

Rachel Grey on behalf of the National Small Business Association

FAR Case 2017-016

Re: Federal Acquisition Regulation: Controlled Unclassified Information Proposed Rule

The National Small Business Association (NSBA) appreciates the opportunity to comment on the Defense Department, General Services Administration, and National Aeronautics and Space Administration proposed rule entitled “Federal Acquisition Regulation: Controlled Unclassified Information” (“Proposed Rule”). NSBA is the nation’s oldest small business advocacy organization representing the 70 million owners and employees that make up American small business, championing efforts that foster the growth, strength, and impact of small businesses.

As small business champions, we applaud the FAR Council’s efforts to advance uniformity across agencies by, among other things, introducing a new standard form (SF XXX) to be included in solicitations and contracts to “determine what information under the contract is considered CUI and how to properly safeguard the CUI.”¹ NSBA has long advocated for the federal government to implement more streamlined guidelines and protocols for cybersecurity to reduce regulatory confusion for small business participants in the federal marketplace. However, we are concerned that the Proposed Rule will create burdensome compliance costs for small business contractors.

As the FAR Council acknowledged in the Proposed Rule, federal offerors, contractors and subcontractors will have to bear the burden of the costs including (but not limited to):

- **Regulatory familiarization**, the estimated cost of which *in the first year* is \$10,267,144 “of which \$6,711,104 is attributed to 44,152 small businesses.”²
- **Preparation and distribution of the SF XXX** in cases where the contractor intends to flow down CUI to a subcontractor, the estimated *annual* cost of which is

¹ Defense Department, General Services Administration, and National Aeronautics and Space Administration, Proposed Rule on Federal Acquisition Regulation: Controlled Unclassified Information, 89 Fed. Reg. 4278 (proposed Jan. 15, 2025) (to be codified at 13 C.F.R. pts. 1, 2, 3, 4, 5, 7, 9, 11, 12, 15, 27, 33, 42, 52, and 53).

² Defense Department, General Services Administration, and National Aeronautics and Space Administration, Proposed Rule on Federal Acquisition Regulation: Controlled Unclassified Information, 89 Fed. Reg. 4278 (proposed Jan. 15, 2025) (to be codified at 13 C.F.R. pts. 1, 2, 3, 4, 5, 7, 9, 11, 12, 15, 27, 33, 42, 52, and 53) (emphasis added).

\$82,782,270 “of which \$2,529,440 is attributed to 15,809 small business contractors and subcontractors.”³

- **Employee training on handling CUI**, the estimated *annual* training cost of which is \$166,546,400 “of which \$26,440,400 is attributed to 34,780 small business contractors and subcontractors.”⁴

Based on the FAR Council’s estimates, NSBA is concerned that small businesses will disproportionately bear the burdens of the costs outlined above, as smaller companies often do not have the robust compliance teams of their larger counterparts. Additionally, in cases where contractors flow down CUI to their subcontractors, small subcontractors may not be able to absorb the costs of preparation and distribution of the SF XXX, as it is not uncommon for prime contractors to delay payments to their small subcontractors. While the Small Business Administration (SBA) is attempting to remedy this payments problem,⁵ the imposition of additional costs would likely shut smaller subcontractors out of the federal marketplace altogether.

Moreover, for non-defense contractors and subcontractors, the FAR Council delineated the various costs associated with the Proposed Rule, including (but not limited to):

- **Enlisting information security specialists**, particularly for contractors and subcontractors with no in-house expertise, the estimated cost of which for small businesses *in the initial year* is \$148,200 with a *recurring* annual labor cost of approximately \$98,800.⁶

³ Defense Department, General Services Administration, and National Aeronautics and Space Administration, Proposed Rule on Federal Acquisition Regulation: Controlled Unclassified Information, 89 Fed. Reg. 4278 (proposed Jan. 15, 2025) (to be codified at 13 C.F.R. pts. 1, 2, 3, 4, 5, 7, 9, 11, 12, 15, 27, 33, 42, 52, and 53) (emphasis added).

⁴ Defense Department, General Services Administration, and National Aeronautics and Space Administration, Proposed Rule on Federal Acquisition Regulation: Controlled Unclassified Information, 89 Fed. Reg. 4278 (proposed Jan. 15, 2025) (to be codified at 13 C.F.R. pts. 1, 2, 3, 4, 5, 7, 9, 11, 12, 15, 27, 33, 42, 52, and 53) (emphasis added).

⁵ See Small Business Administration, Proposed Rule on Government Contracting: Subcontracting Program, 89 Fed. Reg. 103709 (proposed Dec. 19, 2024) (to be codified at 13 C.F.R. pt. 125). This proposed rule seeks “to encourage faster payments to small business subcontractors and streamline the reporting process for prime contracts.”

⁶ Defense Department, General Services Administration, and National Aeronautics and Space Administration, Proposed Rule on Federal Acquisition Regulation: Controlled Unclassified Information, 89 Fed. Reg. 4278 (proposed Jan. 15, 2025) (to be codified at 13 C.F.R. pts. 1, 2, 3, 4, 5, 7, 9, 11, 12, 15, 27, 33, 42, 52, and 53) (emphasis added).

- **Cooperation with federal agency validation actions**, the *annual* estimated cost of which is \$5,574,250 “of which \$4,104,675 is attributed to 81 small businesses” (over \$50,000 per small business).⁷

As NSBA acknowledged in its comments on the Defense Acquisition Regulations System’s proposed amendments to the DFARS to incorporate contractual requirements related to the proposed CMMC 2.0 program rule, combatting the shifting tactics of threat actors is critical. Unfortunately, like the requirements under CMMC, the Proposed Rule’s requirements risk unduly burdening America’s small businesses and diminishing their crucial participation in the federal marketplace.

If the FAR Council is unwilling to amend the requirements of the Proposed Rule to reduce small business costs, NSBA urges the Council to work with various stakeholders on external solutions that will help small businesses remain in the federal marketplace. These solutions may include:

- **Working with lawmakers and industry stakeholders** to ensure that federal agencies have readily accessible resources to help small businesses comply with the provisions of the Proposed Rule.
- **Working with SBA** to integrate readily accessible resources for compliance with the Proposed Rule into SBA’s outreach efforts (e.g., webinars open to the public).
- **Working specifically with SBA’s Office of Advocacy and leveraging their small business-specific data** *in advance* of issuing a final rule.

Thank you again for the opportunity to comment on this Proposed Rule. Please do not hesitate to reach out to rgrey@nsbaadvocate.org if you have any questions.

Sincerely,

Rachel C. Grey

Director of Research & Regulatory Policy, NSBA

⁷ Defense Department, General Services Administration, and National Aeronautics and Space Administration, Proposed Rule on Federal Acquisition Regulation: Controlled Unclassified Information, 89 Fed. Reg. 4278 (proposed Jan. 15, 2025) (to be codified at 13 C.F.R. pts. 1, 2, 3, 4, 5, 7, 9, 11, 12, 15, 27, 33, 42, 52, and 53) (emphasis added).