

118TH CONGRESS
2D SESSION

S. 5436

To provide for certain requirements relating to cloud, data infrastructure,
and foundation model procurement.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2024

Ms. WARREN (for herself and Mr. SCHMITT) introduced the following bill;
which was read twice and referred to the Committee on Armed Services

A BILL

To provide for certain requirements relating to cloud, data
infrastructure, and foundation model procurement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting AI and
5 Cloud Competition in Defense Act of 2024”.

6 **SEC. 2. ENSURING COMPETITION IN ARTIFICIAL INTEL-**
7 **LIGENCE PROCUREMENT.**

8 (a) DEFINITIONS.—In this section:

9 (1) ARTIFICIAL INTELLIGENCE; AI.—The terms
10 “artificial intelligence” and “AI” have the meaning

1 given the term “artificial intelligence” in section
2 5002 of the National Artificial Intelligence Initiative
3 Act of 2020 (15 U.S.C. 9401).

4 (2) CLOUD COMPUTING.—The term “cloud
5 computing” has the meaning given the term in Spe-
6 cial Publication 800–145 of the National Institute of
7 Standards and Technology, or any successor docu-
8 ment.

9 (3) CLOUD PROVIDER.—The term “cloud pro-
10 vider” means any company engaged in the provision,
11 sale, or licensing of cloud computing to customers,
12 including individuals and businesses.

13 (4) CONGRESSIONAL DEFENSE COMMITTEES.—
14 The term “congressional defense committees” has
15 the meaning given the term in section 101(a) of title
16 10, United States Code.

17 (5) COVERED PROVIDER.—The term “covered
18 provider” means any cloud provider, data infrastruc-
19 ture provider, or foundation model provider that has
20 entered into contracts with the Department of De-
21 fense totaling at least \$50,000,000 in any of the 5
22 previous fiscal years.

23 (6) DATA INFRASTRUCTURE.—The term “data
24 infrastructure” means the underlying computer, net-
25 work, and software systems that enable the collec-

tion, storage, processing, and analysis of data, including the ability to record, transmit, transform, categorize, integrate, and otherwise process data generated by digital data systems.

(7) DATA INFRASTRUCTURE PROVIDER.—The term “data infrastructure provider” means any company engaged in the provision, sale, or licensing of data infrastructure to customers, including individuals and businesses.

(8) FOUNDATION MODEL.—The term “foundation model” means an artificial intelligence model that—

(A)(i) generally uses self-supervision;

(ii) contains at least 1,000,000,000 parameters; and

(iii) is applicable across a wide range of contexts; or

(B) exhibits, or could be easily modified to exhibit, high levels of performance at tasks that pose a serious risk to security, national economic security, national public health, or safety.

(9) FOUNDATION MODEL PROVIDER.—The term “foundation model provider” means any company engaged in the provision, sale, or licensing of foun-

1 dation models to customers, including individuals
2 and businesses.

3 (10) MULTI-CLOUD TECHNOLOGY.—The term
4 “multi-cloud technology” means architecture and
5 services that allow for data, application, and pro-
6 gram portability, usability, and interoperability be-
7 tween infrastructure, platforms, and hosted applica-
8 tions of multiple cloud providers and between public,
9 private, and edge cloud environments in a manner
10 that securely delivers operational and management
11 consistency, comprehensive visibility, and resiliency.

12 (b) CLOUD, DATA INFRASTRUCTURE, AND FOUNDA-
13 TION MODEL PROCUREMENT REQUIREMENTS.—The Sec-
14 retary of Defense shall, in contracting provisions with
15 cloud providers, foundation model providers, and data in-
16 frastructure providers—

17 (1) promote security, resiliency, and competi-
18 tion in the procurement of such solutions by requir-
19 ing a competitive award process for each procure-
20 ment of cloud computing, data infrastructure, or
21 foundation model solutions;

22 (2) ensure that the Government maintains ex-
23 clusive rights to access and use of all Government
24 data; and

25 (3) ensure that the competitive process—

1 (A) prioritizes the appropriate role for the
2 Government with respect to intellectual prop-
3 erty and data rights and security, interoper-
4 ability, and auditability requirements;

5 (B) includes modular open systems ap-
6 proaches and appropriate work allocation and
7 technical boundaries; and

8 (C) considers multi-cloud technology where
9 feasible and advantageous.

10 (c) DATA TRAINING AND USE PROTECTION.—The
11 Secretary of Defense shall direct the Chief Digital and Ar-
12 tificial Intelligence Office to update or promulgate provi-
13 sions of the Defense Federal Acquisition Regulation Sup-
14 plement (DFARS) to ensure that—

15 (1) Government-furnished data, provided for
16 purposes of development and operation of AI prod-
17 ucts and services to the Department of Defense, is
18 not disclosed or used without proper authorization
19 by the Department of Defense;

20 (2) Government-furnished data stored on ven-
21 dor systems, provided for purposes of development
22 and operation of AI products and services to the De-
23 partment of Defense, is appropriately protected from
24 other data on such systems, and is treated in ac-
25 cordance with Department of Defense data decrees

1 and Creating Data Advantage (Open DAGIR) prin-
2 ciples;

3 (3) violation of these provisions shall be subject
4 to specific penalties, including fines and contract ter-
5 mination; and

6 (4) component acquisition executives may issue
7 exemptions upon—

8 (A) determining that issuing an exemption
9 is not inconsistent with national security; and

10 (B) notifying the Chief Digital and Artifi-
11 cial Intelligence Officer of the specific provi-
12 sions exempted, the vendor and program being
13 issued the exemption, and the justification for
14 the exemption.

15 (d) REPORTING.—

16 (1) IN GENERAL.—Not later than January 15,
17 2026, and annually thereafter for four years, the
18 Chairman of the Joint Chiefs of Staff, in coordina-
19 tion with the Under Secretary of Defense for Acqui-
20 sition and Sustainment, shall submit to the congres-
21 sional defense committees a report assessing the
22 competition, innovation, barriers to entry, and con-
23 centrations of market power or market share in the
24 AI space for each period covered by the report. The

1 report shall also include recommendations of appro-
2 priate legislative and administrative action.

3 (2) PUBLICATION.—The Secretary of Defense,
4 acting through the Assistant to the Secretary of De-
5 fense for Public Affairs, shall ensure that the report
6 is made available to the public by—

7 (A) posting a publicly releasable version of
8 the report on a website of the Department of
9 Defense; and

10 (B) upon request, transmitting the report
11 by other means, as long as such transmission is
12 at no cost to the Department.

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