



SBA Policy Notice

TO: SBA IT EMPLOYEES and CONTRACTORS **CONTROL NO.:** 9000-2139

SUBJECT: SBA Open Source Software Policy **EFFECTIVE:** January 18, 2017

1. Introduction

SBA is committed to improving the way it buys, builds and delivers information technology (IT) and software solutions to better support cost efficiency, mission effectiveness, and the consumer experience with SBA programs

This policy ensures compliance with Office of Management and Budget (OMB) Memorandum M-16-21, *Federal Source Code Policy: Achieving Efficiency, Transparency and Innovation through Reusable and Open Source Software*. A major objective of Memorandum M-16-21 is to save software development time and costs by making existing Federal government-written code available for reuse and adaptation to all Federal government users.

In addition, OMB plans a pilot project that will designate custom code as Open Source Software (OSS) that is available to the public. The benefits of these initiatives should be considerable:

- Software development time and costs will be reduced by the ability to adapt and modify reusable software rather than developing from scratch
- Cross-training will occur as developers are exposed to new techniques in reused code
- Government code will tend to become more standardized as reuse occurs within and among agencies
- Improved perception of government as the public sees the quality and quantity of government-originated code

2. SBA Implementation Objectives

SBA objectives are to accomplish the following:

- SBA will provide an Open Source Code Policy to supply the Agency with information for open source code and acquiring/developing new custom code.
- SBA will make custom developed code developed by the Agency broadly available across the Federal Government and releasable to the public.
- The availability of custom code will enhance transparency and innovation through reusable and open source software.
- Pursuant to releasing any custom developed code, SBA will establish requirements that meet the Federal Source Code Policy.

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SBA Form 1353.3 (4-93) MS Word Edition; previous editions obsolete
Must be accompanied by SBA Form 58

3. Scope

This policy applies to all SBA program offices that create and/or own IT or software solutions, regardless of whether the solution's source code is developed internally or externally to SBA. When SBA plans new software, it must consider whether there is existing software that meets requirements in the federal inventory before initiating production or acquisition of new software. SBA cooperates fully in listing available software for sharing and making that code accessible for Federal Government-wide visibility. This policy advocates that, but does not require, existing custom-developed code be retroactively made available for Government-wide reuse. All SBA offices that produce software products are required to comply. In the unusual instance that proprietary, security, contractual, or other reasons would preclude public release, such software will be excluded from the federal inventory.

In accordance with Federal Information Technology Acquisition Reform Act (FITARA) and OMB directives, custom developed source code which is hosted at SBA will generally be made available for reuse at all Federal government IT sites. The exceptions to this policy are listed in **Appendix A**.

In addition, OMB has announced a three-year pilot project in which any custom software developed after August 8, 2016 may be designated as Open Source Software (OSS), enabling release to the public. OMB has mandated a minimum of 20% of new software be included in the pilot. No criteria have been put forth by OMB for OSS designation, so this is subject to agency discretion. In accordance with Federal Government commitment to transparency, participation, collaboration, and the degree allowed by limitations such as licensing; SBA will endeavor to make software developed after August 8, 2016 available to the general public as OSS.

The Administration launched www.code.gov, an online collection of tools, best practices, and schemas to help agencies implement this policy. The website will include additional materials such as definitions, evaluation metrics, checklists, case studies, and model contract language—with the goal of enabling collaboration across the Federal Government and advancing the Government's partnership with the public.

This site will serve as the primary identification portal for custom-developed code intended both for Government-wide reuse and for release as OSS. The site will not house the code itself; rather, it is intended to serve as a tool for discovering custom-developed code that is available for Government-wide reuse or as OSS, and to provide transparency into custom code that is developed using federal funds.

Code.gov will be publicly accessible and searchable via a variety of fields and constraints, such as a project name, project intended use, and the agency releasing the source code.

4. Software Solutions Analysis

A Three-Step Software Solutions Analysis has been used at SBA to make software procurement or development determinations. This will continue with early focus on use of existing Federal software as detailed below. OMB's memorandum on Technology Neutrality requires agencies to consider open source, mixed source, and proprietary software solutions equally and on a level playing field.

- **Step 1 Analysis of Strategy and Alternatives** - SBA conducts research and analysis prior to selecting any technology acquisition or usage code development. This strategic analysis will now consider not only SBA mission and operative needs, but also external public initiatives and interagency initiatives. After strategic analysis, SBA then conducts an alternatives analysis. This analysis will now include evaluating whether to use a Federal software solution that currently exists or to acquire or develop a new software solution. The alternatives analysis shall give preference to using a reasonable existing Federal software solution. The OCIO will work with the CFO to ensure that the proper analysis takes place prior to procurement. The Business Technology Investment Council (BTIC) will require that proper analysis be a part of the investment package prior to approval. In addition, the OCIO will work with the Senior Procurement Executive to ensure that the SBA obtains the right to share all custom source code developed at SBA by inserting a standard clause in all software development contracts. See **Appendix A** for language to be included in all procurements for this purpose.
- **Step 2 Consider Commercial Solutions** - If the alternatives analysis concludes that existing Federal software solutions cannot efficiently and effectively meet agency needs, SBA must explore whether requirements can be satisfied with an appropriate commercially available solution. Preference must first be given to procurement of existing commercial solutions through best-in-class vehicles identified by category management categories.
- **Step 3 Consider Custom Development** - If the alternatives analysis has concluded that neither an existing Federal software solution nor a commercial solution adequately meets SBA needs, the agency may consider procuring custom-developed code in whole or in conjunction with existing Federal or commercial code.

SBA must also consider several factors throughout each stage of the three-step analysis:

1. **Hybrid Solutions:** Solutions containing a blend of existing Federal, commercial, and/or custom developed solutions should be considered throughout the examination.
2. **Modular Architecture:** SBA should consider modular design approaches. Per the *Digital Government Strategy*, modularity can decrease general hazard and cost while expanding interoperability and specialized adaptability.
3. **Cloud Computing:** Consistent with OMB direction, SBA is urged to assess safe and secure distributed computing choices all through every step of the analysis.
4. **Open Standards:** Regardless of the solution chosen, all software procurements and Government software development projects should use open standards whenever practicable, keeping in mind the end goal to build the interoperability of all Government programming and software solutions. Open standards empower software to be utilized by all, and can aid development and innovation regardless of the technology used for implementation—be it proprietary, mixed source, or OSS in nature.

5. **Targeted Considerations:** SBA must choose a product/software arrangement that best meets the operational and mission needs of the organization, considering performance, total life-cycle cost of ownership, security and privacy protections, interoperability, capacity to share or reuse, assets required to later switch vendors, and availability of quality support. These considerations should be taken into account during all three steps of the analysis.

5. Policy Elements

For access to SBA-originated software there are three levels of users:

1. **SBA** - IT at SBA is decentralized among several offices and locations, but all software will be readily available to all properly-vetted agency employees and contractors.
2. **Federal Government-wide** - software will be hosted at the owner agency. OMB will maintain a government-wide directory of software at <https://www.code.gov> with information on where to obtain it.
3. **Public** - OMB will open the <https://www.code.gov> site to the public. Some of the software available to government will also be available to the general public.

Guidelines for making software available to other agencies and to the public:

- All SBA owned software shall be considered for sharing
- All IT functions SBA-wide will participate fully in sharing
- Software produced after August 8, 2016 will be shared unless precluded by proprietary, security, or other reasons. See **Appendix A** for a list of exclusions from this policy. Legacy software may also participate in government-wide sharing unless it is excluded by **Appendix A** or by a reason such as using language no longer in widespread use such as COBOL.
- Custom modification (s) to commercial software will be treated as custom code.
- There will be no mass porting of SBA software to a site outside the agency. Instead, SBA will prepare a directory of shareable software using OMB designated file layout and naming conventions for inclusion in www.code.gov/ and will update it as required by OMB.
- SBA will maintain shareable software that is easily accessible by agency employees and contractors as well as users of <https://www.code.gov>.
- SBA will advise OMB whether software for government-wide sharing is also to be made available to the public. No OMB guidelines are known for this determination at this time.

Using software shared from other government sources:

- When developers plan a new application, they must continue to consider if modifying old code or purchasing a COTS (common off-the-shelf) system is the optimal course. Whenever code is developed at the SBA, the three analytical guidelines in **Section 4**

Software Solutions Analysis must be followed, with priority for software reuse when analysis so indicates.

- When new custom software is the best option, endeavor to produce it as OSS, with necessary steps taken to legally assure this contractually. All SBA offices that produce software products will be required to comply.

SBA will support fully Federal Source Code Policy M-16-21 by sharing agency-produced source code and by using software from the government inventory as a preferable option when it is appropriate and cost-effective.

6. Compliance

SBA expects its employees, contactors and associates to comply with these policies and procedures and to seek guidance when necessary from the Office of the Chief Information Officer (OCIO).

APPENDIX A: Local Clause for OSS Procurements

This language is to be used in conjunction with FAR 52.227-14 (alt. II and III), 51.227-15, and 52.227-16 in all solicitations and contracts for custom code development that meets the definition of open source software. . The Contracting Officer must consider whether it is more appropriate to use 52.227-17 rather than 52.227-14 based on whether the software procured is considered a “Special Work” as discussed in FAR 27.405-1. The Contracting Officer must also consider whether it is appropriate to include a data warranty similar to the warranty found at DFARS 252.246-7001 (along with its alternates to paragraph (d)(3) of that clause).

Local Clause Regarding Open Source Software Data Rights

SBA has a paid-up, non-exclusive, world-wide license to use, release, disclose, reproduce, prepare derivative works, distribute copies, perform publicly, display publicly, reverse engineer, sub-license, and modify all open source data, which includes source code, code, documentation, and other associated materials necessary for the application, understanding, and use of the code, developed in the performance of this contract. Such materials include, but are not limited to, data dictionaries, system files, declarative code, database design, database structure, and structure sequence organization information. SBA may disclose all such open source data with other Federal agencies or non-Government entities, which shall have the same rights in the data as SBA has asserted in this contract, including but are not limited to use, modification, and combination with other open source or proprietary software. Additionally, all such open source data may be included in SBA’s data inventory and a Federal Government-wide inventory. The inclusion of such data in a SBA inventory and Federal Government-wide inventory is subject to limited exceptions. The exceptions are as follows:

1. The sharing of the source code is restricted by law or regulation, including—but not limited to—patent or intellectual property law, the Export Asset Regulations, the International Traffic in Arms Regulation, and the Federal laws and regulations governing classified information;
2. The sharing of the source code would create an identifiable risk to the detriment of national security, confidentiality of Government information, or individual privacy;
3. The sharing of the source code would create an identifiable risk to the stability, security, or integrity of agency systems or personnel;
4. The sharing of the source code would create an identifiable risk to agency mission, programs, or operations; or
5. The CIO believes it is in the national interest to exempt sharing the source code.

It is the contractor’s responsibility to notify SBA in its proposal if it anticipates that any code, documentation, or associated materials delivered in the performance of this contract fall within any of the exceptions listed above. Additionally, all open source data developed in the performance of this contract will be stored on an SBA IT system during and after performance of the contract. As such, all open source data developed must be provided to SBA in an executable format that is in compliance with SBA IT systems to provide for reasonable use and storage of that data.

The offerer must present the Government with any and all agreements related to the work performed under this acquisition, including any license agreements related to the work performed under this acquisition, as part of its offer. SBA will not consider such agreements or licenses presented after the submission of offers and SBA will assume that there are no additional agreements or licenses if none are presented with the offer.

The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

The language in this clause does not limit, in any way, the unlimited rights, and other rights in data granted to the Government in this contract.

Appendix B: Definitions

Open-source software (OSS) is computer software with its source code made available with a license in which the copyright holder provides the rights to study, change, and distribute the software to anyone and for any purpose.

Government in all cases refers to Federal government only

CIO, Office of Chief Information Officer

Maria Roat

Date