



**Comments of the**  
**Business Software Alliance**  
**to the**  
**Office of Science and Technology Policy**  
**on**  
**Open Government Directive Recommendations**

June 19, 2009

**Introduction**

The Business Software Alliance ([www.bsa.org](http://www.bsa.org))<sup>1</sup> is pleased to comment on recommendations for the Open Government Directive that President Obama directed the Chief Technology Officer to develop in coordination with the Office of Management and Budget and the General Services Administration.

BSA supports the Obama Administration's initiatives to use information technology to make government more open and improve access by citizens to government through eGovernment capabilities. We also encourage the development of a comprehensive government IT plan that is flexible, technology-neutral, and protective of citizens' privacy and security. Such a plan should harness computers and software to address key challenges to our country's current and future needs.

We support the President's goal to make government more transparent, participatory, and collaborative. Information technology can be used to improve citizen access to government in three primary ways:

- The delivery of government services to citizens;
- Citizen engagement and dialogue with government; and
- The provision of government data to citizens for their use.

The best way to foster the development of innovative information technologies to meet our country's needs -- and give government and citizens the widest array of products and services

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<sup>1</sup> BSA is the foremost organization dedicated to promoting a safe and legal digital world. BSA is the voice of the world's commercial software industry and its hardware partners before governments and in the international marketplace. Its members represent one of the fastest growing industries in the world. BSA programs foster technology innovation through education and policy initiatives that promote copyright protection, cyber security, trade and e-commerce. BSA members include Adobe, Apple, Autodesk, Bentley Systems, CA, Cisco Systems, CNC Software/Mastercam, Corel, CyberLink, Dassault Systèmes SolidWorks Corporation, Dell, Embarcadero, HP, IBM, Intel, Intuit, McAfee, Microsoft, Minitab, Quark, Quest Software, Rosetta Stone, SAP, Siemens, Sybase, Symantec, and The MathWorks.

-- is to preserve choice and competition in the marketplace. Fostering variety and flexibility in software solutions allows information technology to be dynamic and responsive to the evolving needs of citizens for improved interaction, dialogue, and collaboration with government.

By contrast, requiring the use of one-size-fits-all technology for eGovernment stifles choice and innovation and has the potential for promoting implementation of sub-par solutions. Locking in a single technology or development model would deprive government and citizens of the benefits of more open and participatory government.

Regardless of the technology chosen, whether customized software products, off the shelf products, software made available by commercial developers, open source software or increasingly available social networking and similar products, products should be evaluated individually based on the well established criteria used by government agencies when procuring software and other technologies. These criteria should include performance; meeting the needs of the function the agency is to perform; cost (including servicing, maintenance, upgrades and other cost associated with use through the life cycle of the software); security; reliability, etc.

A few guiding considerations for choosing software for eGovernment can help preserve innovation and choice and thus help make open government a robust reality for citizens. These considerations touch on attributes relevant to any government procurement – performance, cost, and competition in the market—as well as interoperability and standards, which are particularly important for eGovernment.

### **Considerations for eGovernment Procurement**

To achieve eGovernment objectives, the choice of software should be based on the value the government receives from the software (performance, interoperability among systems) and cost through the entire useful life of the software (including acquisition, testing, integration, installation, training, technical support, and maintenance).

Technological innovation is best accomplished by a healthy, competitive, and diverse marketplace that allows software companies to develop and grow according to their own strengths and capabilities. Open competition, and not procurement preferences, should determine which products earn the confidence of government and the public. Rigorous competition ensures that technology providers have the incentive to invest and produce the best products for the market, which in turn means broader consumer choice among many innovative technologies. Broader consumer choice should allow government purchasers to maximize the value they receive in exchange for the taxpayers' money.

- **Performance**

Government should choose a software solution, like any other product, based on its merits in terms of functionality, performance, interoperability, security, value and cost of ownership in relation to other software solutions available in the market. An organization procuring software should state in clear and objective terms the functionality, security requirements, and performance characteristics that the user needs, rather than focusing on how the software

was developed or licensed. Characteristics such as interoperability, privacy, and security must be taken into account in for eGovernment solutions.

- **Best Value**

In making buying decisions, purchasers must consider all costs associated with implementing a particular software solution during its entire lifecycle, such as long-term support and maintenance needs. Whether particular software, either commercial or open source, is more cost effective for the government to adopt should be determined in the context of the lifetime costs of a product.

- **Choice Among Vendors**

Choice in a market has a direct impact on the efficiency of the companies operating within the market, and the benefits that consumers receive. Instituting a government policy to pick a particular technology solution goes against the principles of competition and free choice. Such actions can harm the industry and suppress the benefits that may otherwise arise from competitive market forces.

### **Interoperability and Standards Issues for eGovernment**

Interoperability – the ability of products and services to exchange and use data<sup>2</sup> – is particularly important for eGovernment. One effective approach to achieving interoperability is to develop performance criteria and standards through processes that are collaborative and voluntary which are open to all interests. Clearly defining performance criteria can play an important role in hardware and software solutions. Such criteria promote interoperability, which gives a customer the ability to choose from a range of innovative software products to meet its need. Well-defined performance criteria and good standards are neutral and serve the needs of both small and large developers.

Voluntary processes have proven to be the most effective means of fueling innovation through standards. The marketplace, responding to customer demands, is typically in the best position to determine the appropriate timing for the development and promotion of a standard. By contrast, government-mandated technology standards can have unintended consequences, such as freezing the development of new technologies or disadvantaging certain market players.

Standards are particularly important for the public sector to promote better communication between government and citizens and among government agencies. Standards may also help address archival and legacy system problems by providing continuity and minimizing the risk of fragmentation of the market into technological solutions that cannot work together. Where standards are necessary, they should be global as opposed to country-specific, private-sector led instead of government mandated, and respect intellectual property rights

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<sup>2</sup> The E-Government Act of 2002 defines interoperability as “the ability of different operating systems, applications, and services to communicate and exchange data in an accurate, effective, and consistent manner.” 44 U.S.C. § 3601 (1) (2006).

Technology standards are typically documented in written specifications that enable developers of software, hardware and services to make and distribute products or components that interoperate. Based on the standards, different suppliers can develop their own interoperable products, thus giving consumers a choice.

Open standards are one type of technology standards that has garnered interest in relation to achieving widespread interoperability. The U.S. Patent and Trademark Office of the U.S Department of Commerce, in a March 2009 inter-agency cleared statement, stated that open standards, as traditionally defined, are those “developed through an open, collaborative process, whether or not intellectual property is involved.”<sup>3</sup>

Either commercial or open source software may be used to implement an open standard in a particular product or service. Open standards are not synonymous with open source software. Whether a standard qualifies as “open” has nothing to do with the development and licensing model of the software used to implement that standard.

The principal characteristics of an open standard are:

- It is developed through an open, voluntary, consensus-based process.
- The specification is publicly available without cost or for a reasonable fee to any interested party;
- Any patent rights necessary to implement the standard are available to all implementers on reasonable and non-discriminatory (RAND) terms, either with or without payment of a reasonable royalty or fee; and
- The specification is sufficient detail to enable a complete understanding of its scope and purpose and to enable competing implementations by multiple vendors.

## **Conclusion**

The rapid advancement of computing technology in recent years has prompted the software industry to create better solutions, bringing about greater benefits to consumers, including government. Open source and commercial software each offer solutions for eGovernment needs and neither software development model is inherently better.

Government should choose a software product for eGovernment, like any other product, based on its merits in terms of functionality, performance, interoperability, security, value and cost of ownership. Fair and open competition, not government-mandated preferences, should determine which products earn the confidence of consumers, including government entities.

Vigorous competition among a variety of interoperable technology products will allow government to choose innovative products that best serve eGovernment needs.

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<sup>3</sup> USPTO Statement to the World Intellectual Property Organization, posted on American National Standards Institute website at [http://publicaa.ansi.org/sites/apdl/Documents/News and Publications/Links Within Stories/US Statement on Patents and Standards.pdf](http://publicaa.ansi.org/sites/apdl/Documents/News%20and%20Publications/Links%20Within%20Stories/US%20Statement%20on%20Patents%20and%20Standards.pdf) .