



OFFICE OF THE VICE PRESIDENT - RESEARCH AND INNOVATION

OFFICE OF THE PRESIDENT
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Oakland, California 94607-5200

November 30, 2020
(via www.regulations.gov)

Jennifer D. Johnson
Regulatory Control Officer
Defense Acquisition Regulations System
U.S. Department of Defense

Re: Docket DARS-2020-0034, Defense Federal Acquisition Regulation Supplement: Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019-D041/RIN 0750- AK81)

Dear Ms. Johnson:

On behalf of the University of California (UC), thank you for the opportunity to comment on the U.S. Department of Defense's Interim Rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a Department of Defense (DoD) Assessment Methodology and Cybersecurity Maturity Model Certification framework, as published in the Federal Register on September 29, 2020 (Docket DARS-2020-0034) (the "Interim Rule"). The UC system is comprised of ten research-intensive campuses and six medical schools. In addition, UC is affiliated with three U.S. Department of Energy national laboratories. UC received approximately \$430 million in 2019 from the U.S. Department of Defense.

As a recipient of significant DoD funding, UC is committed to supporting the DoD's ongoing efforts against the theft of intellectual property and sensitive information due to malicious cyber activity and strongly believes in the importance of implementing appropriate and effective cybersecurity requirements. However, we would respectfully request that DoD provide some additional clarifications and guidance for contractors performing fundamental research as it moves forward with the development of a final rule.

Clarification on Requirement for Assessment (252.204-7019)

It is our understanding that under DFAR clause 252.204-7012, contractors are required to implement NIST SP 800-171 only if the contractor processes, stores or transmits "covered defense information" (CDI). Since in most cases, UC campuses perform fundamental research, with the expectation that research results will be published, we request a clarification that if a project is determined to be fundamental research under 252.204-7000, and if no inputs requiring dissemination controls are received, then the 252.204-7019 and 252.204-7020 assessments are not required. In such cases, the contractor is not processing, storing or transmitting "covered

defense information (CDI).” Further, where there is a CDI input to fundamental research, but the research program does not otherwise “involve” CDI (i.e., where the research project is not further processing, storing or creating CDI), can DoD clarify that only the CDI inputs are subject to the -7012, -7019 and -7020 clauses?

According to 252.204-7019, *in order to be considered for an award*, a potential contractor must have a current NIST SP 800-171 self-assessment “for each covered contractor information system that is relevant to the offer, contract, task order, or delivery order.” We are concerned that DoD contracting officers would expect this prerequisite for all applicants. Therefore, we request a clarification that a NIST SP 800-171 self-assessment is *not* required when the contractor is performing fundamental research and has not received covered defense information from the government as an input to that research. Alternatively, we would appreciate guidance regarding the decision-making process DoD will employ to determine an applicant’s eligibility when the applicant is performing a fundamental research project that is not expected to process, transmit or store CDI. For example, this guidance could be in the format of a decision tree or “frequently asked questions.” Such clarifications and guidance should also address the application of these requirements to subcontractors performing fundamental research (with no CDI inputs) when the prime contractor is performing work that may have dissemination controls.

Clarification on Determinations of Level of Assessment

The new DFAR clause 252.204-7020 addresses specifics of the 800-171 Assessment referred to in the -7019 clause discussed above. The clause provides further information regarding the differences between “Basic”, “Medium” and “High” level assessments, where the determination of level is made by the DoD. If the DoD considers that a Medium or High Assessment is required, then additional steps must be taken by the contractor. These steps include the provision of additional information or clarifications as requested by the DoD, along with allowing access to the contractor’s facilities, systems and personnel for DoD assessment purposes. While UC does not necessarily object to this process, we do note that the Interim Rule does not provide specific detail on how DoD will determine the assessment level. UC appreciates that -7020 does indicate that a contractor will be offered the opportunity to rebut an assessment summary level score that it does not feel to be accurate; however, at the same time, we feel that it would be helpful if contractors were aware of the decision processes and data points that DoD intends to employ to arrive at a level determination. As it stands, we are concerned that the process appears somewhat subjective; further, transparency on this process should help contractors as they proceed with their initial self-assessment and reduce potential administrative burden for both contractors and the DoD. Therefore, UC recommends that the DoD provide more information in the final rule both on its metrics for “Medium” and “High” level assessment level score determinations and also on how the DoD may change scores based on their further assessments.

UC also notes that the implementation of the cybersecurity requirements outlined in the Interim Rule represents not only a considerable administrative burden for contractors, but also an associated financial burden. While we believe, as stated above, that effective and appropriate cybersecurity measures are necessary, many institutions may be financially ill-equipped to pay for the costs of implementing the DoD measures discussed in the Interim Rule. This is especially true as institutions deal with the significant financial impacts of the ongoing COVID-19

pandemic. Therefore, UC requests that DoD affirmatively state that costs associated with compliance with the new rules are allowable as direct costs on DoD awards.

We again thank the Department of Defense for the opportunity to provide comments and are available for further consultation.

Sincerely,

A handwritten signature in blue ink that reads "Theresa A Maldonado". The signature is written in a cursive style.

Theresa A. Maldonado, Ph.D., P.E.
Vice President
Research & Innovation