



November 2, 2020

Ms. Lisa Barr
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20203

Subject: Federal Acquisition Supply Chain Security Act Interim Final Rule

Dear Ms. Barr,

The Coalition for Government Procurement (the Coalition) appreciates the opportunity to submit comments in response to the Federal Acquisition Supply Chain Security Act interim final rule.

The Coalition is a non-profit association of firms selling commercial services, products, and solutions to the Federal Government. Our members collectively account for tens of billions of dollars of the sales generated through the General Services Administration (GSA) Multiple Award Schedule (MAS) program. The Coalition members include small, medium, and large businesses that account for more than \$145 billion in Federal Government contracts. The Coalition is proud to have worked with Government officials for over 40 years toward the mutual goal of common-sense acquisition.

The interim rule, issued by the Federal Acquisition Security Council (FASC), describes how the FASC will share supply chain risk information and how it will recommend the issuance of removal and exclusion orders to address supply chain security risks in accordance with the Federal Acquisition Supply Chain Security Act of 2018.

Coalition members support the Government's overall objectives of identifying supply chain security risks associated with information and communication technology and services (ICTS) procured by Federal agencies, and the sharing of risk information government-wide. Our comments primarily focus on Subpart C of the interim rule describing removal and exclusion orders.

[Contractor Requirements in Response to Removal Orders](#)

Subpart C of the interim rule covers Federal agency obligations in the event that the Department of Homeland Security (DHS), Department of Defense (DoD), or the Director of National Intelligence (DNI) issues a removal order or exclusion order. Few details, however, are provided for contractors as to their obligations if they are notified of a removal order for articles they sold to the Government. For example, it is unclear to what extent contractors should make efforts to determine if such ordered items are contained in existing systems. Would contractors be required to certify compliance with the removal order, and on what basis? Would the "reasonable inquiry" standard established under "Part B" of Section 889(a)(1) of the National Defense Authorization Act for FY 2019 apply? Given the importance of

these outstanding questions for contractors and their role in ensuring that any identified security risks are mitigated, the Coalition requests that the final rule describe contractors' obligations in the event that a removal order or exclusion order is issued, and the specific requirements that contractors should meet to comply.

Operations in Foreign Markets

As described in the interim rule, the purpose of the FASC is to initiate a more coordinated government-wide response to identifying security risks within the Federal supply chain. Given the immense volume of ICTS being procured by Federal agencies and the broad scope of covered articles and sources that may be subject to evaluation, it is critical that the criteria used by the FASC effectively target national security risks. The Coalition is concerned, however, that some of the criteria listed in Subpart C on Removal Orders and Exclusion Orders are overly broad. Specifically, most global ICTS companies are likely to meet at least one of the following criteria listed in the interim rule:

§ 201.301 (b)(4) Ownership of, control of, or influence over the source or covered article(s) by a foreign government or parties owned or controlled by a foreign government, or other ties between the source and a foreign government, which may include the following considerations:

(i) Whether the U.S. government has identified the country as a foreign adversary or country of special concern;

(ii) Whether the source or its component suppliers have headquarters, research, development, manufacturing, test, distribution, or service facilities or other operations in a foreign country, including a country of special concern or a foreign adversary;

(iii) Personal and professional ties between the source—including its officers, directors or similar officials, employees, consultants, or contractors— and any foreign government; and

(iv) Laws and regulations of any foreign country in which the source has headquarters, research development, manufacturing, testing, packaging, distribution, or service facilities or other operations.

The Coalition recommends that this section be updated to target more clearly sources and covered articles linked to countries that have been identified as foreign adversaries or countries of special concern. In particular, most global ICTS companies are likely to meet § 201.301 (b)(4)(ii) and (b)(4)(iv), in that they appear to cover or implicate research development, manufacturing, service and other operations conducted in, or related to, allied nations, as well. If this is the case, we also have questions about whether the criteria, as written, is consistent with international trade agreements designed to incentivize economic activity between the United States and its international partners.

Safeguarding of Contractor Information

The Coalition requests that the final rule confirm that the FASC will protect contractor information that is submitted to the FASC. In the interim rule, there is some language that may cause confusion about the safeguarding of information submitted by contractors. Specifically, *§ 201.302 Notice of recommendation to source and opportunity to respond* is clear as to the Government's obligations to keep confidential 1) any notice issued to a source, and 2) the information submitted by the source to the U.S. Government.

However, while the confidentiality protections described in § 201.302 are clear, there is some language in the narrative describing Subpart C that may cause confusion—for example, the statement that, “The FASC does not **intend to** publicly disclose communications with the source(s) except to the extent required by law.” Therefore, we respectfully request that the narrative in the final rule be updated to reflect that the Government will protect and maintain the confidentiality of any contractor information as required by law.

Again, the Coalition sincerely appreciates the opportunity to submit comments in response to the FASCSA Act interim final rule. If you have any questions, I may be reached at (202) 315-1053 or rwaldron@thecgp.org.

Best regards,

A handwritten signature in black ink, appearing to read 'RWaldron', with a long horizontal flourish extending to the right.

Roger Waldron
President