

Lunch & Learn: Take a Bite Out of GovCon

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# Conflicts of Interest (COI) in GovCon: New Policy and What It Means for Your Business

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# Agenda

**I. Relevant Policies and What They Say**

**II. Why Now?**

**III. What Does This Mean for Contracting Officers?**

**IV. How Can You Prepare?**

**V. Q&A**

**What are these policies and  
what do they say?**

# FY23 National Defense Authorization Act (NDAA)

- **Section 857:** DOD not allowed to contract with companies owned, directed, subsidized, or otherwise affiliated with China on projects relating to passenger boarding bridges at military airports
- **Section 1269:** Prohibits federal, state, and local public works contracts to be awarded to Chinese-affiliated entities
- **Section 5866:** Prevents the government from doing business with companies that continue to operate in Russia during the Ukrainian invasion
  - Exceptions: Good Faith, Permissible Operations, American Diplomatic Mission in Russia, and Individual Contracts (ex. humanitarian purposes)

# Combating Obstructive National Security Underreporting of Legitimate Threats (CONSULT) Act

- Focuses on COIs specific to “adversaries,” defined as: China, Russia, Iran, North Korea, Syria, Cuba, state sponsors of terror, and organizations that engage in crimes against humanity.
- If passed, the Office of Federal Procurement Policy (OFPP) would have a year to develop and implement government-wide procurement policy to eliminate COIs related to national security and foreign policy.
- Failure to disclose relevant conflicts could result in suspension of existing contracts and debarment from participation in future government contracts.

# Preventing Organizational Conflicts of Interest in Federal Acquisition Act

- Proposes new disclosure requirements and updates how agencies identify potential COIs with contractors
- Update FAR definition of “organizational COIs” to guide K/COs
- Federal contractors have to report any business relationships that conflict with the interests of the American public or work they have already been contracted to do

# Employee Transparency Regarding Individuals Who Perform Work in the People's Republic of China (DFARS Case 2022-D010)

- DFARS Case 2022-D010 was implemented as an interim rule in the DFARS
- Initially enacted without hearing public comments beforehand; following industry backlash, DoD is now accepting comments through October 24 before finalizing the rule.
- Implements FY22 NDAA Section 855, requiring companies to disclose if any of their employees work in China.
  - Applies to all DoD contracts and subcontracts valued over \$5M, excluding commercial items
  - Applies at all stages of procurement process
- Does not prevent companies from winning contracts or performing work under existing contracts



**Why now?**

# Time for an Update



It's been a while since COI regulations have been updated!

The National Security Act of 1947 created the National Security Council (NSC), Central Intelligence Agency (CIA), and other institutions.

Under the National Security Act of 1947, the Director of the National Intelligence Council is responsible for providing security requirements and preventing COIs for contractors working for the Council.

This remains the status quo.

Few changes have been made in the interceding 75 years. This legislation is overdue.

# Recent COIs Discovered

While no national security problems have been reported due to a lack of these rules, companies have been caught in violation of them, the threat is still very present.

***A federal contractor recently paid a six-figure settlement after failing to disclose that they were contracting with DOD while advising Chinese and Russian state-owned entities on military efforts, potentially risking American taxpayer interests.***

The government is turning to new legislation to rectify the situation and prevent a much larger problem from actually occurring.

The implications of a federal contractor allowing U.S. adversaries access to confidential national security information is extremely varied depending on the situation, but is something the Government wants to avoid at all costs.

# Russian Invasion of Ukraine

The Russian invasion of Ukraine has become a point of concern for the federal government in regards to contracting.

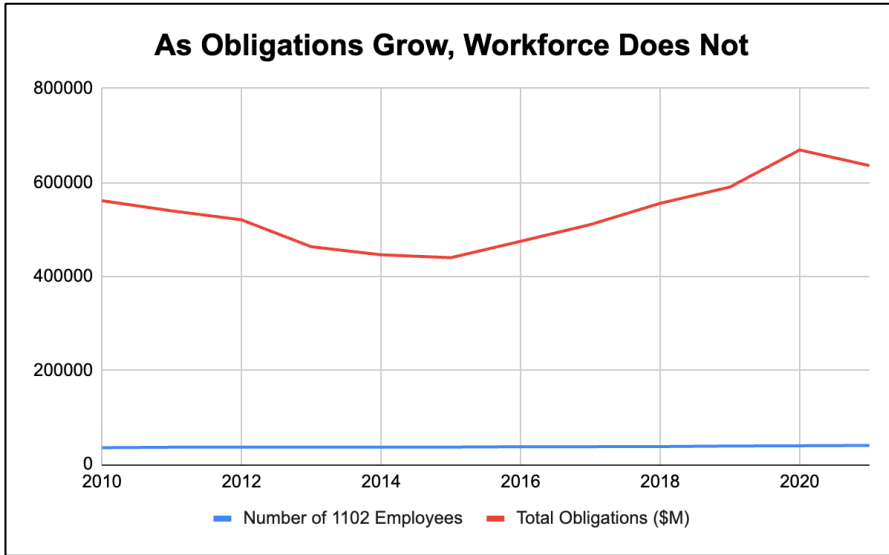
Having companies working in Russia for or with the U.S. undermines national security and goes against protecting American interests as the U.S. has condemned Russia for its ongoing attack on Ukraine.

The policies relating to the Russian-Ukrainian War may be temporary, but the feelings and ideas behind them may eventually be solidified.



**What does this mean for  
K/COs?**

# K/COs Already Have a Lot to Manage



Data Sources: OPM FedScope and USASpending



**The average dollar amount managed by a single K/CO is continually increasing.**

Contract obligations continue to grow Year-Over-Year across the federal government, but the 1102 Contracting Officer workforce is not keeping pace.

# How and When Will They Be Trained?

- **Category Management as an example?**
  - Will there be formal training? Or will K/COs have to figure it out as they go (like industry)?
  - If so, CM's training numbers could be a good sign, already meeting 132.1% of the Program's Goal.
- If not, there could be delays and inconsistent execution when implementing the new policies.
  - ex. K/COs within the same agency providing incompatible information and decisions, making contractors unsure of where they stand with the Government
- **Implementation may differ between agencies.**
  - How can the federal government ensure K/COs are consistently and effectively trained for relevant variations?

**How can you prepare?**



# Conduct an Internal Audit

Similar to Section 889, not knowing is not an excuse when it comes to violating these new regulations.

To the extent possible, contractors should be proactively auditing their supply chains and their employees to ensure compliance.



# Prepare for K/COs to be *Less Available*



K/CO's are about to be busier than ever, which means *even less* time to answer emails and phone calls from industry.

Focus on building strong relationships with the key players at your target agencies.

They're more likely to answer the phone for a number they know.

# Get Organized

Many questions remain about how these new regulations will be implemented by individual agencies.

Odds are, rules will look a little bit different everywhere.

Make sure you know what your customers require and build processes for each one to ensure compliance.





# Questions?

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