement.

■ Critics also believe that agencies too often prioritize cost considerations above technical merit when selecting contractors. Even when not explicit, the drumbeat to reduce costs can influence acquisition officials' "best value" decisions to favor short-term cost savings in a way that may not reduce the government's costs over the long term.

■ Many of the criticisms of the current system are not focused on the adequacy or inadequacy of the existing rules but instead upon execution—operating within the current framework to make sound investment decisions with the resources currently available. Much of the blame falls on the IT acquisition workforce, which critics believe is too thinly staffed and may not have the experience and resources necessary to administer large, complex IT projects. Some have expressed concern that the current environment favors overly risk-averse decision making.

■ Others contend that the government does not do enough to encourage participation from commercial IT companies, especially smaller technology companies.

President Barack Obama has been among the IT procurement system's many critics. In announcing changes in the implementation of the Patient Protection And Affordable Care Act (the "Affordable Care Act") last November, President Obama described the procurement system as "cumbersome, complicated, and outdated." [5] He said that "[o]ne of the things" the federal government "does not do well is information technology procurement," suggesting that the problems with *Healthcare.gov* were not an outlier but the result of "a systematic problem that we have across the board." [6]

Federal IT procurement is, by no means, a new target for the president, as procurement reform has long been on his agenda. In 2010, the Administration, through then U.S. Chief Information Officer ("CIO") Vivek Kundra, released a 25 Point Implementation Plan to Reform Federal Information Technology Management (the "25 Point Plan"). The Administration has attempted to improve the system by promoting "shared services," allocating additional resources to the acquisition workforce, launching a "myth-busters" campaign to educate the acquisition workforce to foster better communication between the government and private sector during the acquisition process, and systematically scrutinizing high-profile IT projects and cancelling those deemed unsuccessful. Yet, despite the Administration's efforts, when reflecting on implementation of the Affordable Care Act, the president lamented that the procurement system still does not allow the government to utilize IT as efficiently and effectively as the private sector. The president has compared the way in which his 2008 campaign was able to leverage the capabilities of the IT that was commercially-available at the time with the impediments that are perceived to have contributed to the delays in the rollout of *Healthcare.gov*. [7]

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troduced amendments to the Senate version of the 2014 defense authorization bill (S. 1197) that would have added the FITARA sections that the House passed. FITARA, however, was stripped from the final bill before passage.

[4] Unless otherwise noted, citations to FITARA provisions discussed herein refer to H.R. 1232 as passed by the House on February 25, 2014. The amended bill, which includes changes reflected in H.R. 1960, is available here: *http://docs.house.gov/ billsthisweek/20140224/BILLS-113hr1232-SUS.pdf* (last visited February 24, 2014).

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[5] The White House, Office of the Press Secretary, Press Release "Statement by the president on the Affordable Care Act" (Nov. 14, 2013), available at *http://m.whitehouse.gov/the-press-office/2013/11/14/statement-president-affordable-care-act*.
[6] *Id.*
[7] *Id.* ("And so this isn't a situation where on my campaign I could simply say, who are the best folks out there; let's get them around a table, let's figure out what we're doing, and

The challenges associated with *Healthcare.gov* are not necessarily novel or unique among federal IT projects. Although many projects are on time and on budget, many others are delayed, over budget, or both. [8]Without the increased scrutiny associated with being a centerpiece of the president's domestic policy agenda, the troubles surrounding *Healthcare.gov* would not have been a likely or natural catalyst for reform. In fact, the perceived problems with this particular program may be due in large part to the unprecedented nature of the government's requirements and its rolling changes to those requirements, which reportedly have been sporadic and belated, as well as the restraints on testing before the system was scheduled to "go live." Yet, regardless of whether the blame for the *Healthcare.gov* delays should be placed more on systemic problems or on the unique aspects of this particular procurement, few would argue with the idea that the IT procurement system could benefit from at least modest reforms, and the attention drawn by *Healthcare.gov* may ultimately be an impetus for change. However, because FITARA did not pass with the FY 2014 NDAA, there is a lingering question as to whether the heightened interest in procurement reform is already waning, suggesting that the opportunity for substantial reform has passed, at least for the time being. [9]

B. The Federal Information Technology Acquisition Reform Act. Despite not being passed into law last year, FITARA remains the most important recent legislative proposal in this area. Indeed, FITARA would mark the most substantial IT procurement reform in the almost two decades since the passage of the Clinger-Cohen Act of 1996. [10]/ While other IT reform laws have followed Clinger Cohen, [11]FITARA would be the successor, in many ways, to that earlier law, as it would expand upon the general IT management framework that Clinger-Cohen established.

The key provisions of FITARA (as reflected in the amended version recently passed by the House) are summarized below.

1. Expansion of Chief Information Officer Authority and Accountability. FITARA would elevate the Chief Information Officer within each agency to a presidential appointee and vest greater budget and personnel authority with the CIO. The agency's CIO would have authority to allocate all funds appropriated for IT. The purpose of this reform is to centralize authority to empower CIOs to manage IT programs that meet the agency's needs in a manner that is cost effective and minimizes waste, and by doing so, it is intended to ensure that there is a high-ranking official who can be held accountable when a high-profile program is unsuccessful.[12]

2. Establishment of Federal Centers for IT Acquisition. FITARA would establish centralized IT centers focused on improving federal IT acquisition and management through implementation of standard best practices across the government. These new centers would include a Federal Infrastructure and Common Application Collaboration Center ("Collaboration Center") and Assisted Acquisition Centers of Excellence ("AACEs"). [13]The bill would expand upon similar efforts by President Obama's Administration to develop a cadre of specialized IT acquisition professionals and scale IT acquisition best practices governmentwide. Specifically, the Collaboration Center would establish guidelines to increase uniformity and consistency in IT acquisition processes and develop a governmentwide strategic-sourcing initiative focused on the procurement of software licenses. The AACEs would be responsible for compiling subject matter expertise in particular areas of specialized IT acquisition, and developing best practices among federal agencies in their respective areas of expertise. [14]

3. Strengthening the IT Acquisition Workforce. FITARA includes several provisions focused on strengthening and promoting the skills, competency, and training of the federal IT acquisition workforce. The bill would require the Office of Management and Budget ("OMB") to issue a 5-year "IT Acquisition Cadres Strategic Plan" to develop federal acquisition personnel with highly-

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we're just going to continue to improve it and refine it and work on our goals. If you're doing it at the federal government level, you're going through 40 pages of specs and this and that and the other, and there are all kinds of laws involved, and it makes it more difficult. It's part of the reason why, chronically, federal IT programs are over budget, behind schedule.").

[8] Another high-profile program often cited as an example of an unsuccessful, high-profile program was Department of Homeland Security's SBInet border-security IT program, which the agency terminated in 2011, reallocating funding to smaller contracts.

[9] In December, citing the "systematically flawed rollout of Healthcare.gov," Senators Tom Udall (D.-NM), Jerry Moran (R.-KS), and Mike Johanns (R.-NE) introduced the Federal Information Technology Savings, Accountability, and Transparency Act, which shares certain elements in common with FITARA but is not as expansive in scope.

[10] Pub. Law No. 104-106.

[11] For instance, the Services Acquisition Reform Act of 2003 ("SARA"), among other things, provided further incentives for the use of performance-based contracting and authorized federal agencies to acquire commercial services on a time-and-materials basis using the FAR Part 12 streamlined commercial acquisition procedures. Pub. L. 108-136, Div. A, Title XIV, § 1432, Nov. 24, 2003, 117 Stat. 1672.

[12] *See* H.R. 1232, § 101. DoD was originally excluded from the new CIO provisions, but the amended version of FITARA would encompass DoD. *See id*.

[13] When initially proposed, FITARA included a section that would have introduced mandatory purchasing centers with authority to make certain IT purchases for users across the Executive Branch, but that section was removed before the House passed FITARA. The amended version of the bill codifies a preference for strategic sourcing and mandates the development of a new strategic sourcing initiative for the acquisition of software subject to a governmentwide license agreement. *Id.* §§ 501, 502.

[14] *See* H.R. 1232, §§ 401, 402. The prospect of FITARA establishing these centers raised concerns among certain stakeholders. Certain federal agencies are worried that the effort to further centralize IT procurement may reduce the control and flexibility that at least some agencies may need to meet their IT requirements. There is concern that a one-size-fits-all approach to IT acquisition may not be effective or appropriate for agencies that have particularly unique IT needs. The contractor community also has expressed concern that these centers could create inefficiencies through the proliferation of interagency IT contract vehicles, which is seen as a threat to existing contract vehicles, including the GSA Federal Supply Schedules program and interagency governmentwide acquisition contracts ("GWACS"). The amended version of FITARA attempts to address these concerns by introducing the Collaboration Centers as a three-year pilot program and making the AACEs available as an optional resource. *Seeid.*

specialized skills in IT acquisition, including program managers. The bill also would require OMB to issue a separate plan for improving the management of IT programs. The plan would include:

■ Creation of a specialized career path for IT program management.

■ The development of a competency model for program management.

■ A career advancement model that (i) specifies appropriate expertise and experience as a prerequisite to advancement, (ii) is competitive with the private sector, and (iii) recognizes both government and private-sector experience.

■ Appropriate consideration of, and alignment with, the needs and priorities of the Collaboration Center and AACEs.

FITARA also would require the Office of Personnel Management ("OPM") to develop policies and guidance for agencies to incentivize exemplary performance within the IT acquisition workforce through bonuses, promotions, and other incentives. Further, it would require that OMB issue a report assessing the improvement of IT programs and project management. [15]

4. Governmentwide IT Inventory. FITARA would require that federal agencies participate in developing a governmentwide inventory of IT assets, with a particular focus on software licenses. The purpose of the IT inventory would be to improve the government's knowledge of the IT that it currently owns, which could reduce the government's costs by optimizing its use of existing IT assets and minimizing duplication.[16]

5. Consolidation of Federal Data Centers. FITARA would accelerate the Federal Data Center Consolidation Initiative, which the OMB launched in 2010. With the goal of improving energy efficiency and reducing costs, the bill would mandate the consolidation and closure of federal data centers that are deemed underutilized or unnecessary to support the government's current requirements, and it also would call for new performance requirements for server utilization and energy efficiency. The Federal CIO would oversee the Initiative by developing and implementing standards, assessing progress of agencies, and reporting to Congress.[17]

6. "Fixed-Price-Technical" Competitions. FITARA would clarify that federal agencies can solicit proposals on the basis of so-called "fixed-price-technical" competition. For such competitions, the government would dictate the amount it would pay from the outset, effectively establishing a price ceiling. Offerors would be required to commit to the government's fixed price and compete strictly on the basis of non-price factors, such as technical merit and past performance. [18]

7. Consideration of Open-Source Software. The original FITARA bill included provisions that would have promoted the wider adoption of open-source software.

It included a section entitled "Clarification of Current Law With Respect To Open Source Software," which would have established guidance and processes to ensure that open source software "is a valid procurement option" and that it receives "full consideration" in federal IT acquisitions. As initially proposed, this section would have expanded the use of open-source solutions by directing agencies to consider its availability in all acquisitions.

After government and industry stakeholders criticized this approach, the House removed the language before passing FITARA. The section was then re-titled "Clarification of Current Law With Respect to Technology Neutrality In Acquisition of Software" and the language in the bill that would have promoted wider adoption of open source software was removed. The current version of the bill states that the government will maintain technology neutrality in IT acquisitions and that proprietary and open-source IT solutions will continue to be considered on an equal basis, without an across-the-board, governmentwide preference for either.[19]

C. Beyond FITARA: Long-Term Impediments to Improving Federal IT Procurement. FITARA includes a series of largely sensible reforms, but even if FITARA or a comparable bill is passed into law, that legislation, standing alone, is unlikely to resolve all of the perceived problems with the way that the government purchases IT. Many of the most challenging aspects of the procurement system go beyond the types of issues that would be addressed through legislative reforms, at least relatively modest reforms such as FITARA. The following highlights several fundamental, lingering issues that could undermine future reforms efforts.

1. The capabilities of the acquisition workforce. The government and other stakeholders have long recognized the importance of the IT acquisition workforce, and enhancing the workforce has been a focus of past reforms in this area and is addressed by FITARA and the 25 Point Plan. [20] Some believe that the prior efforts, though laudable, have not appreciably improved the overall capabilities of contracting officials, and sequestration and other budget cuts have aggravated the problems. [21] This is problematic because even the most sensible and sound reforms can only be effective when properly implemented, and the acquisition workforce—with support from management and advice from counsel—is ultimately responsible for making procurement decisions (*e.g.*, defining requirements, overseeing source selection, and managing IT investments post-award) that will implement future reforms. The success of any reforms, therefore, will depend upon improving the capabilities of the acquisition workforce.

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[15] *See id.* §§ 411-413.

[16] *See id.* § 301.

[17] *See id.* §§ 201-206.

[18] *See id.* § 504. This acquisition method has drawn sharp criticism from some corners. Although it could help agencies control costs in certain contexts, it also may decrease competition for procurements where prospective contractors determine that the fixed price is too low and may place an unacceptable level of risk on the contractor.

[19] *See id.* § 507.

[20] The 25 Point Plan directed OPM to create a formal career path for IT program managers, including development of a career advancement model identifying the experience and expertise levels necessary for advancement, and FITARA would expand upon those efforts.

[21] *See, e.g.*, GAO, "Acquisition Workforce, Federal Agencies Obtain Training to Meet Requirements, but Have Limited Insight into Costs and Benefits of Training Investment," GAO-13-231 (Mar. 2013); GAO, "Defense Acquisition Workforce, Improved Processes, Guidance, and Planning Needed to Enhance Use of Workforce Funds," GAO-12-747R (Jun. 2012); GAO, "Defense Acquisition Workforce, Better Identification, Development, and Oversight Needed for Personnel Involved in Acquiring Services," GAO-11-892 (Sep. 2011).

There are questions surrounding the acquisition workforce's ability to adapt to new ways of purchasing IT. For example, many believe that the government could benefit from wider use of modular IT development,[22] but most federal IT programs are still modeled around traditional ''waterfall'' development, which is generally considered antiquated in the commercial space.[23] Although the 25 Point Plan emphasizes the importance of modular development and agency CIOs, Collaboration Centers, and AACEs likely would push to expand the use of modular development under FITARA. Such an expansion would be challenging, demanding more flexibility in defining the stages of development (and the contractual terms surrounding those stages) and greater interaction between program management and the contractor throughout the process. If the workforce is stretched in managing the current system, with rules and procedures that have been relatively static for decades, how will it adapt to entirely new ways of approaching procurement? Critics are skeptical and believe that fundamentally bolstering the workforce may be the ''long pole in the tent'' for successful reform.

2. The realities of the federal budget process and funding cycles and competition requirements. The IT acquisition process is inextricably linked to the budget process and the availability of federal funding. The constitutional system of checks and balances, with Congress holding the ''power of the purse,'' constrains agency IT purchases, especially for larger projects that require substantial funding over an extended period. The budget process is annual, and fiscal law limits the ways in which agencies can allocate funding, unless Congress provides special appropriations (*e.g.*, multi-year funding) or the agency generates non-appropriated funds. Agencies often face long lead times between when they assess their needs for purposes of their budget requests and when they eventually receive the funding. This systemic lag tends to force agencies to invest in incremental—rather than ''transformational''—upgrades to existing IT.

Recognizing this tension, the 25 Point Plan focuses on aligning the budget process with the acquisition process. While FITARA does not involve reforms to the congressional budget process, it would attempt to improve the way that agencies use available funding by vesting greater budget authority with the agency CIO, as noted above. Improving the way in which agencies manage IT funding is an important reform. As a practical matter, however, the government may never be able to procure IT as nimbly as the private sector, at least not without a sea change in the budget and appropriation processes.

Further, federal agencies also operate under a vast array of acquisition laws and regulations that affect how they purchase IT. Agencies are subject to competition rules that serve an important public policy but can delay acquisitions and hinder efforts to adopt more innovative approaches to source selection. While commercial purchasers often strive for competition, they are not constrained by the formal processes and procedures that apply to most federal acquisitions, and thus, have more flexibility to seize upon innovative solutions as they become available.

3. Government-unique technical requirements. Another unavoidable fact about federal procurement is that the government, due to its size and the breadth of its responsibilities, occasionally has unique needs, especially for larger programs. This is evident, for instance, with the development of *Healthcare.gov*. Some have argued, as noted above, that there is no precedent for this IT project—the private sector has never undertaken to develop a website that integrates so many large legacy systems within the government and accommodates so many external inputs (including data from states and private insurers). The specialized IT security required for certain government systems is another example. The commercial market, of course, demands IT security, and certain industries (*e.g.*, finance and health care) already adhere to very strict standards. Yet the sensitivity of certain government information, especially classified information, can put an even higher onus on IT security for certain government systems, which translates to additional, often onerous compliance obligations (*e.g.*, data location requirements). These are just some examples of the way that government-specific technical requirements can present challenges that do not exist in the private sector.

4. Compliance obligations that discourage participation of commercial companies. While a portion of the money the government spends on IT is for projects that are unique in size or scope, the government spends considerable sums on IT that is the same as, or very similar to, the IT purchased by its private sector counterparts. This is why most stakeholders tend to agree that one of the most important goals of procurement reform is to assure that the government has access to the ''best and brightest'' people and technologies available in the private sector. The government's acquisition rules, however, can undermine this goal by mandating that agencies impose on their contractors a slew of restrictions and compliance obligations that are foreign to the commercial market.[24]

The Federal Acquisition Streamlining Act of 1994[25] (''FASA''), which predated the Clinger-Cohen Act by two years, established a preference for the purchase of ''commercial items,'' products and services that are available in the commercial marketplace or similar to those that are, and directed the Executive Branch to limit the government-unique obligations placed on com-

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[22] Modular development is an interactive process, whereby requirements and solutions evolve through on-going collaboration between the buyer and the seller. It emphasizes ongoing iteration and testing, and it is akin, in some senses, to trial and error, with the assumption that it is better to identity and address potential problems as early in the process as possible. For additional information on modular development, see OMB ''Contracting Guidance to Support Modular IT Development'' (Jun. 2012), available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/guidance/modular-approaches-for-information-technology.pdf*.

[23] Waterfall development is a linear methodology, meaning that the stages generally do not overlap: requirements definition precedes design, which precedes development, which precedes testing, which precedes delivery. Thus, for instance, testing is not performed until after all design and development is complete.

[24] For example, many government procurements prohibit products that originate from China and India, in light of the United States' trade status with those countries. While these restrictions may further the government's trade policies, they can foreclose the government's access to many IT products and services available in the commercial market.

[25] Pub. Law No. 103-355, §§ 8002, 8104.

mercial companies. The preference for commercial-items, however, has been eroded slowly over the past 20 years through the imposition of compliance obligations on commercial-item contracts and the shift away from streamlined FAR Part 12 acquisitions. When the government imposes additional requirements on commercial companies, it unsurprisingly makes the federal market less attractive to those companies, increasing the likelihood that they will forego the federal market or reduce their investment in it. This, in turn, can deprive the government of access to innovative products and services readily available to commercial purchasers. Eliminating all government-unique requirements—from security specifications to socioeconomic policies—is neither realistic nor desirable, but the government should conduct a thoughtful cost-benefit analysis before imposing requirements on commercial vendors, especially when seeking ''off the shelf'' IT.

5. Focusing on low-cost and low-price solutions. Overemphasizing the importance of cost savings can have a similar effect on the willingness of commercial companies to participate in the government space. Although lowest-price, technically-acceptable (''LPTA'') procurements can help agencies control costs in some cases, they can stifle innovation. The same could be true of the ''fixed price technical'' competitions contemplated by FITARA. In some contexts, it may be advantageous for agencies to focus on the lowest-price solutions or even to establish a price ceiling, but agencies should understand the implications before they decide to do so. Indeed, the advantages of certain approaches that appear lower cost (in terms of initial financial outlay) may be illusory, especially where a higher-priced approach allows the government to operate more effectively and efficiently.

6. Barriers for emerging technology companies. Beyond minimizing disincentives generally, there also have been calls for the government to take greater steps to encourage participation of small technology companies, which are seen as integral to driving innovation. While small companies commonly act as subcontractors on large IT projects, they often, in the absence of a set-aside or evaluation preference, do not pursue work as prime contractors because of real or perceived obstacles, including up-front investment costs associated with larger IT procurements. The 25 Point Plan calls for addressing barriers to entry for small businesses, but

achieving this goal may involve tough choices, as small businesses tend to be even more sensitive to government-unique requirements than large businesses.

Certain federal initiatives may hinder the efforts to increase participation of smaller businesses. One example is the Federal Risk and Authorization Management Program (''FedRAMP''), an initiative that is intended to enhance access to secure cloud computing solutions by centralizing (at least in some respects) the process for vetting the security controls of a contractor's system. FedRAMP clearance is akin to a ''seal of approval,'' and once a company receives it, that company may have a competitive advantage in seeking future work. The process involved in obtaining such approval, however, is arduous and expensive, creating an unintended but potentially high barrier to entry for smaller companies, which may struggle to marshal the resources necessary to fund participation in an intensive vetting process.

Maximizing small business participation may not always be a predominant consideration, but if the government is serious about encouraging such participation, it should be mindful of the aspects of the federal procurement system that may limit the involvement of smaller companies.

D. Conclusion. The attention that *Healthcare.gov* has drawn to federal IT procurement may present a unique opportunity to improve the system that the government uses to purchase IT. While certain aspects of FITARA could prove unnecessary or even counterproductive, the bill generally reflects a series of sensible reforms that could improve the current system, and it appears that there is a reasonable chance that FITARA in some form will be passed into law this year. Yet even with the passage of reform legislation, both Congress and the Administration should be mindful of lingering challenges, such as the capabilities of the acquisition workforce, delays associated with the federal budget and acquisition processes, and government-unique requirements. Over the long term, these challenges will have to be addressed or else future presidents are likely to share President Obama's frustration with the inability of the government to purchase IT as effectively and efficiently as counterparts in the private sector.