Dear Senator Mastriano,

On behalf of the thousands of software, manufacturing, professional services and information technology companies our organizations represent, we write to express our opposition to SB 1133, contractor monitoring legislation that would mandate state contractors to install spyware (misleadingly defined as billing verification software) to verify hours billed for certain projects. Similar legislation has been introduced in 30 other states; however, not a single bill requiring all state entities to implement such a system has been enacted—and for good reasons. These bills are pushed by a single entity that stands to profit with its passage and introduces unacceptable security and privacy risks to the Commonwealth, its residents and vendors throughout the procurement and contracting process.

We respectfully urge against moving forward with SB 1133 as it would jeopardize the privacy of Pennsylvania citizens, poses risks to the security of state and vendor computer networks, imposes impractical and unnecessary requirements on state contractors, and lead to added costs to the Commonwealth.

The provisions in SB 1133 raise significant privacy and data security concerns. The specific type of software outlined in the bill automatically gathers data of all work performed by the contractor on a computer by tracking total keystrokes, mouse event frequency, and recording screenshots at least
once every three minutes. The software would capture large amounts of sensitive information including passwords, personal health information, and other sensitive, personally identifiable information with no mechanism for redaction before being recorded or stored by the tracking software. This bill effectively would mandate the installation of third-party spyware secure networks and devices for the sole purpose of reclassifying sensitive data for time-keeping purposes.

The requirements in the bill would introduce unnecessary risk to the protection of the most sensitive data of Pennsylvania citizens. Under the bill, vendors would be required to securely maintain an increasing amount of data for an unspecified period of time. The volume of data generated from the tracking software, as described, would be extremely large. For example, a contractor working 40 hours a week would generate 800 screen shots. This data must then be able to be securely stored, backed-up, and recovered. Furthermore, the bill requires that ownership of this data be transferred to the contractor and stored off-site with no guarantees as to how that data will be stored. At a time when most states and businesses have worked together towards implementing stronger data protections, contractor monitoring provisions would run counter to that goal by weakening security.

Additionally, the cost of doing business with Pennsylvania government agencies would increase because of the mandates for contractors to purchase the tracking software, store large amounts of data, 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 these added costs and risks.

Lastly, the legislation is unnecessary. Currently there are no industry standards for the number of keystrokes, or mouse events that equate to the amount or quality of work being performed. Defining clear project evaluation methods would be a more effective means of achieving the underlying goals of this legislation; and the Commonwealth could do so at lower costs and without the added risks to personal citizen data and sensitive IT networks presented by third-party 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 those 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, this bill introduces overly burdensome mandates and puts security of state and citizen data at risk. We appreciate your thoughtful consideration of our concerns. In light of the serious privacy and data security challenges, impractical and unnecessary requirements, and likelihood of increasing the costs to Pennsylvania, we respectfully oppose any attempt to move forward with this legislation.
Sincerely,

Associated General Contractors of America (AGC)
American Council of Engineering Companies (ACEC)
American Institute of Certified Public Accountants (AICPA)
Computing Technology Industry Association (CompTIA)
Information Technology Industry Council (ITI)
Pennsylvania Institute of Certified Public Accountants (PICPA)
TechNet

CC: Senate Majority Leader Jake Corman, President Pro Tempore Joseph B. Scarnati III, Senate Leadership