

DENTONS



# Legislative and Regulatory Updates

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June 20, 2024

# Agenda

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# FAR Updates

# FAR Interim Rule on Certification of Service-Disabled Veteran-Owned Small Businesses

## Interim Rule

- On February 23, 2024, the Department of Defense (“DoD”), General Services Administration (“GSA”), and National Aeronautics and Space Administration (“NASA”) (together the “*FAR Council*”) published an interim rule to amend the *Federal Acquisition Regulation* (“*FAR*”) to implement the Small Business Administration’s (“SBA”) final rules implementing sections of the National Defense Authorization Acts (“NDAA”) for Fiscal Years (“FY”) 2021 and 2022
- Section 862 of the NDAA for FY 2021 transfers the verification of small business concerns owned and controlled by veterans or service-disabled veterans from the Department of Veterans Affairs (“VA”) to SBA as of January 1, 2023. It also creates a certification requirement for service-disabled veteran-owned small business (“SDVOSB”) concerns seeking sole-source and set-aside awards under the SDVOSB program
- This interim rule went into effect on February 23, 2024

# FAR Final Rule Establishing Federal Acquisition Regulation Part 40

## Final Rule

- On April 1, 2024, the Department of Defense (“DoD”), General Services Administration (“GSA”), and National Aeronautics and Space Administration (“NASA”) (together the “*FAR Council*”) published a final rule to amend the *Federal Acquisition Regulation* (“*FAR*”) by adding the framework for a new *FAR* part on information security and supply chain security.
- This final rule does not implement any information security or supply chain security policies or procedures. The purpose of this rule is to establish a new *FAR* part to consolidate the policies and procedures for prohibitions, exclusions, supply chain risk information sharing, and safeguarding information that address security objectives.
- This final rule went into effect on May 1, 2024

# FAR Final Rule on Sustainable Procurement

## Final Rule

- On April 22, 2024, the *FAR* Council published a final rule to amend the *FAR* to restructure and update the regulations to focus on current environmental and sustainability matters and to implement a requirement for agencies to procure sustainable products and services to the maximum extent practicable
- This final rule is a result of Executive Order (“E.O.”) 14057 which directs agencies to reduce emissions, promote environmental stewardship, support resilient supply chains, drive innovation, and incentivize markets for sustainable products and services by purchasing sustainable products and services
- The rule dedicates *FAR* part 23 to environmental matters by removing unrelated content and moving related content to the part. It also creates a new contract clause at *FAR* 52.223-23, Sustainable Products and Services and adds a definition of sustainable procurement to *FAR* 2.101
- This final rule went into effect on May 22, 2024

# FAR Advanced Notice of Proposed Rulemaking Prohibiting Certain Semiconductor Products and Services

## Advanced Notice of Proposed Rulemaking

- On May 3, 2024, the Department of Defense (“DoD”), General Services Administration (“GSA”), and National Aeronautics and Space Administration (“NASA”) (together the “FAR Council”) published an advanced notice of proposed rulemaking, which considers amending the *Federal Acquisition Regulation* (“FAR”) to implement paragraphs (a), (b), and (h) in section 5949 of the National Defense Authorization Act (“NDAA”) for Fiscal Year (“FY”) 2023 (Pub. L. 117-263).
- This advanced notice contemplates prohibiting executive agencies from procuring or obtaining certain products and services that include covered semiconductor products and services.
- Semiconductors have been identified as one of the technology sectors where the stakes of disruption are potentially greatest for U.S. economic and national security. Because semiconductors are key components of U.S. critical infrastructure, this proposed rule seeks to prohibit procuring semiconductors from certain nations and specific corporations. This prohibition would become effective on December 23, 2027
- Comments will close for this proposed rule on July 2, 2024

# DFARS Updates



# DFARS Proposed Rule on Assuring Integrity of Overseas Fuel Supplies

## Proposed Rule

- On February 15, 2024, the DoD published a proposed rule to amend the *Defense Federal Acquisition Regulation Supplement* (“DFARS”) to implement section 843 of the NDAA for FY 2022 requiring offerors to certify that they will not provide fuel from a prohibited source and will comply with certain export and anticorruption regulations and statutes for contracts awarded for the acquisition of fuel in support of overseas contingency operations
- In addition to the certification requirement above, offerors are required to furnish records necessary to verify their compliance with applicable export control and anticorruption regulations and statutes. The rule also proposes to add a requirement that contracting officers consider using a tradeoff during source selection when acquiring fuel for overseas contingency operations
- Comments closed for this proposed rule on April 15, 2024

# DFARS Final Rule on DoD DIB Cybersecurity Activities

## Final Rule

- On March 12, 2024, the Department of Defense (DoD) published a final rule to implement the DoD Defense Industrial Base (DIB) Cybersecurity (CS) Program. This rule finalizes revisions to the eligibility criteria for this voluntary program that allows all defense contractors who own or operate an unclassified information system that processes, stores, or transmits covered defense information to benefit from bilateral information sharing
- The program is meant to complement the threat information sharing requirements of Defense Federal Acquisition Regulation Supplement (DFARS) 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting. A defense contractor is eligible for the voluntary program if it: (1) has DoD-approved medium assurance certificates; (2) has an existing facility clearance to at least the Secret level; and (3) can execute the standardized Framework Agreement provided to interested contractors after the DoD has verified the DIB company is eligible
- This final rule went into effect on April 11, 2024

# DFARS Proposed Rule on Updating Challenge Period for Validation of Asserted Restrictions on Technical Data and Computer Software

## Proposed Rule

- On April 25, 2024, the DoD published a proposed rule to amend the *DFARS* to implement section 815(b) of the NDAA for FY 2012. This proposed rule increases the validation period for asserted restrictions from three to six years and provides an exception to the prescribed time limit for validation of asserted restrictions if the technical data is the subject of a fraudulently asserted use or release restriction
- This proposed rule amends the clauses at *DFARS* 252.227-7019, Validation of Asserted Restrictions—Computer Software, and *DFARS* 252.227-7037, Validation of Restrictive Markings on Technical Data. It does not impose any new requirements on contracts at or below the Simplified Acquisition Threshold (“SAT”), for commercial products including Commercial Off-the-Shelf (“COTS”) items, or for commercial services
- Comments will close for this proposed rule on June 24, 2024. A virtual public meeting was held on May 17, 2024

# DFARS Proposed Rule on Modification of Prize Authority for Advanced Technology Achievements

## Proposed Rule

- On April 25, 2024, the DoD published a proposed rule to amend the *DFARS* to implement section 822 of the NDAA for FY 2022. This proposed rule provides procedures and approval and reporting requirements for contracts awarded as prizes for advanced technology achievements
- This proposed rule grants the DoD authority to implement advanced technology prize programs to award contracts in recognition of outstanding achievements in basic, advanced, and applied research; technology development; and prototype development. Award of a contract as a prize is considered a competitive procedure if the solicitation is widely advertised. Award of advanced technology prizes requires approval when exceeding \$10,000 and congressional reporting when exceeding \$10 million
- Comments for this proposed rule will close on June 24, 2024

# DFARS Final Rule on Data Requirements for Commercial Products for Major Weapon Systems

## Final Rule

- On May 30, 2024, the DoD published a final rule amending the *Defense Federal Acquisition Regulation Supplement* (“DFARS”) to implement section 803 of the NDAA for FY 2023 (Pub. L. 117-263) to clarify the data to be provided for certain procurements related to major weapon systems
- This final rule provides additional guidance regarding data requirements to support a determination of commerciality and price reasonableness for certain procurements associated with major weapon systems
- It amends the provision at *DFARS* 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data which applies to acquisitions of commercial products, excluding commercial-off-the-shelf (“COTS”) items, and to acquisitions of commercial services. The rule is expected to streamline contracting officer’s commerciality and price reasonableness determinations
- The final rule went into effect on May 30, 2024

# DFARS Final Rule on Limiting the Acquisition of Certain Goods Other than United States Goods

## Final Rule

- On May 30, 2024, the DoD published a final rule amending the *DFARS* to implement multiple sections from the NDAA for FY 2021-2023, and one section of the Consolidated Appropriations Act, 2023. These statutes remove limitations and restrictions on certain components that are no longer required and add new limitations on other components
- This final rule requires acquisition of certain items and components from the national technology and industrial base from the United States, Australia, Canada, New Zealand, or the United Kingdom. The items and components are for the acquisition of star trackers for certain national security satellites and certain components for T-AO 205 and T-ARC class vessels
- The final rule went into effect on May 30, 2024

# DFARS Final Rule on Restricting Certain Metal Products

## Final Rule

- On May 30, 2024, the DoD published a final rule amending the *DFARS* to implement several NDAA sections that provide restrictions on the acquisition of certain covered materials from The Democratic People's Republic of North Korea, The People's Republic of China, The Russian Federation, and The Islamic Republic of Iran
- The final rule first implements Section 844 of the NDAA for FY 2021 (Pub. L. 116-283) to remove from the restriction “material melted” and replace it with “material mined, refined, separated, melted.” It also removes the reference to “tungsten” and replaces it with “covered material”
- This final rule also implements section 854 of the NDAA for FY 2024 (Pub. L. 118-31), which extends the effective date of these restrictions from 5 years to 6 years
- The final rule went into effect on May 30, 2024

# GSAR Update



# GSAR Proposed Rule on SAM Representation for Leases

## Proposed Rule

- On March 27, 2024, the General Services Administration (GSA) published a proposed rule to amend the *General Services Administration Acquisition Regulation (GSAR)* to remove the requirement for lease offerors to have an active System for Award Management (SAM) registration when submitting offers
- The proposed rule only requires prospective GSA lessors to complete SAM registration after becoming an apparent awardee of a GSA lease contract. This amendment is a codification of a GSA deviation to Federal Acquisition Regulation (FAR) clause 52.204-7, which requires offerors to be registered in SAM when submitting offers
- Comments closed for this proposed rule on May 28, 2024

# Legislative Updates

# H.R. 6609 – TIGER Act

## Foreign Military Sales Technical, Industrial, and Governmental Engagement for Readiness Act

- On December 5, 2023, Representative Michael Waltz (R-FL) introduced the TIGER Act (H.R. 6609). The TIGER Act was referred to the House Committee on Foreign Affairs and a Mark-Up Session was held on February 6, 2024
- The TIGER Act is a provision that raises the dollar threshold at which the president can approve an arms transfer without notifying Congress from \$14 million to \$23 million. This legislation also raises the threshold for the sale of defense articles, upgrades, related training, or other services without congressional notification from \$50 million to \$83 million. Moreover, this legislation includes a provision to permit the State Department to use the Pentagon's Special Defense Acquisition Fund, a revolving fund that finances the procurement of defense articles and defense services for foreign military sales
- This legislation was ordered to be reported in the nature of a substitute by a vote of 26-20 in support of reporting the substituted language. This substitution means that substantial changes were made to the original text that was introduced. At this time, an updated version of the text that reflects changes made during the markup are not yet available

# H.R. 4366 – Consolidated Appropriations Act, 2024

## Legislation Providing Appropriations for 2024

- On June 27, 2023 Rep. John R. Carter introduced the Consolidated Appropriations Act, 2024 ([H.R. 4366](#)). This legislation went through extensive review and revisions which culminated in President Biden signing this legislation into law on March 9, 2024
- This legislation provides FY2024 appropriations for several federal departments and agencies, as well as extending various expiring programs and authorities
- This legislation includes six of the 12 regular FY2024 appropriation bills. Of interest to parties that contract with the government, the legislation includes the Military Construction, Veterans Affairs, and Related Agencies Appropriations bill and funds Department of Defense military construction, the U.S. Army Corps of Engineers, Department of Energy, and Department of Transportation

# S. 4066 – FIT Procurement Act

## Legislation That Updates Federal Procurement Procedures for Acquisition of Technology

- On March 22, 2024, Sen. Gary Peters (D-MI) introduced the Federal Improvement in Technology (“FIT”) Procurement Act (S. 4066). This legislation was referred to the Committee on Homeland Security and Governmental Affairs and on April 10, 2024, was included in a Committee meeting to consider the pending legislation
- This legislation includes updates to federal procurement regulations and procedures for the acquisition of technology. The bill includes updates aimed at streamlining the procurement process to allow more companies to participate in the federal marketplace. This legislation would amend federal law to allow agencies to acquire cloud computing and other information and communications technology on a subscription basis. This legislation would raise the simplified acquisition threshold (“SAT”) from \$250,000 to \$500,000. Moreover, this legislation would allow bidders in federal procurements to submit information related to their performance on commercial or non-government projects as relevant past performance. Finally, it would establish requirements for federal contracting personnel to receive specialized training on the acquisition of emerging technology, like artificial technology
- This legislation is awaiting further action by the Senate Homeland Security and Governmental Affairs

# H.R. 5255 - Federal Cybersecurity Vulnerability Reduction Act of 2023

## Legislation to Enhance Federal Contractor Cybersecurity Practices

- This legislation aims to enhance cybersecurity practices among federal contractors by mandating the implementation of Vulnerability Disclosure Policies (“VDP”)
- VDPs provide guidance as to how security researchers should notify organizations when researchers discover flaws that hackers can abuse
- If passed, this legislation would ensure the federal government was compliant with cybersecurity guidelines from the National Institute of Standards and Technology (“NIST”)
- In 2020, the Cybersecurity and Infrastructure Security Agency (“CISA”) sent a directive requiring agencies to set up VDPs. The Department of Defense has yet to take up that directive, which this legislation would require

# S. 3810 - Time to Choose Act of 2024

## Legislation that Impacts Federal Consulting Contracts

- The bill would prohibit federal consulting contracts from being awarded to an organization that provides consulting services to the governments of China, Russia, or any country that the Secretary of State determines has repeatedly provided support for acts of terrorism
- If an agency determines that a contractor has violated the bill's requirements, the measure would mandate the agency head to terminate the contract, and the consulting firm would be liable for three times the amount of damages the federal government incurs

# H.R. 5528 – Safe and Smart Federal Purchasing Act of 2023

## Legislation that Impacts the Source Selection Process

- This bill would mandate the Office of Management and Budget to determine whether acquisition requirements for agencies related to the “lowest price technically acceptable source selection process” have created any national security risks
- The Federal Acquisition Regulation requires contracting officers, except those at the Department of Defense, to avoid using this process for acquiring information technology services, personal protective equipment, or certain training or logistics services in military contingency operations outside the United States
- This legislation currently awaits a vote in the Senate



# Questions and Answers

# Thank you

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