Published on *The National Law Review* https://natlawreview.com

How Well Do You Know Your Supply Chain? New Policy Developments Affect Defense and Security Contractors

Article By:

Zachary M. Mears

Jeff Bozman

Generating and sustaining the United States' global economic and military superiority over more than the last half century has depended on a dominant U.S. global economic position and perpetual technological innovation. The United States has increasingly relied on a global industrial supply chain and a relatively open environment for foreign investment in early stage technology development to sustain this dominant position, but in so doing has built risk into the foundation of its competitive advantage. The U.S. Government has growing concerns that these past practices meant to extend the U.S. economic and military advantage are contributing to its erosion. As a result, the Department of Defense (DoD), other Executive agencies, and Congress are taking steps to mitigate risks across the defense industrial and innovation supply chains that provide hardware, software, and services to the U.S. Government.

The U.S. Government has been focused on supply chain issues for more than a decade. As the threats have increased, so has the Government's scrutiny of its contractors and their suppliers. Underlying these efforts is the concern that a foreign government will be able to expropriate valuable technologies, engage in espionage with regard to sensitive government information, and/or exploit vulnerabilities in products or services. Many senior policymakers across the Executive Agencies and the Congress believe these threats are increasing, and they are focused on taking further steps to make security a business differentiator for those seeking to compete for U.S. Government contracts. Contractors need to understand these security obligations and implement compliance processes, or they may find themselves at competitive disadvantage or even precluded from competition.

Companies seeking to sustain and grow business with the U.S. federal government must ask: how well do you actually know your supply chain—from the materials you acquire to the software you include in your products or services? If you have not answered this question recently, you should consider adding it to your "to do" list. Not only does the United States Government want to know, the Government is seeking to integrate national security considerations into the acquisition process and expect contractors to be the first line of defense.

A cross-functional team from Covington's Government Contracts, Public Policy, and National Security practices have studied the major initiatives the Government has launched to protect its supply chain. In a recent article (available here), we analyze new provisions in the recently enacted Fiscal Year 2019 John S. McCain National Defense Authorization Act, including restrictions on the procurement and use of certain telecommunications equipment, software, and services from manufacturers connected to the Chinese government, and stringent disclosure obligations related to foreign review of software code. Finally, we discuss how the Deliver Uncompromised initiative is likely to influence DoD going forward, and what impact this could have on defense contractors and suppliers.

Contractors and the U.S. Government share the strategic objectives of protecting the United States' competitive edge and sustaining overmatch on the battlefield. Our recent article highlights some of the friction points in pursuing those goals. With planning, forethought, and experienced counsel, contractors can minimize disruption and continue to accomplish their business goals while furthering U.S. national security interests.

National Law Review, Volume VIII, Number 281

Source URL:https://natlawreview.com/article/how-well-do-you-know-your-supply-chain-new-policy-developments-affect-defense-and