

AI Procurement Reboot: Modern Strategies for Faster, Smarter Solutions

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I. INTRODUCTION

Imagine this: You are tasked to find, store, manage, sift through, and remember hundreds of thousands of pages of policy initiatives, just to find a few gaps—only to add even more pages to the mountain of policy that already exists.¹ Before Artificial Intelligence (AI) came to the rescue, policy workers at the Department of Defense were essentially reading Crime and Punishment over 150 times. That was a crime and punishment in its own right.

The use of AI is now widespread throughout the federal government. According to the Office of Management and Budget, forty-one federal agencies and departments had a combined 2,133 AI use cases.²

There are a multitude of examples of the federal government deploying AI to streamline tasks. As of January 23, 2025, the Department of State alone was employing fifty-one different AI use cases.³ Among these is using AI to “translate global media articles” and social media posts to English and deploying “StateChat” which is an internal chatbot using Generative Artificial Intelligence (GenAI).⁴ The Transportation Security Administration (TSA) under the Department of Homeland Security has deployed “Touchless PreCheck Identity Solution” facial recognition AI technology at border checkpoints.⁵ This technology uses AI to verify identity by rapidly attempting to match the picture taken of you in real time to images that were previously provided to the government.⁶ The Federal Bureau of Investigation is using AI to identify languages spoken on sound clips and filter data after conducting analysis on video footage in order to enhance their investigative processes.⁷ The Department of Defense uses an AI system, GAMECHANGER, to sift through hundreds of thousands of pages of policy requirements to find gaps and has “transform[ed] the way policymakers access, analyze and create guidance.”⁸

1. See *DoW Directives and Issuances*, EXEC. SERVS. DIRECTORATE, <https://www.esd.whs.mil/Directives/issuances/dodd/> [<https://perma.cc/57P4-X3W6>] (last visited Apr. 4, 2025).

2. *2024 Federal Agency AI Use Case Inventory*, GITHUB, <https://github.com/ombegov/2024-Federal-AI-Use-Case-Inventory> [<https://perma.cc/V6P2-K2YJ>] (Jan. 23, 2025).

3. See *Department of State AI Inventory 2024*, U.S. DEP’T OF STATE (Dec. 13, 2024), <https://2021-2025.state.gov/department-of-state-ai-inventory-2024/> [<https://perma.cc/DM8Y-A9NE>].

4. See *id.*

5. See *Artificial Intelligence Use Case Inventory*, U.S. DEP’T OF HOMELAND SECURITY, https://www.dhs.gov/archive/data/AI_inventory [<https://perma.cc/7MY2-MB77>] (Dec. 16, 2024).

6. See *id.*

7. See *Artificial Intelligence*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/investigate/counterintelligence/emerging-and-advanced-technology/artificial-intelligence#> [<https://perma.cc/39WA-3GLF>].

8. DIA Public Affairs, *Gamechanger: Where Policy Meets AI*, DEF. INTEL. AGENCY (Feb. 7, 2022), <https://www.dia.mil/News-Features/Articles/Article-View/Article/2926343/gamechanger-where-policy-meets-ai/> [<https://perma.cc/6Z7L-E6ET>].

In particular, GenAI is a technology advancing at a rapid rate. The market for GenAI is expected to reach \$1.3 trillion by 2032.⁹ It has great potential for streamlining national security and public use functions, but it comes with several challenges such as the risk of generating misinformation (“hallucinations”), posing a threat to national security, and being an expense that cannot keep up with annual budgeting plans.¹⁰

In order for the federal government to acquire products such as AI technologies they must refer to the controlling Federal Acquisition Regulation (FAR). It is the “primary regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds.”¹¹ Further, when an agency wants to acquire “cloud technologies” it must refer to The Federal Risk and Management Program (FedRAMP).¹²

While investment in GenAI continues to increase, the strategies for procuring this software are slow, often taking almost two years to complete, while some AI companies are developing GenAI at a rate of almost a version a year.¹³ This misalignment between the rapid development of GenAI and the traditional, lengthy government procurement cycles presents a significant barrier to timely adoption and effective use of the technology in government operations.

The procurement of GenAI tools is often slower than the pace at which GenAI technology evolves, necessitating a shift toward a more dynamic and efficient procurement model. Therefore, non-defense government agencies should leverage the Department of Defense’s expedited acquisition pathways—specifically the Middle Tier Acquisition and Software Acquisition Pathways—in combination with agile, outcome-based procurement strategies to rapidly procure both task-oriented and GenAI technologies. This strategy offers a solution by accelerating the contracting process, enhancing risk management, addressing budgeting challenges and

9. See *Generative AI to Become a \$1.3 Trillion Market by 2032, Research Finds*, BLOOMBERG (June 1, 2023), <https://www.bloomberg.com/company/press/generative-ai-to-become-a-1-3-trillion-market-by-2032-research-finds/> [<https://perma.cc/LMX4-YDW2>].

10. See *Science and Tech Spotlight: Generative AI*, U.S. GOV’T ACCOUNTABILITY OFF. (June 2023), <https://www.gao.gov/assets/830/826491.pdf> [<https://perma.cc/D5T2-WT2Q>]; See Anirban Ghoshal, *Government Tech Procurement Takes Three Times Longer Than Average*, CIO (Sept. 7, 2022), <https://www.cio.com/article/406456/government-tech-procurement-takes-three-times-longer-than-average.html> [<https://perma.cc/V9U2-JDLA>]; See Army Maj. Wes Shinego, *Defense Officials Outline AI’s Strategic Role in National Security*, U.S. DEP’T OF WAR (Apr. 24, 2025), <https://www.war.gov/News/News-Stories/Article/Article/4165279/defense-officials-outline-ais-strategic-role-in-national-security/> [<https://perma.cc/TJ7F-N85D>]; See Uyen Chu, *AI in Public Sector: Top Use Cases You Need to Know* (Sept. 10, 2025), SMARTDEV, <https://smartdev.com/ai-use-cases-in-public-sector/> [<https://perma.cc/ZL9T-M2FN>].

11. *Federal Acquisition Regulation: Foreword*, GEN. SERVS. ADMIN., <https://www.acquisition.gov/sites/default/files/current/far/pdf/FAR.pdf> [<https://perma.cc/HDF9-KMK3>] (Apr. 4, 2024).

12. See *Program Basics*, FEDRAMP, <https://web.archive.org/web/20250323001508/https://www.fedramp.gov/program-basics/> [<https://perma.cc/5VAP-PQF6>].

13. See Ghoshal, *supra* note 10; See Zee, *The History of ChatGPT: A Timeline of Events*, TECHROUND (Nov. 13, 2024), <https://techround.co.uk/startups/chatgpt-history-timeline/> [<https://perma.cc/BZ2T-JCSH>].

encouraging innovation, ultimately enabling faster and more effective adoption of task-oriented and GenAI for non-defense government agencies.

II. BACKGROUND

A. What is AI and GenAI?

AI has evolved from basic human performance tests to performing advanced capabilities. AI is a “machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments” with inputs generated by the machine or manually input by a human.¹⁴ It was first invented back in the 1950s by Alan Turing with his published book describing a test known as “The Imitation Game” or “The Turing Test” which looks radically different from the AI most of the population imagines today.¹⁵ The Turing Test was a “way of dealing with the question whether machines can think.”¹⁶ The test involves a human interrogating another human and a machine at the same time to decipher which responses are generated by the machine and if the interrogator is fooled, the machine has passed the test.¹⁷ Since the introduction of the Turing Test in the 1950s, AI steadily improved. In the 1990s, a computer with the ability to play chess defeated a human adversary.¹⁸ In the 2000s, there was a boom in the development of robots.¹⁹ Then, in the 2010s, more modern AI emerged when an advanced AI system defeated two former Jeopardy! champions.²⁰

The government increasingly implements AI into its functions. Today, the government procures AI technologies to expedite and automate repetitive tasks such as welfare payments.²¹ As AI has become more sophisticated, it has been deployed and relied on for matters of increasing importance such as for national security interests. For instance, the Department of Homeland Security has deployed AI facial recognition technology at TSA checkpoints during US border crossings.²²

14. National Artificial Intelligence Initiative Act of 2020, H.R. 6216, 116th Cong. (2020).

15. See *The Birth of Artificial Intelligence (AI) Research*, LAWRENCE LIVERMORE NAT’L LAB’Y: SCI. AND TECH., <https://st.llnl.gov/news/look-back/birth-artificial-intelligence-ai-research> [<https://perma.cc/4A4P-CGC6>].

16. *The Turing Test*, STANFORD ENCYCLOPEDIA OF PHIL. (Oct. 4, 2021), <https://plato.stanford.edu/entries/turing-test/> [<https://perma.cc/UT98-MC9K>].

17. See *id.* at § 1.

18. See *History of AI: Timeline and Future*, MARYVILLE UNIV. (May 19, 2023), <https://online.maryville.edu/blog/history-of-ai/> [<https://perma.cc/BJ64-E4MF>].

19. See *id.*

20. See *id.*; see also *What are Large Language Models (LLMs)?*, IBM, <https://www.ibm.com/think/topics/large-language-models> [<https://perma.cc/2G4H-VR8K>] (last visited Jan. 24, 2025).

21. See *The Government and Public Services AI Dossier*, DELOITTE, <https://www2.deloitte.com/us/en/pages/consulting/articles/ai-dossier-government-public-services.html> [<https://perma.cc/8DA8-ZWRK>].

22. See U.S. DEP’T OF HOMELAND SECURITY, *supra* note 5.

GenAI is an extension of AI and an even more powerful tool. The Government Accountability Office defines it as a “technology that can create content, including text, images, audio, or video, when prompted by a user.”²³ In other words, it creates new content based on the data from a previous input. Creators of the technology train the system on real data so that it can form patterns that will later be used by an AI system to generate new content.²⁴ Developers will gather an incredibly large data set, sometimes with thousands or millions of data points. Then, the system will learn “patterns and relationships from massive amounts of data.”²⁵ A popular GenAI is the Large Language Model. Large Language Models take in a large amount of data and offer greater diverse capabilities and applications as compared to other AI models which may only be applicable to performing one, specific task.²⁶ For instance, ChatGPT is able to take in all different types of input including different spoken languages and even code to generate the user’s desired result.²⁷ In comparison, other, more limited AI tools, such as image generators, are only able to generate pictures from the user’s prompts.²⁸

The Turing Test phenomenon was always theorized until ChatGPT rose to the occasion in 2024, when the GenAI “was not distinguishable from its human counterparts” thus passing the test.²⁹

ChatGPT is a GenAI tool that is available for public use.³⁰

ChatGPT looks like a chatbot that prompts the user to enter anything they want and in response the model will return content that is generated in that moment such as emails, code, announcements, answer questions, write essays, perform mathematical computations and more.³¹ The Government also uses GenAI. The Department of State’s “StateChat” is a prime example of a GenAI. Employees prompt and interact with the chatbot and it is expected to generate answers such that the employee can expedite internal tasks.³²

“StateChat” is akin to a Large Language Model that “learn[s] patterns

23. See U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 10.

24. See *id.*

25. *Id.*

26. See IBM, *supra* note 20 (explaining Open AI’s Chat GPT-3 and GPT-4 are examples of public Large Language Models).

27. See Amanda Hetler, *What is ChatGPT?*, TECHTARGET, <https://www.techtarget.com/whatis/definition/ChatGPT> [<https://perma.cc/E2HE-FZV2>] (Mar. 2025).

28. See Altexsoft Editorial Team, *AI Image Generation Explained: Techniques, Applications, and Limitations*, ALTEXSOFT (July 9, 2023), <https://www.altexsoft.com/blog/ai-image-generation/> [<https://perma.cc/HYM6-DGCE>].

30. *Study Finds ChatGPT’s Latest Bot Behaves Like Humans, Only Better*, STANFORD: SCHOOL OF HUMANITIES AND SCIENCES (Feb. 22, 2024), <https://humsci.stanford.edu/feature/study-finds-chatgpts-latest-bot-behaves-humans-only-better> [<https://perma.cc/9HP9-MZCE>].

30. See *Introducing ChatGPT*, OPENAI (Nov. 30, 2022), <https://openai.com/index/chatgpt/> [<https://perma.cc/UD4Y-GREG>].

31. See Hetler, *supra* note 27.

32. See U.S. DEP’T OF STATE, *supra* note 3.

in written language.”³³ When prompted, a Large Language Model can generate writing that a human could have seemingly written.³⁴

GenAI is poised to be a trillion-dollar technology and rapidly surpass the mass use of Personal Computers (PCs) and the internet. GenAI is a market expected to grow to \$1.3 trillion by 2032, almost 32 times greater than in 2023.³⁵ It has also been picked up profoundly faster by a wider audience compared to other marvels of their time such as the adoption of PCs and the internet.³⁶ PCs and the Internet had a 20 percent adoption rate two years after their reveal, while GenAI has doubled that with an adoption rate of almost 40 percent.³⁷

B. *The Rapid Development of GenAI*

GenAI is a fast-growing industry with technology that is growing even faster in terms of its capabilities. One of the most well-known GenAI systems is OpenAI’s ChatGPT. OpenAI would release five versions in just a mere six years.³⁸ The first version of their platform was GPT-1 released in 2018.³⁹ OpenAI proceeded to rapidly release new versions of their platform each year after the initial release.⁴⁰ In 2022, OpenAI released their most developed version of GenAI ChatGPT and a new, updated version quickly followed in 2023.⁴¹ Almost less than two years later, OpenAI is set to release ChatGPT-5.⁴²

C. *The Government is After AI*

GenAI is rapidly being integrated into government agencies.⁴³ There have already been agencies that have adopted the use of GenAI resulting in “improvements in employee satisfaction, compliance, and operational costs and time savings.”⁴⁴ GenAI is sought after by the government for its use in

33. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 10; see Madison Alder, *From Translation to Email Drafting, State Department Turns to AI to Assist Workforce*, FEDSCOOP (Dec. 11, 2024), <https://fedscoop.com/state-department-ai-chatbot-email-drafting-northstar-famsearch/>.

34. See Hetler, *supra* note 27.

35. See BLOOMBERG, *supra* note 9.

36. See Christina Pazzanese, *Generative AI Embraced Faster than Internet, PCs*, HARVARD GAZETTE (Oct. 4, 2024), <https://news.harvard.edu/gazette/story/2024/10/generative-ai-embraced-faster-than-internet-pcs/> [<https://perma.cc/L2KQ-G77M>].

37. See *id.*

38. See Zee, *supra* note 13.

39. See *id.*

40. See *id.*

42. See *id.*

42. See Adam Rowe, *When Is ChatGPT-5 Release Date, and What New Features Will it Have?*, TECH.CO (Aug. 20, 2024), <https://tech.co/news/when-is-chatgpt-5-release-date> [<https://perma.cc/FE8D-FX4W>].

43. See *New Study: Government GenAI Optimism May be Outpacing Ability to Deploy*, SAS INSTITUTE (Oct. 3, 2024), https://www.sas.com/ro_ro/news/press-releases/2024/october/government-genai-report.html [<https://perma.cc/L9EJ-79B5>].

44. *Id.*

processing, optimization abilities, and automation of many tasks.⁴⁵ For example, the Federal Risk and Authorization Management Program (FedRAMP), a government program that standardizes the security and risk assessments and the authorizations of cloud services with the goal of promoting the use of secure cloud services across the federal government released an Emerging Technology Prioritization Framework in June of 2024.⁴⁶ This framework put forth a list of three GenAI capabilities that will be at the forefront of their technology government procurement: “chat interfaces, code-generation and debugging tools, and prompt-based image generators.”⁴⁷ Since then, several agencies have taken action. On August 14, 2024, the Department of Defense awarded a contract titled “Generative AI-Driven Defense and Machine Learning Against Advanced Phishing Attacks.”⁴⁸ On September 15, 2025, The Department of Health and Human Services awarded a contract titled “Next Generation Dual Targeting ADCs For SCLC Empowered By Generative AI.”⁴⁹ On December 15, 2026, The Department of Veterans Affairs awarded a contract titled, “Artera Artificial Intelligence (AI) for Prostate Cancer Cost-Per Test. Bpa Called.”⁵⁰

Funding for AI has surged. Federal funding for AI has nearly tripled since 2017.⁵¹ In 2023, Nondefense government agencies requested \$1.8 billion for the fiscal year budget for AI research and development compared to \$560 million in 2018.⁵² Nondefense government agencies are those in “education, transportation, income security, veterans’ health care, and homeland security.”⁵³ Federal funding for AI research and development was

45. See Anurag Singh, *Generative AI in the Government Sector: Use-cases, Challenges & Best Practices*, REZOLVE.AI (July 16, 2025), <https://www.rezolve.ai/blog/generative-ai-government> [<https://perma.cc/RUG9-JKNV>].

46. See *Release of Emerging Technology Prioritization Framework*, FEDRAMP (June 27, 2024), <https://www.fedramp.gov/2024-06-27-release-of-et-framework/> [<https://perma.cc/RV24-EN4S>].

47. *Id.*

48. *Contract Award* FA864924P1084, USASPENDING.GOV, https://www.usaspending.gov/award/CONT_AWD_FA864924P1084_9700_-NONE_-NONE- [<https://perma.cc/PL6B-A5XR>].

49. *Contract Award* 75N91025C00040, USASPENDING.GOV, https://www.usaspending.gov/award/CONT_AWD_75N91025C00040_7529_-NONE_-NONE- [<https://perma.cc/X48M-7WKX>].

50. *Contract Award* 36C24826N0220, USASPENDING.GOV, https://www.usaspending.gov/award/CONT_AWD_36C24826N0220_3600_36C24825A0009_3600 [<https://perma.cc/2D9F-PRRY>].

51. See ARTIFICIAL INTELLIGENCE INDEX REPORT 2023, STANFORD UNIV. 24 (2023), https://aiindex.stanford.edu/wp-content/uploads/2023/04/HAI_AI-Index-Report-2023_CHAPTER_6.pdf [<https://perma.cc/B6M3-73MD>].

52. See *id.*

53. *Discretionary Spending Options*, CONG. BUDGET OFF., <https://www.cbo.gov/content/discretionary-spending-options> [<https://perma.cc/RX5B-5R72>].

about \$2.4 billion in 2021, but for fiscal year 2025 a request was made for over \$3.3 billion.⁵⁴

D. Risks Associated with the Implementation of GenAI

1. Hallucinations

While GenAI has immense capabilities, it offers many challenges that create hesitancy in its use and application in the government. For example, GenAI can “hallucinate” which is where the system generates a response that is inaccurate and akin to misinformation.⁵⁵ This is typically a result when the user has asked for a result that the model did not learn in the training phase because it lacked the data necessary to form that pattern.⁵⁶ In such a case, the model will spit out information that is anywhere from just slightly misguided or completely made up.⁵⁷ ChatGPT, a Large Language Model that generates content when prompted by the user, has been in hot water for “hallucinating.”⁵⁸ In June of 2023, two lawyers litigating an injury case against an airline submitted documents to a court that contained six court cases and details that were completely fabricated, also known as hallucinated, by ChatGPT.⁵⁹ The information either “[was not] real, misidentified judges, or involved airlines that did not exist.”⁶⁰ While this hallucination was limited to the private sphere, OpenAI, the owner of ChatGPT, has contracted with federal agencies such as the National Aeronautics and Space Administration (NASA) and the Internal Revenue Service (IRS) to obtain annual licenses for ChatGPT enterprise software.⁶¹ Therefore, the potential for hallucinations in the federal government sphere has become imminent. AI hallucinations that occur within the federal system can have greater impact as compared to private, personal use due to the potential for the widespread dissemination of false information. Information that is “ungrounded” can “misguide

54. See *Artificial Intelligence R&D Investments Fiscal Year 2019–Fiscal Year 2025*, NETWORKING AND INFORMATION TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM (NITRD), <https://www.nitrd.gov/ai-rd-investments/> (last visited Jan. 16, 2026) [<https://perma.cc/3MTE-5MSR>].

55. See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 10.

56. See *id.*

57. *The Dangers of AI Hallucinations in Federal Data Streams*, IT VETERANS (May 20, 2024), <https://www.itveterans.com/the-dangers-of-ai-hallucinations-in-federal-data-streams/> [<https://perma.cc/UQ86-K5G5>].

58. See *Introducing ChatGPT*, *supra* note 30; Larry Neumeister, *Lawyers Submitted Bogus Case Law Created by ChatGPT. A Judge Fined them \$5,000*, ASSOCIATED PRESS (June 22, 2023, 6:16 PM), <https://apnews.com/article/artificial-intelligence-chatgpt-fake-case-lawyers-d6ae9fa79d0542db9e1455397aef381c> [<https://perma.cc/62BQ-QMVE>].

59. See Neumeister, *supra* note 58.

60. *Id.*

61. See Rebecca Heilweil, *OpenAI Further Expands its Generative AI Work with the Federal Government*, FEDSCOOP (Nov. 4, 2024), <https://fedscoop.com/openai-expands-chatgpt-work-federal-government/> [<https://perma.cc/348M-FQ7M>].

policymakers ... churn out misleading trends ... [and] spawn incorrect medical guidelines.”⁶²

2. Algorithmic and Machine Learning Bias

AI systems, including Large Language Models, are subject to algorithmic bias and machine learning bias.⁶³ Algorithmic bias is the output of results that mirror and reinforce societal biases and comes from the “initial training data, the algorithm, or the predictions of the algorithm procedures.”⁶⁴ Since GenAI, especially Large Language Models, intake a large amount of data, they are susceptible to bias risks.⁶⁵ When these models are deployed in such large formats, the biases are amplified.⁶⁶

Training data can become corrupt when overinclusive or underinclusive data is used to train the algorithm.⁶⁷ For example, with a facial recognition AI, if the data training set has a disproportionate amount of white faces to people of color, the algorithm could fail to appropriately recognize the group with less representation, possibly perpetuating bias.⁶⁸ If a flawed training data set is used, algorithmic bias can result because the system has learned off of flawed data.

Algorithmic bias can also come from the algorithm itself on the programmer’s side.⁶⁹ Algorithms that are constantly taking new data in and learning in the moment can suffer from a “runaway feedback loop.”⁷⁰ A feedback loop occurs when bias has already been introduced to the training set, causing the algorithm to make decisions based on biased data.⁷¹ These biased decisions are then fed back into the algorithm, making increasingly biased decisions, ultimately creating a feedback loop.⁷² This has become a well-known issue in predictive policing. Predictive Policing uses location, previous arrest statistics, and more to train their algorithm to point out high crime areas.⁷³ These areas experience higher patrols which leads to more crime identified which are fed into the algorithm.⁷⁴ Ultimately, these areas are “over-emphasized[d]” in the system due to the feedback loop.⁷⁵ When procuring AI systems, the federal government and the public may be wary of

62. IT VETERANS, *supra* note 57.

63. See generally, *Shedding Light on AI Bias with Real World Examples*, IBM (Oct. 16, 2023), <https://www.ibm.com/think/topics/shedding-light-on-ai-bias-with-real-world-examples> [<https://perma.cc/4XAJ-5HR2>].

64. *Id.*

65. See IBM, *supra* note 20; see *id.*

66. See IBM, *supra* note 65.

67. See *id.*

68. See *id.*

69. See *id.*

70. Clare Veal et al., *The Perils of Feedback Loops in Machine Learning: Predictive Policing*, GILBERT+TOBIN (Feb. 20, 2023), <https://www.gtlaw.com.au/insights/the-perils-of-feedback-loops-in-machine-learning-predictive-policing> [<https://perma.cc/BF3K-YMP5>].

71. See *id.*

72. See *id.*

73. See *id.*

74. See *id.*

75. See *id.*

these potential biases having far-reaching, negative societal effects and it could be a factor that prevents non-defense agencies from fully diving in.⁷⁶

3. Privacy and National Security Risks

The government is also concerned about the privacy and national security risks of AI.⁷⁷ Regarding private models, the system may not be programmed to or is unable to rid itself of sensitive content not available to the public, making itself vulnerable if a cyberattack were to occur.⁷⁸

Public GenAIs such as ChatGPT pose a substantial risk to the revelation of secure data. The Department of Defense believes imputing data into public Large Language Models “risks having the Army’s sensitive data bleed into the public domain via the internet and training models that adversaries could access.”⁷⁹ In September of 2023, The U.S. Space Force, a branch of the US Armed Forces, released an internal memorandum to its workforce that prevented the use of public AI tools such as ChatGPT “due to data aggregation risks.”⁸⁰

An overall danger leading to hesitancy is the lack of comfortability with the technology and specialized knowledge from both the procurement team’s and end users’ point of view. The SAS Institute is a heavy research-based, data analytics company that manages data software and supplies businesses with data intelligence.⁸¹ According to the SAS institute, a large barrier to GenAI being procured by government agencies is the “inadequate regulatory preparedness and lack of understanding of [GenAI].”⁸² There has been guidance put into place, but only a little bit more than half of government agencies guide employees on the permissible uses of GenAI.⁸³ Additionally, only thirty-eight percent of “senior government decision makers say they understand [GenAI] and its impacts on business processes well or completely.”⁸⁴ Though, comfortability and confidence is expected to grow the more the GenAI software is used.⁸⁵ On January 23, 2025, President Donald Trump signed an Executive Order setting the United States’ goal of securing a stronghold in the field of AI to “promote human flourishing, economic

76. See generally Clare Veal et al., *supra* note 70; see generally Rosie Tomiak, *Analyzing AI Use in Government Agencies*, THE ANTI-FRAUD COAL. (Feb. 6, 2025), <https://www.taf.org/ai-government-agencies/> [<https://perma.cc/V9HP-EANQ>].

77. See U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 10.

78. See *id.*

79. Jon Harper, *Army Set to Issue New Policy Guidance on Use of Large Language Models*, DEFENSESCOOP (May 9, 2024), <https://defensescoop.com/2024/05/09/army-policy-guidance-use-large-language-models-llm/> [<https://perma.cc/DXN2-HET7>].

80. *U.S. Space Force Pauses Use of AI Tools Like ChatGPT Over Data Security Risks*, REUTERS (Oct. 12, 2023, 2:36 AM), <https://www.reuters.com/technology/space/us-space-force-pauses-use-ai-tools-like-chatgpt-over-data-security-risks-2023-10-11/> [<https://perma.cc/AHN4-HZ2L>].

81. *SAS Institute Inc: Overview*, GLOBALDATA, <https://www.globaldata.com/company-profile/sas-institute-inc/> [<https://perma.cc/MDC7-UNAG>].

82. SAS INSTITUTE, *supra* note 43.

83. See *id.*

84. *Id.*

85. See *id.*

competitiveness, and national security.”⁸⁶ This order requires that assistants, directors, and heads of various government agencies develop an action plan to achieve these objectives within 180 days.⁸⁷ This concerted effort demonstrates the federal government’s willingness to incorporate AI into the government’s daily operations.

E. The Classic Process of AI Government Procurement

The federal procurement process for AI is slow as agencies face lengthy cycles, budget issues and delayed decision-making. The current procurement process of AI software and technology in general is slow.⁸⁸ Federal agencies are reported to have the “longest average buying cycle for technology” as compared to other areas.⁸⁹ The term for federal agencies can be up to 22 months while some private sectors are averaging about six months.⁹⁰

Federal agencies cite strict procurement laws and budgeting hurdles as to why the process takes so much longer.⁹¹ A procurement project is typically connected to the approval of an annual budget and any relevant legislation.⁹² This means that a government procurement project that takes almost two years to deliver is operating with a budget almost two years old and contracting for technology two years old. Additionally, “procurement is siloed in its own office separate from policy and technology functions.”⁹³

The lack of overlap between diverse, decision-making teams also stalls progress. The division prevents large procurement teams from coming to a consensus quickly.

1. Technology Procurement in the Federal Acquisition Regulation Framework

The Federal Acquisition Regulation Framework (FAR) governs the acquisition of supplies and services, with Part 39 specifically regulating Information Technology. The Federal Acquisition Regulation Framework (FAR) is the “primary regulation for use by all executive agencies in their

86. Exec. Order No. 14,179, 90 Fed. Reg. 8741 (Jan. 23, 2025).

87. *See id.*

88. *See* Christopher R. Barlow et al., *Enhancing Acquisition Outcomes through Leveraging of Artificial Intelligence* 6, THE MITRE CORP. 2024, <https://www.mitre.org/sites/default/files/2025-03/PR-24-0962-Leveraging-AI-Acquisition.pdf>.

89. Ghoshal, *supra* note 11.

90. *See id.*

91. *See id.*; *See* Charli Renken, *Why Government Tech Is So Slow — and How D.C. Companies Are Bringing It Up to Speed*, BUILT IN (Mar. 16, 2022), <https://builtin.com/articles/dc-companies-government-tech-modernization-031622> [<https://perma.cc/6WUA-QLZ4>].

92. *See* Renken, *supra* note 92.

93. Chloe Autio et. al., *A Snapshot of AI Procurement Challenges*, THE GOVLAB 1, 18 (June 2023), <https://files.thegovlab.org/a-snapshot-of-ai-procurement-challenges-june2023.pdf> [<https://perma.cc/X6LU-HAKD>].

acquisition of supplies and services with appropriated funds.”⁹⁴ Part 39 regulates the acquisition of Information Technology.⁹⁵ Information technology within the framework is defined as “any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.”⁹⁶

While GenAI is not specifically mentioned in the FAR,⁹⁷ it falls into the Information Technology definition as it is typically a system that performs those enumerated functions. Part 39 of FAR covers information and communication technology for the general use of the agencies or public.⁹⁸

FAR suggests that agencies should use “modular contracting” which is the “use of one or more contracts to acquire information technology systems in successive, interoperable increments.”⁹⁹ The FAR adopts this method consistent with 41 U.S.C. § 2308.¹⁰⁰ The FAR specifies that an agency within the next 180 days should award the next increment and delivery should occur within 18 months.¹⁰¹

The FAR gives agencies the flexibility to choose procurement methods, but the traditional approach struggles to keep pace with the fast-evolving field of Generative AI. The FAR leaves open what method of procurement to use at each increment¹⁰² but ultimately does not address the timing issue. With the agencies able to use their own discretion as to the method, this is where the process can stall. The traditional procurement method that the FAR sets forth is a slow process that does not align with the rapid pace of the development of GenAI. The traditional procurement method begins with laying out the entire, full scope of the project from the start and soliciting competitive bids.¹⁰³ The procurement team will go through the contracting process step-by-step, conferring with each other at each step and only after a consensus will they move onto the next step.¹⁰⁴

94. *Federal Acquisition Regulation: Foreword*, GEN. SERVS. ADMIN., <https://www.acquisition.gov/browse/index/far> [<https://perma.cc/HDF9-KMK3>].

95. *See Federal Acquisition Regulation: Part 39*, GEN. SERVS. ADMIN., <https://www.acquisition.gov/far/part-39> [<https://perma.cc/8RKK-L5AP>].

96. *Federal Acquisition Regulation: Part 2*, GEN. SERVS. ADMIN., <https://www.acquisition.gov/far/part-2> [<https://perma.cc/2Q84-4PHB>].

97. *See id.*

98. *See id.* at pt. 39.

99. *Id.* at 39.

100. *Federal Acquisition Regulation*, *supra* note 95, at pt. 39.103 (“This section implements 41 U.S.C. 2308.”).

101. *Id.*

102. *See id.*

103. *See* Graham McConnell, *Agile Procurement v. Traditional Procurement*, RESPONSIVE (Aug. 1, 2024), <https://www.responsive.io/blog/agile-procurement/> [<https://perma.cc/PR3V-YK4S>]; *see also Federal Acquisition Regulation: Part 6*, GEN. SERVS. ADMIN., <https://www.acquisition.gov/far/part-39> [<https://perma.cc/8RKK-L5AP>].

104. *See id.*

2. Technology Procurement in the Federal Risk and Authorization Management Program

GenAI requires substantial computing power, making cloud use essential, but is difficult to implement due to the need for FedRAMP authorization. GenAIs require an incredibly large data set and computing power which puts pressure and strain on “compute, storage, and networking” necessitating the use of a “cloud” for the product.¹⁰⁵ The Federal Risk and Authorization Management Program (FedRAMP) is the authoritative approach to procuring “cloud services” which is a subset of “cloud computing.”¹⁰⁶ The National Institute of Standards and Technology defines “cloud computing” as offering “on-demand network access” to a common group of resources that involves little effort to manage or supervise.¹⁰⁷ Within the models included in FedRAMP there is a “government-only” community deployment model which concerns a cloud that contains only data owned by the government, i.e. no private organization or public information.¹⁰⁸ As of January 17, 2026, there are 488 FedRAMP authorized government-only cloud services.¹⁰⁹

The authorization process involves preparation, security assessments, and continuous monitoring. There are two main stages involved in the authorization process followed by a continuously monitoring stage.¹¹⁰ In the first stage, “Preparation,” the cloud service provider goes through an optional “readiness assessment” and a mandatory “pre-authorization” which establishes the partnership with the federal agency and identifies the security impact of the service.¹¹¹ In the second phase, “Authorization,” the cloud service provider will go through a “full security assessment” with a third party, then conduct a debrief with stakeholders encompassing the assessment approach, any residual risk and mitigation techniques, how the federal agency

105. Chhavi Arora et al., *In Search of Cloud Value: Can Generative AI Transform Cloud ROI?*, MCKINSEY & CO. (Nov. 15, 2023), <https://www.mckinsey.com/capabilities/mckinsey-digital/our-insights/in-search-of-cloud-value-can-generative-ai-transform-cloud-roi> [<https://perma.cc/9WJU-BEWK>].

106. *Program Basics*, FED. RISK & AUTHORIZATION MGMT. PROGRAM, <https://www.fedramp.gov/program-basics/> [<https://perma.cc/5VAP-PQF6>]; see also H.R. 21, 117th Cong. (2021).

107. See Peter Mell & Timothy Grance, *The NIST Definition of Cloud Computing*, NAT'L INST. OF STANDARDS & TECH. (Sept. 2011), <https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf> [<https://perma.cc/J8ED-SLPW>].

108. See *FedRAMP CSP Authorization Playbook*, FED. RISK & AUTHORIZATION MGMT. PROGRAM (Feb. 15, 2024), https://www.fedramp.gov/assets/resources/documents/CSP_Authorization_Playbook.pdf [<https://perma.cc/V5JG-KNL9>].

109. See *FedRAMP Marketplace*, FED. RISK & AUTHORIZATION MGMT. PROGRAM, <https://marketplace.fedramp.gov/products> [<https://perma.cc/H3SA-M6S6>].

110. See *REV5 Agency Authorization*, FED. RISK & AUTHORIZATION MGMT. PROGRAM, <https://www.fedramp.gov/rev5/agency-authorization/> [<https://perma.cc/5A9J-SV6Q>] (last visited Apr. 4, 2025); see also FED. RISK & AUTHORIZATION MGMT. PROGRAM, *supra* note 108, at 14.

111. See FED. RISK & AUTHORIZATION MGMT. PROGRAM, *supra* note 108, at 8-9.

reviewed the assessment, and more.¹¹² In the last phase, the cloud service provider will provide monthly reports to the federal agency addressing system vulnerabilities and incidences.¹¹³ This FedRAMP certification process typically takes twelve to eighteen months to complete with a possible timeline spanning as little as six months to two years.¹¹⁴ With the boost in use of GenAI, FedRAMP has released an “Emerging Technology Prioritization Framework” that serves to prioritize the authorization of GenAIs such as “chat interfaces, code-generation and debugging tools, and prompt-based image generators.”¹¹⁵ However, even though these technologies will be prioritized, the actual procurement process and ultimate approval of the technology is up to the agency as they “drive their own acquisition, evaluation, and authorization processes using a far broader set of criteria.”¹¹⁶

Recently, FedRAMP also put out prioritization criteria complete with five criteria as well as a prioritization process.¹¹⁷ They also shortlisted three programs that were on track for authorization by January 2026.¹¹⁸

Additionally, FedRAMP has a pilot program called 20x that aims to make the authorization process significantly faster and in 2025 doubled the number of authorizations as compared to 2024.¹¹⁹ However, this is for a low-impact authorization and the numbers remain low for GenAI, standing at 13 as of January 18, 2025.¹²⁰ This may be due to the technologies still being subject to the agency’s timeline and budget constrictions.¹²¹

F. Agile and Outcome Based Procurement Strategies

Agile approaches prioritize flexibility and communication. Agile approaches are iterative and keep track of necessary changes to accommodate and adapt.¹²² Agile approaches organize the implementation and completion of a project in a way such that the software is implemented within the original time specified and the original budget.¹²³ Key components of an agile approach are breaking the process into small digestible pieces, adapting to

112. *See id.* at 11-12.

113. *See id.* at 14.

114. *See* ANCHORE, *FedRAMP Compliance: FAQs & Key Things to Know*, <https://anchore.com/fedramp/fedramp-overview> [<https://perma.cc/5REA-4R84>] (last updated Jan. 7, 2025).

115. FEDRAMP, *supra* note 46.

116. *Id.*

117. *See* FEDRAMP, *FedRAMP AI Prioritization* (Aug. 18, 2025), <https://www.fedramp.gov/ai/> [<https://perma.cc/2E3N-BU2G>].

118. *See id.*

119. *FedRAMP 20x CWG: What Federal Agencies Need to Know in 2026*, ELEVATE CONSULT (Jan. 14, 2026), <https://elevateconsult.com/insights/fedramp-20x-cwg-what-federal-agencies-need-to-know-in-2026/> [<https://perma.cc/6JNS-SY4K>].

120. *FedRAMP Marketplace: Products*, FEDRAMP, <https://marketplace.fedramp.gov/products> [<https://perma.cc/39JH-2UZ7>] (last visited Jan. 18, 2026).

121. FEDRAMP, *supra* note 46.

122. *See* Benjamin J. Balter, Note, *Toward a More Agile Government: A Case For Rebooting Federal IT Procurement*, 41 PUB. CONT. L.J. 149, 164 (2011).

123. *See id.* at 157.

changes, and pushing certain long-term decisions until they necessarily need to be made.¹²⁴ Agile procurement strategies reinforce the notion of communication being at the core of a software procurement project.¹²⁵

The need to procure software on the basis that it will need to continuously adapt to the agency's needs and circumstances promotes "face-to-face discussions."¹²⁶

Outcome-based procurement contracts incentivize innovation and risk-management. Outcome-based procurement contracts, sometimes referred to as results-based financing, center around the idea that payment will be received when a certain milestone has been achieved.¹²⁷ It allows the agency to set the overall goal but for the bidder to implement their own solution.¹²⁸

Outcome-based procurement works best when the agency has a "clear purpose" in mind and the large costs associated with the project.¹²⁹ It typically serves three purposes: promoting desired behavior, managing risks financial, security or otherwise, and reducing costs by driving up the competitive value of the project which in turn drives innovative solutions.¹³⁰

Regarding timeline and risk, the risk of non-delivery of the product falls onto the bidder, rather than the agency.¹³¹ Outcome-based procurement benefits from the inverse relationship of costs and competition.¹³² Costs of the project reduce when competition increases.¹³³ Outcome-based procurement has been historically hard to implement due to the lack of technical expertise and ill-trained contracting employees.¹³⁴

Depending on the technology being procured and the agency procuring, a different strategy will work best in different circumstances, so it is critical to evaluate and assemble long-term and short-term goals and project all potential costs of the project in order to choose the strategy that will produce the best results.

G. Adaptive Acquisition Framework Pathways

The Adaptive Acquisition Framework was developed for expediting defense acquisitions.¹³⁵ The framework has become a critical guide for the

124. *See id.* at 164.

125. *See id.* at 167.

126. *See id.* at 167-68.

127. *See* Government Outcomes Lab, *Outcomes-Based Contracting*, UNIV. OF OXFORD, <https://golab.bsg.ox.ac.uk/the-basics/outcomes-based-contracting/> [<https://perma.cc/6BW3-QF7F>].

128. Nick Wakeman, *Outcome-based contracts are smart but hard to field*, WASH. TECH. (Nov. 30, 2022), <https://www.washingtontechnology.com/companies/2022/11/outcome-based-contracts-are-smart-hard-field/380293/> [<https://perma.cc/UH7F-YDVY>].

129. *See* Government Outcomes Lab, *supra* note 127.

130. *See id.*

131. *See id.*

132. *See id.*

133. *See id.*

134. *See* Wakeman, *supra* note 128.

135. *See* Kevin Fahey, *DOD's Transformational Adaptive Acquisition Framework*, DAU (Nov. 5, 2019), <https://www.dau.edu/news/dods-transformational-adaptive-acquisition-framework> [<https://perma.cc/VZ5V-WUDE>].

Department of Defense's procurement strategies.¹³⁶ Within this framework are six different types of pathways designed to work with different technologies, strategies, and teams.¹³⁷

1. Middle Tier of Acquisition Pathway

The Middle Tier of Acquisition Pathway (MTA) is specifically used for the development of technologies that only need to “minimally develop a capability before rapidly fielding.”¹³⁸ The Department of Defense has found success in the MTA pathway. For instance, The Department of Defense has been able to make continuous changes to its autonomous robotic combat vehicles through the middle tier acquisition pathway, which without the pathway would have involved lengthy, iterative follow-ups preventing critical updates and improvements.¹³⁹

The pathway offers three advantages. It reduces cost to the department by proving capability prior to making the big purchase, it allows smaller businesses to compete and offer innovative solutions that could not otherwise afford the traditional procurement process, and serves to “jump start” innovative technologies.¹⁴⁰ Within five years of beginning the pathway, the technologies are expected to be prototyped or fielded.¹⁴¹ This is in comparison to the Department's typical eleven-year delivery timeline, so the pathway is designed to deliver results with speed.¹⁴² However, five years is still a long process for procuring emerging technologies given the timeline of releases of GenAI.¹⁴³

136. See Jim Garamone, *Transformational Change Comes to DOD Acquisition Policy*, U.S. DEP'T OF DEF. (Oct. 21, 2019), <https://www.defense.gov/News/News-Stories/Article/Article/1994041/transformational-change-comes-to-dod-acquisition-policy/> [<https://perma.cc/T6TT-2J8G>].

137. See Def. Acquisition Univ., *Adaptive Acquisition Framework*, <https://aaf.dau.edu/#> [<https://perma.cc/9WFFV-TUA9>] (last visited Apr. 4, 2025).

138. *Id.*

139. See Pete Modigliani et al., *Get to Know the Middle-Tier, the Awesome-er Acquisition*, DEFENSE ONE (Sept. 12, 2022), <https://www.defenseone.com/ideas/2022/09/get-know-middle-tier-awesomeer-acquisition/377017/> [<https://perma.cc/P8LQ-SCAK>]; see generally ANDREW FEICKERT, CONG. RSCH. SERV., IF11876, *THE ARMY'S ROBOTIC COMBAT VEHICLE (RCV) PROGRAM* (2025).

140. Def. Acquisition Univ., *MTA Overview & Benefits*, <https://aaf.dau.edu/aaf/mta/overview/> [<https://perma.cc/3MLV-KNC5>] (last visited Apr. 4, 2025).

141. See Def. Acquisition Univ., *supra* note 137.

142. See Peter Musurlian, *Major DoD Acquisition Programs Taking Too Long, GAO Says*, FED. NEWS NETWORK (June 18, 2024), <https://federalnewsnetwork.com/federal-news/2024/06/major-dod-acquisition-programs-taking-too-long-gao-says/#:~:text=GAO%20said%20on%20average%2C%20DoD's,three%20years%20longer%20than%20planned> [<https://perma.cc/HHS7-SDVH>].

143. See *Zee*, *supra* note 13.

2. The Software Acquisition Pathway

The Software Acquisition Pathway was developed to rapidly deploy software systems to users in the defense industry.¹⁴⁴ It is an agile and iterative solution to procuring and acquiring software rapidly and continuously. A key point in the pathway is that the capabilities of the software will be shown not more than one year post the dedication of funds.¹⁴⁵ As the software is improved, these improvements will be distributed to the end user at least annually.¹⁴⁶ Moreover, the improvements to the software over time will be done in “collaboration with end users” which seems to promote harmony amongst the software and the updated needs of the department.¹⁴⁷

Program Maven demonstrated the success of the Department of Defense’s expedited software acquisition pathway. Program Maven, originally Project Maven, is a Pentagon initiative that began in 2017.¹⁴⁸

The project featured AI capabilities that could “scan photos and identify objects on the battlefield.”¹⁴⁹ Program Maven was introduced in the battlefield a mere six months after receiving funding due to acquisitions through the expedited software acquisition pathway.¹⁵⁰ Through the pathway, the National Geospatial-Intelligence Agency has been able to maintain “agility, flexibility, and speed” in keeping the projects capabilities up-to-date.¹⁵¹ This pathway has been used to acquire fifty software programs since its unveiling.¹⁵² The then Assistant Secretary of Defense for Acquisition, Cara Abercrombie, notes that greater adoption of the software acquisition pathway could result from “a team of experts who know how to use the software pathway, who know how to do agile acquisition strategies” illuminating that expertise is key to making the pathway successful.¹⁵³

The Federal Aviation Administration (FAA) could similarly make use of this pathway in their flight monitoring software. The implementation of AI could “monitor America’s crowded skies... [and] mean quicker safety

144. See Def. Acquisition Univ., *Software Acquisition*, <https://aaf.dau.edu/aaf/software/> [<https://perma.cc/H3HA-9NYY>].

145. See *id.*

146. See *id.*

147. *Id.*

148. See Saleha Mohsin, *Inside Project Maven, The U.S. Military's AI Project*, BLOOMBERG (Feb. 29, 2024), <https://www.bloomberg.com/news/newsletters/2024-02-29/inside-project-maven-the-us-military-s-ai-project> [<https://perma.cc/3FRA-VNFC>].

149. *Id.*

150. See Gregory C. Allen, *Project Maven Brings AI to the Fight Against ISIS*, CTR. FOR A NEW AM. SEC. (Dec. 21, 2017), <https://www.cnas.org/publications/commentary/project-maven-brings-ai-to-the-fight-against-isis#> [<https://perma.cc/L5HU-DEEL>]; See also Lizbeth Perez, *NGA Official Updates on Program Maven, AI Initiatives*, MERITALK (Oct. 25, 2023), <https://www.meritalk.com/articles/nga-official-updates-on-program-maven-ai-initiatives/> [<https://perma.cc/PBP2-9K9Q>].

151. Perez, *supra* note 150.

152. See Jared Serbu, *DoD Stands Up ‘SWAT Team’ to Help Speed Software Acquisition*, FED. NEWS NETWORK (May 10, 2024), <https://federalnewsnetwork.com/defense-news/2024/05/dod-stands-up-swat-team-to-help-speed-software-acquisition/#> [<https://perma.cc/UMA6-4MNT>].

153. *Id.*

checks.”¹⁵⁴ However, as is the case with the rapid development and improvements to AI, it would be advantageous of the FAA to use the software acquisition pathway to ensure their technology is always up to date, ensuring safety and trust.

The procurement process for GenAI lags behind the rapid improvements in AI, causing non-defense agencies to encounter procurement challenges with regards to the technology. The use of expedited acquisition pathways is a promising solution that when properly leveraged, can elevate and expedite the non-defense procurement process.

III. ANALYSIS

The Middle Tier of Acquisition Pathway and the Software Acquisition Pathway have demonstrated success when it comes to procuring and acquiring emerging technologies.¹⁵⁵ The ability of these pathways to produce rapid results serves to solve budgeting, risk and timeline challenges.

A. The Rapid Development of GenAI Illuminates the Need for Non-Defense Government Agencies to Use AI to Procure GenAI

Implementing AI in government contracting will work to automate much of the process, generate insights, detect fraud, manage risk, predict cost and timeline, and track compliance with regulations.¹⁵⁶ Currently, the typical procurement process involves multiple stages that have long, drawn out implications. Federal contracting officers are facing the strain of reviewing more material than ever before. “In 2022, for every Federal contracting officer, an average of 2,000 contracting actions had to be executed per year. Comparing that number to the 300 actions per year in 2013 reveals the scope of the problem.”¹⁵⁷ This explosion in workload has led to inefficiencies and delays, highlighting the need for a more effective and streamlined approach.¹⁵⁸ Non-GenAI, such as task-orientated AIs that do not need the use of a cloud and thus require no FedRAMP certification, can be obtained

154. *FAA Eyes AI System to Watch America’s Airways*, PYMNTS (Nov. 12, 2024), <https://www.pymnts.com/artificial-intelligence-2/2024/faa-eyes-ai-system-to-watch-america-airways/> [<https://perma.cc/MM6L-HKMX>].

155. *See Integrated Visual Augmentation System (IVAS)*, FY 2019 ANNUAL REPORT 85 (2019), <https://www.dote.osd.mil/Portals/97/pub/reports/FY2019/army/2019ivas.pdf> [<https://perma.cc/QY5Z-PD3F>]; *see also* U.S. GOV’T ACCOUNTABILITY OFFICE, *Defense Software Acquisitions: Changes to Requirements, Oversight, and Tools Needed for Weapon Programs*, GAO-23-105867 (July 20, 2023), <https://www.gao.gov/assets/gao-23-105867.pdf> [<https://perma.cc/S22T-DWAR>].

156. *See* Ben Allen, *Improving Procurement with AI in Government Contracting*, APPIAN (Oct. 24, 2024), <https://appian.com/blog/acp/public-sector/ai-in-government-contracting> [<https://perma.cc/6ZTQ-CL7E>].

157. Harry Menear, *Is There a Role for Generative AI in Public Sector Procurement?*, CPO STRATEGY (Feb. 23, 2024), <https://cpostategy.media/blog/2024/02/23/is-there-a-role-for-generative-ai-in-public-sector-procurement/> [<https://perma.cc/JC7H-XF9L>].

158. *Id.*

quickly through The Department of Defense's expedited software acquisition pathway previously mentioned.

AI will streamline the contract bidding selection process. The use of this AI will be able to monitor the contract phases, perform financial checks on bidders, and review past performance in earlier contract jobs.¹⁵⁹ AI can significantly reduce the time and resources needed to execute procurement actions. AI can analyze industry-wide data and have it generate factors on performance history and reputation.¹⁶⁰

One large hesitancy to procuring GenAI was the associated security risks.¹⁶¹ However, AI can help that process. An AI system can flag problematic clauses and inconsistencies.¹⁶² It may also project delays or failures with the intended project.¹⁶³ Additionally, the use of AI during the procurement process by government employees will foster greater confidence, aiding in comfort level when it comes to using the procured GenAI. Moreover, the use of AI, while it can be expensive on the forefront, can save and recover money.¹⁶⁴ The Treasury Department was able to recover \$375 million through their use of AI, demonstrating the money-saving impact of AI.¹⁶⁵

1. Non-Defense Government Agencies Should Use the Department of Defense's Middle Level Acquisition Pathway to Procure Non-Generative, Task-Orientated AIs for Future Government Use

For non-defense government agencies, the Middle Level Acquisition Pathway presents a valuable opportunity to quickly field AI solutions designed to support procurement processes. The Middle Level Acquisition Pathway¹⁶⁶ will serve non-defense agencies in rapidly fielding AI technology. This pathway would be integral in the procurement of task-oriented AIs because there is a plethora of AI.¹⁶⁷ Task-oriented AI systems are focused on specific, narrow tasks—such as reviewing vendor performance history, monitoring contract compliance, or flagging potentially fraudulent activities.¹⁶⁸ Task-oriented AIs can stay local to the computer as compared

159. See Molly Colaneri, *The Transformative Power of AI in USG Procurement*, U. DAYTON L., https://udayton.edu/law/government_contracting/articles/transforming_government_procurement_ai.php# [<https://perma.cc/4DZ4-EYHH>].

160. See *id.*

161. See Allen, *supra* note 156.

162. See *id.*

163. See *id.*

164. See Tomiak, *supra* note 76.

165. See *id.*

166. See Def. Acquisition Univ., *supra* note 137.

167. See *id.*

168. See Allen, *supra* note 156.

to GenAIs, meaning no FedRAMP certification is needed.¹⁶⁹ With no FedRAMP certification needed, the procurement process will be quicker and there is an added bonus of security with no cloud-based networks needed for it to operate.¹⁷⁰ The absence of FedRAMP requirements is a significant advantage in speeding up the procurement process.

Despite hesitancy around AI procurement, Middle Level Acquisitions attract bidders with mature technologies that require minimal modification, addressing both risk concerns and the needs of non-defense agencies. Typically, there is hesitancy surrounding procurement of AI due to the timeline being too short to adequately address the risk concern. However, the point of Middle Level Acquisitions is to attract bidders who have technologies that need very little in order to be fielded.¹⁷¹ They are mature technologies that require minimal modification or further development before they can be deployed.¹⁷² Therefore, bidders for the project should already have security and risk assessments performed and submitted to the procurement team. This aligns well with the needs of non-defense agencies looking for reliable task-oriented AI tools.

The lower cost and the competitive environment fostered by the MTA Pathway not only help keep procurement costs within budget but also promote innovation and diversity in the vendor pool. As of April 3, 2025, the Office of Management and Budget released a memorandum (M-25-21) guiding federal agencies to remove barriers that are preventing AI innovation giving even more reason to implement this pathway.¹⁷³ Regarding the budget, Middle Level Acquisitions attract smaller companies¹⁷⁴ whose prices have not inflated compared to AIs from Microsoft and OpenAI. Smaller companies, eager to establish a presence in the government contracting space, are likely to offer more cost-effective solutions in exchange for the opportunity to scale their technologies. Thus, the likelihood of staying within the budget is high. This will also promote competition and innovative solutions.

B. Non-Defense Government Agencies Should Leverage the Department of Defense's Software Acquisition Pathway with Agile and Outcome Based Procurement Strategies to Procure GenAI

The software acquisition pathway in combination with the agile and outcome-based procurement methods are critical to rapidly acquiring emerging technologies such as generative AI. The Software Acquisition Pathway allows agencies to integrate agile procurement principles, enabling

169. See Gary Stevens, *Understanding Locally Hosted AIs*, NAMECHEAP (March 29, 2024) <https://www.namecheap.com/blog/understanding-locally-hosted-ais/> [<https://perma.cc/87Y2-PCU9>].

170. See *id.*

171. See Def. Acquisition Univ., *supra* note 137.

172. See *id.*

173. See OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, OMB M-25-21, DRIVING EFFICIENT ACQUISITION OF ARTIFICIAL INTELLIGENCE IN GOVERNMENT (2025).

174. See *id.*

them to respond quickly to technological advancements and agencies can adjust the technology as needed.¹⁷⁵ Nondefense agencies looking to acquire GenAI are constantly faced with the challenge of the technology necessitating upgrades after procurement which leads to requesting larger budgets, more risk assessment reviews, waiting on senior decision makers, and constantly revising AI guidance. Sticking to the traditionally long procurement process entails an arduous process with stagnation and the inability to keep up to date with the constant updates that characterize GenAI. However, the software acquisition pathway allows for agile and outcome-based procurement methods to be implemented.

1. Agile and Outcome-Based Procurement Methods Will Allow for Flexibility and Security and an Overall Faster Procurement Process When it Comes to GenAI

Agile procurement streamlines the procurement process by focusing on high-level goals and outcomes, allowing flexibility for bidders.¹⁷⁶ Regarding the timeline, with agile procurement, the government only needs to relay their high-level goal instead of laying out every single detail.¹⁷⁷ This gives way to a win-win situation between the bidder and the agency. The bidder has more flexibility in how they reach the outcome and develop their solution, while the FAR requirements are satisfied by keeping up competition for contracts.¹⁷⁸ With developers choosing their own way to get the project done it will inevitably speed up the decision-making process thus making the whole procurement process faster. Outcome based procurement satisfies the budgeting challenging.¹⁷⁹ If payments and contract renewals are based on the achievement of specific outcomes, providers are more motivated to deliver the desired outcome and on time within budget.

One major challenge in adopting emerging technologies is addressing the evolving risk assessment, necessitating a more flexible approach. Due to the risk, there is often a “wait-and-see” approach taken, rather than immediately taking steps to procure AI.¹⁸⁰ When it comes to AI, there is a strong desire for the government agency to wait for the market to do the risk assessment so that the government can pick up the AI on the second or third version.¹⁸¹ However, due to some GenAI’s releasing versions almost yearly,¹⁸² this is not an option and lends to the current procurement process being

175. See Def. Acquisition Univ., *supra* note 144.

176. See Benjamin J. Balter, *supra* note 122; see also Government Outcomes Lab, *supra* note 127.

177. See Benjamin J. Balter, *supra* note 122.

178. See Government Outcomes Lab, *supra* note 127; see also *Federal Acquisition Regulation: Part 6*, *supra* note 103.

179. See *id.*

180. See Bob Violino, *Dept. of Homeland Security embraces AI and Other Federal Agencies are Likely to Follow*, CNBC (Apr. 17, 2024), <https://www.cnbc.com/2024/04/17/dept-of-homeland-security-embraces-ai-other-agencies-to-follow.html> [<https://perma.cc/NSH7-N6PK>].

181. See *id.*

182. See Zee, *supra* note 13.

outdated. With the software acquisition pathway and agile procurement, the risk assessment can constantly be addressed.¹⁸³ When procuring through these methods, it allows for constant iteration and annual updates and reviews.¹⁸⁴

There are built-in opportunities for risk reassessment at each stage of deployment.¹⁸⁵ The most important element is constant communication between the developer and the end user.¹⁸⁶ This means that a security assessment can and should be done with each evaluation and update making sure there is always compliance with the agency's security specifications.

Moreover, non-defense government agencies typically face different, lower levels of risk when it comes to national security. Defense agencies deal with classified information such as military intelligence, operations, knowledge of weapons systems.¹⁸⁷ In contrast, non-defense agencies handling education, environment stability, healthcare and research have less high-risk information vulnerable to security compromise.¹⁸⁸ While cybersecurity is still needed, should a data breach occur, the consequences are less severe for non-defense agencies. Moreover, M-25-21 has established that agencies should be utilizing AI that is "American-Made" which should further reduce national security fears.¹⁸⁹ It is important to note that public facing departments will need to employ additional guardrails mandated based on the technology they are procuring.

C. Non-Defense Government Agencies Should Bring in AI Talent and Make the Decision Circle Smaller to Streamline the Procurement Process

To fully capitalize on the potential of generative AI, non-defense government agencies must ensure that they have the right expertise on hand to manage the procurement process effectively. GenAI is an expensive endeavor that demands keen attention to security, the ability to keep up with current technologies, and knowledge of its implementation and use. A typical procurement team oversees multiple offices, as factors like budgeting, risk management, security, and specialized knowledge all play a role in the procurement process.¹⁹⁰ This team setup can work with more procurement

183. See Def. Acquisition Univ., *supra* note 144.

184. See *id.*

185. See *id.*

186. See *id.*

187. See generally DEFENSE INTELLIGENCE AGENCY, *About DIA*, <https://www.dia.mil/About/About-Us/> [https://perma.cc/4P6Q-44P6] (last visited Apr. 7, 2025).

188. See *Policy Basis: Non-Defense Discretionary Programs*, CTR. ON BUDGET AND POL'Y PRIORITIES (Dec. 19, 2024), <https://www.cbpp.org/research/federal-budget/non-defense-discretionary-programs> [https://perma.cc/93UC-9SRX].

189. See OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, OMB M-25-21, DRIVING EFFICIENT ACQUISITION OF ARTIFICIAL INTELLIGENCE IN GOVERNMENT (2025).

190. See Shyam Sundar, *How to Build a Procurement Team: It's Structure and Key Roles*, RAMP (Feb. 21, 2025), <https://ramp.com/blog/procurement-team-structure-responsibilities> [https://perma.cc/3YZT-84B6].

projects, but due to the intricacies of GenAI, a team of AI experts who have specialized knowledge on the technology will better serve the team.

A specialized, knowledge-based GenAI team can enhance risk-assessment and decision-making speed. Instead of having a large, all-inclusive team that have varying educations on AI, it would be beneficial to have a dedicated GenAI knowledge-based team.¹⁹¹ Making these teams smaller with a more refined education will foster greater risk management and speed up the time it takes to make the decision to move forward with that phase of the project. A team composed of AI experts with deep technical knowledge of the technology can make more informed decisions, quickly assess risks, and move projects forward with greater confidence. These specialized procurement teams who are incredibly familiar with the technology can develop guidance on how to use the procured GenAI and conduct trainings which will foster greater confidence in senior decision makers and the employees.

While the initial investment in hiring specialized procurement teams may raise budgeting concerns, it will streamline decision-making and save money in the long run.¹⁹² Research has shown that implementing “AI-driven decision-making” will decrease operation costs by ten percent and may result in savings upwards of 20 percent.¹⁹³ This solution may bring up budgeting concerns because the budget will have to accommodate the hiring of more individuals and those with specialized knowledge, but these savings will leave room in the budget for these AI professionals to join procurement teams. Additionally, this solution will streamline decision making, keeping the project on the correct timeline, which outweighs the initial investment. Agile procurement teams usually consist of less people as compared to traditional teams, enabling them to reach a consensus more efficiently.¹⁹⁴ In fact, by streamlining the procurement process and adopting agile methods, agencies can actually save money over time by reducing the delays and inefficiencies typically associated with government procurement. Additionally, through the use of the previously mentioned Department of Defense’s borrowed expedited pathways and the combination of agile and outcome-based techniques, the procurement project will be able to attract smaller, more affordable companies overall making room in the budget for AI expert expenditures.

191. See Exec. Order No. 14,110, 88 Fed. Reg. 75191 (Oct. 30, 2023).

192. See Helene Laffitte, *Generative AI in Procurement: Real Innovation or False Promise?*, CONSULTING QUEST (Feb. 23, 2025), <https://consultingquest.com/insights/generative-ai-in-procurement/> [<https://perma.cc/5DTJ-S3BR>].

193. *Id.*

194. See Graham McConnell, *Agile Procurement v. Traditional Procurement*, RESPONSIVE.IO (Aug. 1, 2024), <https://www.responsive.io/blog/agile-procurement/> [<https://perma.cc/PR3V-YK4S>].

IV. CONCLUSION

This Note highlights the need for non-defense government agencies to adjust or overhaul their AI and GenAI procurement processes. The rapid development and constant updates to GenAI do not fit with the long, burdensome, and outdated non-defense procurement process.

The Middle Tier of Acquisition Pathway offers a streamlined approach to procure task-oriented, non-GenAI systems. This pathway is ideal for quickly fielding mature AI technologies that require minimal modification, ensuring faster deployment and enhanced security. Non-defense agencies can leverage the Middle Tier Acquisition Pathway to benefit from more affordable, innovative solutions provided by smaller companies, thereby fostering competition and keeping costs within budget.

For procuring GenAI, the Department of Defense's Software Acquisition Pathway combined with agile and outcome-based procurement strategies provides the flexibility needed to address the constant changes and updates to GenAI technology. Agile and outcome-based procurement methods serve to satisfy timeline constraints, budgeting challenges, and earn positive risk assessments. Additionally, the use of both pathways and the two methods comply with The Office of Management and Budget's Memo on the federal government's use of AI.

To successfully implement these AI solutions, agencies must invest in specialized talent with deep knowledge of AI technologies. An expert-focused AI procurement team can facilitate faster decision-making and more effective risk management, helping agencies navigate the complexities of GenAI while keeping with the timeline and staying within budget.

Ultimately, adopting these modern procurement pathways and strategies, supported by the right specialized AI team, will overcome the current challenges and position these agencies for success in the rapidly evolving AI field.

