52.204-30 Federal Acquisition Supply Chain Security Act Orders—Prohibition.

As prescribed in 4.2306(c), insert the following clause:

Federal *Acquisition* Supply Chain Security Act Orders—Prohibition (Dec 2023)

(a) *Definitions*. As used in this clause—

Covered article, as defined in 41 U.S.C. 4713(k), means—

(1) *Information technology*, as defined in 40 U.S.C. 11101, including cloud computing services of all types;

(2) Telecommunications equipment or telecommunications service, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

(3) The processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program (see 32 CFR part 2002); or

(4) Hardware, systems, devices, software, or services that include embedded or incidental *information technology*.

FASCSA order means any of the following orders issued under the Federal *Acquisition* Supply Chain Security Act (FASCSA) requiring the removal of covered articles from *executive agency* information systems or the exclusion of one or more named *sources* or named covered articles from *executive agency procurement* actions, as described in 41 CFR 201–1.303(d) and (e):

(1) The Secretary of Homeland Security *may* issue FASCSA orders applicable to civilian agencies, to the extent not covered by paragraph (2) or (3) of this definition. This type of *FASCSA order may* be referred to as a Department of Homeland Security (DHS) *FASCSA order*.

(2) The Secretary of Defense *may* issue FASCSA orders applicable to the Department of Defense (DoD) and national security systems other than *sensitive compartmented information systems*. This type of *FASCSA order may* be referred to as a DoD *FASCSA order*.

(3) The Director of National Intelligence (DNI) *may* issue FASCSA orders applicable to the intelligence community and *sensitive compartmented information systems*, to the extent not covered by paragraph (2) of this definition. This type of *FASCSA order may* be referred to as a DNI *FASCSA order*.

Intelligence community, as defined by 50 U.S.C. 3003(4), means the following—

(1) The Office of the Director of National Intelligence;

(2) The Central Intelligence Agency;

(3) The National Security Agency;

(4) The Defense Intelligence Agency;

(5) The National Geospatial-Intelligence Agency;

(6) The National Reconnaissance Office;

(7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy;

(9) The Bureau of Intelligence and Research of the Department of State;

(10) The Office of Intelligence and Analysis of the Department of the Treasury;

(11) The Office of Intelligence and Analysis of the Department of Homeland Security; or

(12) Such other elements of any department or agency as *may* be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

National security system, as defined in 44 U.S.C. 3552, means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

(1) The function, operation, or use of which involves intelligence activities; involves cryptologic activities related to national security; involves command and control of military forces; involves equipment that is an integral part of a weapon or weapons system; or is critical to the direct fulfillment of military or intelligence missions, but does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications); or

(2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of *national defense* or foreign policy.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of any covered articles, or any *products* or services produced or provided by a *source*. This applies when the covered article or the *source* is subject to an applicable *FASCSA order*. A *reasonable inquiry* excludes the need to include an internal or third-party audit.

Sensitive compartmented information means *classified information* concerning or derived from intelligence *sources*, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of National Intelligence.

Sensitive compartmented information system means a national security system authorized to process or store *sensitive compartmented information*.

Source means a non-Federal supplier, or potential supplier, of *products* or services, at any tier.

(b) *Prohibition.*

(1) Unless an applicable waiver has been issued by the issuing official, Contractors *shall* not provide

or use as part of the performance of the contract any covered article, or any *products* or services produced or provided by a *source*, if the covered article or the *source* is prohibited by an applicable FASCSA orders as follows:

(i) For *solicitations* and contracts awarded by a Department of Defense *contracting office*, DoD FASCSA orders apply.

(ii) For all other *solicitations* and contracts DHS FASCSA orders apply.

(2) The Contractor *shall* search for the phrase "*FASCSA order*" in the *System for Award Management (SAM*) at *https://www.sam.gov* to locate applicable FASCSA orders identified in paragraph (b)(1).

(3) The Government *may* identify in the *solicitation* additional FASCSA orders that are not in SAM, which are effective and apply to the *solicitation* and resultant contract.

(4) A *FASCSA order* issued after the date of *solicitation* applies to this contract only if added by an amendment to the *solicitation* or modification to the contract (see FAR 4.2304(c)). However, see paragraph (c) of this clause.

(5)

(i) If the contractor wishes to ask for a waiver of the requirements of a new *FASCSA order* being applied through modification, then the Contractor *shall* disclose the following:

(A) Name of the product or service provided to the Government;

(B) Name of the covered article or *source* subject to a *FASCSA order*;

(C) If applicable, name of the vendor, including the Commercial and Government Entity code and *unique entity identifier* (if known), that supplied or *supplies* the covered article or the product or service to the *Offeror*;

(D) Brand;

(E) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(F) Item description;

(G) Reason why the applicable covered article or the product or service is being provided or used;

(ii) *Executive agency review of disclosures.* The *contracting officer* will review disclosures provided in paragraph (b)(5)(i) to determine if any waiver is warranted. A *contracting officer may* choose not to pursue a waiver for covered articles or *sources* otherwise covered by a *FASCSA order* and to instead pursue other appropriate action.

(c) *Notice and reporting requirement.*

(1) During contract performance, the Contractor *shall* review *SAM.gov* at least once every three months, or as advised by the *Contracting Officer*, to check for covered articles subject to *FASCSA order*(s), or for *products* or services produced by a *source* subject to *FASCSA order*(s) not currently

identified under paragraph (b) of this clause.

(2) If the Contractor identifies a new *FASCSA order*(s) that could impact their supply chain, then the Contractor *shall* conduct a *reasonable inquiry* to identify whether a covered article or product or service produced or provided by a *source* subject to the *FASCSA order*(s) was provided to the Government or used during contract performance.

(3)

(i) The Contractor *shall* submit a report to the *contracting office* as identified in paragraph (c)(3)(ii) of this clause, if the Contractor identifies, including through any notification by a subcontractor at any tier, that a covered article or product or service produced or provided by a *source* was provided to the Government or used during contract performance and is subject to a *FASCSA order*(s) identified in paragraph (b) of this clause, or a new *FASCSA order* identified in paragraph (c)(2) of this clause. For indefinite delivery contracts, the Contractor *shall* report to both the *contracting office* for the indefinite delivery contract and the *contracting office* for any affected order.

(ii) If a report is required to be submitted to a *contracting office* under (c)(3)(i) of this clause, the Contractor *shall* submit the report as follows:

(A) If a Department of Defense *contracting office*, the Contractor *shall* report to the website at *https://dibnet.dod.mil*.

(B) For all other *contracting offices*, the Contractor *shall* report to the *Contracting Officer*.

(4) The Contractor *shall* report the following information for each covered article or each product or service produced or provided by a *source*, where the covered article or *source* is subject to a *FASCSA order*, pursuant to paragraph (c)(3)(i) of this clause:

(i) Within 3 business days from the date of such identification or notification:

(A) Contract number;

(B) Order number(s), if applicable;

(C) Name of the product or service provided to the Government or used during performance of the contract;

(D) Name of the covered article or *source* subject to a *FASCSA order*;

(E) If applicable, name of the vendor, including the Commercial and Government Entity code and *unique entity identifier* (if known), that supplied the covered article or the product or service to the Contractor;

(F) Brand;

(G) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(H) Item description; and

(I) Any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (c)(4)(i) of this clause:

(A) Any further available information about mitigation actions undertaken or recommended.

(B) In addition, the Contractor *shall* describe the efforts it undertook to prevent submission or use of the covered article or the product or service produced or provided by a *source* subject to an applicable *FASCSA order*, and any additional efforts that will be incorporated to prevent future submission or use of the covered article or the product or service produced or provided by a *source* that is subject to an applicable *FASCSA order*.

(d) *Removal*. For Federal Supply Schedules, Governmentwide *acquisition* contracts, multi-agency contracts or any other *procurement* instrument intended for use by multiple agencies, upon notification from the *Contracting Officer*, during the performance of the contract, the Contractor *shall* promptly make any necessary changes or modifications to remove any product or service produced or provided by a *source* that is subject to an applicable *FASCSA order*.

(e) *Subcontracts*.

(1) The Contractor *shall* insert the substance of this clause, including this paragraph (e) and excluding paragraph (c)(1) of this clause, in all subcontracts and other contractual instruments, including subcontracts for the *acquisition* of *commercial products* and *commercial services*.

(2) The Government *may* identify in the *solicitation* additional FASCSA orders that are not in SAM, which are effective and apply to the contract and any subcontracts and other contractual instruments under the contract. The Contractor or higher-tier subcontractor *shall* notify their subcontractors, and suppliers under other contractual instruments, that the FASCSA orders in the *solicitation* that are not in SAM apply to the contract and all subcontracts.

(End of clause)

Alternate I (Dec 2023). As prescribed in 4.2306(c), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause:

(b) *Prohibition.* (1) Contractors are prohibited from providing or using as part of the performance of the contract any covered article, or any *products* or services produced or provided by a *source*, if the covered article or the *source* is prohibited by any applicable FASCSA orders identified by the checkbox(es) in this paragraph (b)(1).

[*Contracting Officer must select either "yes" or "no" for each of the following types of FASCSA orders:*]

Yes ☐ No ☐ DHS *FASCSA Order*

Yes ☐ No ☐ DoD *FASCSA Order*

Yes ☐ No ☐ DNI *FASCSA Order*

Alternate II (Dec 2023). As prescribed in 4.2306(c)(2)(ii), substitute the following paragraph (b) in place of paragraph (b) of the basic clause. This clause applies to each order as identified by the *Contracting Officer*.

(b) *Prohibition.* (1) Contractors are prohibited from providing or using as part of the performance of

the contract any covered article, or any *products* or services produced or provided by a *source*, if the covered article or the *source* is prohibited by any applicable FASCSA orders identified by the checkbox(es) in this paragraph (b)(1).

[*Contracting Officer must select either "yes" or "no" for each of the following types of FASCSA orders:*]

Yes ☐ No ☐ DHS *FASCSA order*

Yes ☐ No ☐ DoD *FASCSA order*

Yes ☐ No ☐ DNI *FASCSA order*

(2) The Contractor *shall* search for the phrase "*FASCSA order*" in the *System for Award Management (SAM*) at *https://www.sam.gov* to locate applicable FASCSA orders identified in paragraph (b)(1) of this clause.

(3) The Government *may* identify in the request for quotation (RFQ) or in the notice of intent to place an order additional FASCSA orders that are not in SAM, but are effective and apply to the order.

(4) A *FASCSA order* issued after the date of the RFQ or the notice of intent to place an order applies to this contract only if added by an amendment to the RFQ or in the notice of intent to place an order or added by modification to the order (see FAR 4.2304(c)). However, see paragraph (c) of this clause.

(5)(i) If the contractor wishes to ask for a waiver, the Contractor *shall* disclose the following:

(A) Name of the product or service provided to the Government;

(B) Name of the covered article or *source* subject to a *FASCSA order*;

(C) If applicable, name of the vendor, including the Commercial and Government Entity code and *unique entity identifier* (if known), that supplied the covered article or the product or service to the *Offeror*;

(D) Brand;

(E) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(F) Item description;

(G) Reason why the applicable covered article or the product or service is being provided or used;

(ii) *Executive agency review of disclosures.* The *contracting officer* will review disclosures provided in paragraph (b)(5)(i) of this clause to determine if any waiver *may* be sought. A *contracting officer may* choose not to pursue a waiver for covered articles or *sources* otherwise covered by a *FASCSA order* and *may* instead make award to an *offeror* that does not require a waiver.

Parent topic: 52.204 [Reserved]