Memorandum

To: New Jersey General Assembly

From: American Council of Engineering Companies (ACEC), American Institute of Certified Public Accountants (AICPA), Computing Technology Industry Association (CompTIA), and Information Technology Industry Council (ITI)

Date: July 27, 2020

RE: Opposition to A-702

On behalf of thousands of software, manufacturing, professional services, and information technology companies we represent, we write to express our **opposition** to **A-702**, legislation offered by a single entity that stands to profit with passage of this bill, and mandates state contractors to install spyware (misleadingly defined as billing verification software) to verify hours billed for certain projects. A-702 is similar to legislation introduced in 30 other states; however, not a single bill has been enacted— and for good reasons. We respectfully urge you to ***oppose*** this legislation, because it would jeopardize the privacy of New Jersey citizens, poses risks to the security of state and vendor computer networks, imposes impractical and unnecessary requirements on state contractors, and would lead to added costs to the state.

The provisions in A-702 raise significant privacy and data security concerns. The specific type of software outlined in the bills automatically gathers data of all work performed by the contractor on a computer by tracking the total keystrokes and mouse event frequency and records screenshots at least once every six minutes. The software would capture everything including passwords, personal health information, and other sensitive, personally identifiable information with no mechanism for redaction before being recorded or stored. Furthermore, A-702 effectively mandates the installation of third-party spyware for the sole purpose of reclassifying sensitive data for time-keeping purposes.

The requirements in A-702 introduce unnecessary risk to the protection and security of the most sensitive data of New Jersey citizens. Under the bill, vendors will be required to keep an increasing amount of data for several years—the volume of which would be extremely large. Furthermore, the bill requires ownership of this data be transferred from the state to the contractor and stored off-site with no guarantees on how that information be stored or protected. This may unintentionally create risk of state and non-state sensitive data being comingled and accessible by unauthorized individuals as well as potentially introducing new security risks and attack vectors to state and contractor networks.

In addition, A-702 establishes several operational and scope-related issues that would be impractical to implement and would significantly increase costs for both vendors and the state. To ensure a fair playing field for impacted vendors, state agencies would need to monitor and audit software implementation for professional or technical services which is extremely broad and could likely include engineering, surveying, accounting, financial services, insurance-related services, attorneys, and environmental services, just to name a few. The bills make no appropriation to cover the added costs to the state for such compliance monitoring.

Additionally, the cost of doing business with New Jersey government agencies would increase because of the mandates for contractors to purchase the tracking software, store large amounts of data for a long period of time, and take on substantial liability and risk. The requirements in the legislation would be especially burdensome for small businesses and independent contractors working with the state as they likely cannot afford to assume the cost and risk.

Lastly, A-702 is unnecessary. Currently, there are no industry standards for the number of keystrokes, or the frequency of mouse events that equate to the amount or quality of work being performed. Defining clear project evaluation methods would achieve the underlying goal of this legislation; and it would do so at lower costs and without the added risks to personal citizen data and public IT networks presented by third-party tracking

spyware. Other solutions may include adding a transparency provision in the contract itself or including transparency in the RFP process. Most contracts already include a scope and estimated hours, and requirements for a contractor not to exceed limits. Government agencies should closely scrutinize cost proposals and actively negotiate for the best price.

Project management and oversight of state contracts should also include milestones, deadlines for deliverables, status meetings, scrutiny of invoices and audits of supporting documentation to compare and account for hourly billings, including employee timesheets. Selection processes should also include reviews of past performance and quality of work. Fraudulent billings or overcharging mean that a service provider may be excluded from future opportunities. A functional procurement system should be designed to root out poor performers and penalize those who seek to defraud the state.

While we support ample, flexible controls to ensure the proper performance of government contracts, the requirements offered under this bill by a single entity that stands to profit, introduces overly burdensome mandates and puts security of state and citizen data at risk.

We appreciate your thoughtful deliberation of our concerns. Considering the serious privacy and data security challenges, impractical and unnecessary requirements, and likelihood of increasing the costs to New Jersey, we respectfully caution the General Assembly from moving forward with this legislation.

Thank you.