

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS
4401 Wilson Boulevard, Suite 1110
Arlington, Virginia 22203
codsia@codsia.org
www.codsia.org

CODSIA Case – 2024-002

June 10, 2024

Sent via the Federal eRulemaking Portal: <https://www.regulations.gov>

Regulatory Secretariat Division
General Services Agency (GSA)
1800 F St NW
Washington, DC 20405
E-mail: GSARegSec@gsa.gov

RE: Public Comments by the Council of Defense and Space Industry Associations on FAR part 40, RFI

Dear Madam or Sir:

On behalf of the members of the Council of Defense and Space Industry Associations (CODSIA), we write to submit these comments regarding the request for information titled "Federal Acquisition Regulation: FAR part 40, Information Security and Supply Chain Security; Request for Information," Docket Number FAR-2024-0054, published in the Federal Register on April 10, 2024.

CODSIA appreciates the government's efforts to establish FAR part 40 as a single, consolidated location in the FAR that addresses the policies and procedures for prohibitions, exclusions, supply chain risk information sharing, and safeguarding information that address security objectives. This will provide much-needed clarity for both the acquisition workforce and the general public to understand and implement requirements related to managing information security and supply chain security when acquiring products and services.

As a threshold matter, we believe FAR part 40 should provide greater clarity regarding its scope and applicability to products and services. While it is clear that security and supply chain risk management requirements for information and communications technology (ICT) will remain in FAR part 39, more clarity is needed regarding the types of products and services that will be subject to FAR part 40 requirements. For example, the government increasingly procures total solutions that contain ICT, but would not necessarily be characterized as ICT. Additional definitions for key terms used throughout these sections (e.g., "ICT," "non-ICT," "supply chain risk," etc.) would be helpful, as well as additional guidance regarding the applicability of either FAR part 39 or part 40 (or both) to products, services, and total solutions.

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CODSIA recommends that the FAR Council populate FAR part 40 by transferring existing security-related provisions in other parts of the FAR, but also by establishing FAR part 40 as a landing place for the results of anticipated future rulemakings regarding security, supply chain risk management, safeguarding information, and other related regulatory efforts, as applicable. Furthermore, CODSIA recommends that the FAR Council be vigilant and prohibit the addition of regulations that modify the government's approach to requesting or requiring uncompensated access to intellectual property (IP) and data rights. Approaches to IP and data rights access must be negotiated and adjudicated in the contracting process and should not be altered without due consideration provided to the IP and data rights owners. Additionally, as FAR part 40 will house cyber requirements, consideration should be given to the impact on business systems and business systems auditing.

In general, CODSIA supports the government's proposed scope for FAR part 40 listed in the Federal Register notice for this RFI and agrees with including each of the existing FAR provisions already identified by the government (copied below from the Federal Register notice). Where applicable, we have suggested the inclusion of additional rulemakings/open FAR cases in **bold, italicized, and underlined text** below:

Part 40—Information Security and Supply Chain Security

40.000 - Scope of part.

- General Policy Statements
- Cross reference to updated FAR part 39 scoped to ICT
- **Definitions and additional guidance on the applicability of FAR part 39 vs. FAR part 40, especially for total solutions that contain ICT**
 - **Cross reference to applicable definitions in FAR part 2, including but not limited to:**
 - **Information and Communications Technology (ICT)**
 - **Information Security**
 - **Information Technology (IT)**

Subpart 40.1—Processing Supply Chain Risk Information

- FAR 4.2302, sharing supply chain risk information
- Cross reference to counterfeit and nonconforming parts (FAR 46.317)
- Cross reference to cyber threat and incident reporting and information sharing (FAR case 2021-017)
- **Cross reference to supply chain software security requirements (FAR case 2023-002), including final policies and procedures for agency collections, use, and safeguarding of Software Self-Attestation Form**

Subpart 40.2—Security Prohibitions and Exclusions

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- FAR subpart 4.20, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab
- FAR subpart 4.21, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
- FAR subpart 4.22, Prohibition on a ByteDance Covered Application, which covers the TikTok application, from FAR case 2023-010
- Prohibition on Certain Semiconductor Products and Services (FAR case 2023-008)
- FAR subpart 4.23, Federal Acquisition Security Council, except section 4.2302
- **Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders (FAR case 2020-011)**
- Covered Procurement Action/agency specific exclusion orders (FAR case 2019-018)
- FAR subpart 25.7, Prohibited Sources
- Prohibition on Operation of Covered Unmanned Aircraft Systems from Covered Foreign Entities (FAR case 2024-002)

Subpart 40.3—Safeguarding Information





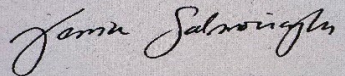
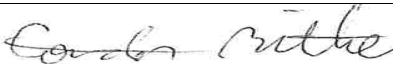


- FAR subpart 4.4, Safeguarding Classified Information Within Industry
- Controlled Unclassified Information (CUI) (FAR case 2017-016)
 - **Protecting contractors who, in performance of work, develop and use information that is later designated CUI or classified information from liability or violation of regulation or public law.**
- **Standard Cybersecurity Requirements for Unclassified Federal Information Systems (FAR case 2021-019)**
- FAR subpart 4.19, Basic Safeguarding of Covered Contractor Information Systems

CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy issues at the suggestion of the Department of Defense. CODSIA consists of eight associations—Aerospace Industries Association (AIA), Alliance for Digital Innovation (ADI), American Council of Engineering Companies (ACEC), Associated General Contractors (AGC), BSA, The Software Alliance (BSA), Information Technology Industry Council (ITI), National Defense Industrial Association (NDIA), and Professional Services Council (PSC). CODSIA's member associations represent thousands of government contractors nationwide. The Council acts as an institutional focal point for coordination of its members' positions regarding policies, regulations, directives, and procedures that affect them. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent.

Should you have questions or need any additional information, please contact David Drabkin, CODSIA Administrator, by email at codsia@codsia.org.

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Sincerely

 Steve Hall Vice President, Government Affairs American Council of Engineering Companies	 Grant Schneider Senior Advisor Alliance for Digital Innovation
 Jimmy Christianson Regulatory Counsel Associated General Contractors of America	 Lorenzo E. Williams Sr. Director, Acquisition Policy National Security Division Aerospace Industries Association
	
Jessica Salmoiraghi Senior Director, IT Modernization & Procurement BSA The Software Alliance	Gordon Bitko Senior Vice President of Policy, Public Sector Information Technology Industry Council (ITI)
	
Michael Seeds Senior Director Strategy and Policy National Defense Industrial Association	David J. Berteau President and CEO Professional Services Council