

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

DAVID M. WEINBERG, STAFF DIRECTOR
WILLIAM E. HENDERSON III, MINORITY STAFF DIRECTOR
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September 23, 2024

Christine J. Harada
Chair
Federal Acquisition Regulatory Council
725 17th Street, N.W.
Washington, D.C. 20503

Dear Chair Harada,

We write to you today to urge swift implementation of the *Preventing Organizational Conflicts of Interest in Federal Acquisition Act*, which was signed into law on December 27, 2022. We are proud to have worked in a bipartisan, bicameral manner to author and advance this law in response to reports that have highlighted the need to prevent conflicts of interest within companies that are awarded federal contracts. The law, when implemented, will provide transparency before federal contractors are awarded contracts with taxpayer dollars, and ensure contractors are working in the interest of the American people.

Specifically, the law directs the Federal Acquisition Regulatory (FAR) Council to revise the Federal Acquisition Regulation within eighteen months of enactment with definitions, guidance, and illustrative examples related to relationships of contractors with public, private, domestic, and foreign entities that may cause contract support to be subject to potential organizational conflicts of interest, including undue influence. The law also requires the FAR Council to provide executive agencies with solicitation provisions and contract clauses to avoid or mitigate organizational conflicts of interest. The deadline for the FAR Council to revise the Federal Acquisition Regulation with these updates was June 27, 2023. That deadline has now passed without a notice of proposed rulemaking being issued by the Council related to these revisions.

Recently, examples of organizational conflicts of interest have come to light where U.S. contractors were also advising foreign adversaries or had provided services to foreign governments and were stuck in situations where requirements under U.S. and foreign laws conflicted.¹ Additionally, U.S. contractors were found to have been working with regulatory agencies while also working for the regulated entity.² Other potential conflicts exist where U.S.-based technology service providers working for foreign adversaries while performing multibillion dollar contracts for the U.S. government risk exposing—or being coerced to expose—vulnerabilities in services provided to the U.S. government.³ Further guidance and

¹ U.S. Senate Permanent Subcommittee on Investigations, Opening Statement of Chairman Richard Blumenthal, *Hearings to Examine Foreign Influence in The United States: Reviewing Boston Consulting Group, McKinsey & Company, M. Klein and Company, and Teneo's Compliance with Congressional Subpoenas*, 118th Cong. (Feb. 6, 2024) (www.hsgac.senate.gov/wp-content/uploads/2024-02-06-Chair-Blumenthal-Opening-Statement-1.pdf)

² Majority Staff, House Committee on Oversight and Reform, *The Firm and the FDA: McKinsey & Company's Conflicts of Interest at the Heart of the Opioid Epidemic* (Apr. 13, 2022) (oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/2022-04-13).

³ U.S.-China Economic and Security Review Commission, *Red Cloud Rising: Cloud Computing in China* (2014) (www.uscc.gov/DGI-Red-Cloud-Rising_2014.pdf) and Microsoft 365, Exchange Online Operated by 21Vianet (Apr. 25, 2023) (learn.microsoft.com/en-us/office365/servicedescriptions/office-365-platform-service-description/exchange-online-operated-by-21vianet).

reforms are needed expeditiously, as directed by the law, to ensure that these types of conflicts do not occur.

We support the FAR Council's commitment to addressing complex federal acquisition issues, ensuring that the government spends money wisely and eliminates waste and abuse of taxpayer dollars. In fiscal year 2023, the federal government obligated more than \$750 billion dollars through federal contracts.⁴ The federal government must ensure that contracts are awarded in the best interests of the American people. Contractors who have the opportunity to do business with the federal government must support the American people without bias or compromise and must not jeopardize America's national security.

Accordingly, for Congress to conduct independent oversight, no later than October 7, please provide the status and timeline of next steps to implement this law. Additionally, please provide records showing the steps the FAR Council has already taken to implement the law. If no steps have been taken, why not? Finally, please explain in detail the reason the FAR Council did not finalize the rulemaking necessary to implement this law in June as was required. I look forward to continuing to work with you to ensure the government spends money wisely and eliminates waste and abuse of taxpayer dollars.

Sincerely,



Gary C. Peters
Chair
Committee on Homeland Security and
Governmental Affairs



Charles E. Grassley
Ranking Member
Committee on the Budget



Margaret Wood Hassan
Chair
Subcommittee on Emerging
Threats and Spending Oversight



Joni K. Ernst
Ranking Member
Subcommittee on Emerging
Threats and Capabilities

⁴Government Accountability Office, *A Snapshot: Government-Wide Contracting*. (2023)
(https://files.gao.gov/multimedia/Federal_Government_Contracting/index.html#:~:text=The%20federal%20government%20obligated%20%24759,2022%20after%20adjusting%20for%20inflation)