

July 18, 2005

***Via email***

Dr. David Brailer  
National Coordinator for Information Technology  
U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

Re: National Health Information Network RFP

Dear Dr. Brailer:

The Initiative for Software Choice (ISC, [www.softwarechoice.org](http://www.softwarechoice.org)) – a global coalition representing over 300 software companies and Information Technology trade associations around the world – is writing to express our concern that the recent amendment to your RFP for a prototype for a nationwide health information network creates a set aside for open source software. We believe that this set aside amounts to a preference that is counter to existing federal government procurement policy and introduces an unnecessary licensing model distinction into the procurement process.

The ISC strongly supports the development and adoption of all kinds of software: be it open source software (OSS), hybrid or proprietary. For this reason, we believe that mandatory government regulations, which give preference to specific kinds of software, weaken the overall marketplace, biasing the choice of viable software options available to public authorities. Only when all software options are available can the specific needs of each IT project be met.

The July 1, 2005 amendment of solicitation No.ONCHIT-3 states that the “Government will set aside one unrestricted award for an offeror that proposes an open source implementation.” We are concerned with this amendment for several reasons.

First, creating preference or set aside for a specific software licensing model violates federal IT procurement policy. On July 1, 2004 OMB issued a software acquisition memo summarizing OMB Circulars A-11 and A-130 and the Federal Acquisition Regulation (FAR). The memo reminds federal procurement executives that the above cited policies are “intentionally technology and vendor neutral, and to the maximum extent practicable, agency implementation should be similarly neutral.”

Next, mandating a set aside based on software licensing models creates an irrelevant and unnecessary distinction. Software is software and should be chosen based on factors such as cost, reliability, security, functionality and availability rather than how the product is distributed and licensed. This set aside does not spell out specific technical requirements that only OSS can address—it merely creates a preference for one licensing model over all others.

The ISC has recently completed a set of government procurement protocols that set forth best practices that governments around the world should consider when creating procurement policies. The first of these protocols is to maintain choice in procurement options. You may view the complete protocols document at [http://www.softwarechoice.org/download\\_files/Government\\_Procurement\\_Protocols\\_English.pdf](http://www.softwarechoice.org/download_files/Government_Procurement_Protocols_English.pdf)

Finally, we are troubled by the last minute addition of this amendment to the RFP process and feel that it is unnecessary. Currently there are no barriers to the federal government's procurement of open source software products if they are determined to be the best solution for the given procurement need.

We respectfully urge HHS to take immediate steps to withdraw this amendment. We stand ready to work with HHS as you complete this procurement process and for any future IT procurement that you undertake. We welcome the opportunity to meet with you and your staff to further discuss sound IT procurement policies.

Yours sincerely,

A handwritten signature in black ink that reads "Melanie Wyne". The signature is written in a cursive, slightly slanted style.

Melanie Wyne  
Executive Director – ISC