



October 23, 2012

General Services Administration, Regulatory Secretariat (MVCB)
ATTN: Hada Flowers, 1275
First Street NE., 7th Floor
Washington, DC 20417
Submitted via <http://www.regulations.gov>

RE: FAR Case 2011–020 (Federal Acquisition Regulation; Basic Safeguarding of Contractor Information Systems)

To Whom It May Concern:

I am writing on behalf of the Association of University Export Control Officers (AUECO), a group of senior export practitioners at twenty-five accredited institutions of higher learning in the United States. AUECO members monitor proposed changes in laws and regulations affecting academic activities and advocate for policies and procedures that advance effective university compliance with applicable U.S. export controls and trade sanction regulations.

AUECO is specifically interested in monitoring proposed regulatory changes in order to ensure that they do not have an adverse impact on academic pursuits. As a result, AUECO is providing the following comments with respect to the proposed rule for Basic Safeguarding of Contractor Information Systems under the Federal Acquisition Regulations.

General Observations

AUECO has previously recognized the need to safeguard unclassified DoD information and has commented on proposed regulations that contain safeguarding requirements and other and infrastructure for contractors handling this type of information (see our comments¹ in response to DFARS Case 2011-D039). Similar to those comments, AUECO recognizes that some level of protection should be afforded, but seeks regulations that will provide an appropriate level of protection without creating unwieldy compliance burdens or creating a chilling effect on academic activity, including fundamental research.

This issue is of particular importance to universities as the level and degree of IT infrastructure that is in place will vary dramatically from university to university. This being said, it is AUECO's position that the proposed FAR rule for Basic Safeguarding of Contractor Information Systems generally sets forth standards for protection that many universities have at least partially in place already. However, the language contained in the proposed rule appears to contain a significant expansion of the scope of information that would require protection, while also failing to clearly exclude fundamental research results from the proposed requirements.

¹ <http://aueco.org/sitebuildercontent/sitebuilderfiles/auecocommentsonsafeguardingunclassifieddodinformation.pdf>

A Lack of Clarity Regarding the Results of Fundamental Research

Fundamental research is basic and applied research where the resulting information is ordinarily published and shared broadly within the scientific community.² Thus, fundamental research results are generally understood to be a type of public domain and/or publicly available information exempt from export regulations. In the proposed rule the introduction of the term “public information³” does not clearly *exclude* fundamental research results from the applicability of the proposed safeguarding requirements, as the language does not specify that information *eligible* for public release without specific agency authorization is “public information”. As a result, information resulting from government funded fundamental research awards appears to be subject to the safeguarding requirements of the proposed rule. AUECO strongly recommends that the proposed rule clarify that fundamental research results, while not expressly included in 44 U.S.C. 3502, are nonetheless a de facto form of “public information” and not subject to the requirements of this proposed rule.

Expanded Scope of Information Covered by Proposed Rule

The preceding concern, coupled with the proposed expansion in scope of information subject to the rule (see “information provided by *or generated for* the Government” (emphasis ours)) presents a particularly sweeping regulatory burden for universities. The proposed inclusion of information “generated for the Government” seems to capture a broad swath of information resident on university systems. As a result, AUECO agrees with the recommendation from the Council on Government Relations (COGR) and the Association of American Universities (AAU) that the scope of the clause be limited by changing the phrase “generated for” to “delivered to”, or alternatively that the definitions could be modified to define “generated for” in a manner that captures *only* information that is a deliverable under a contract.

Conclusion

In closing, AUECO would like to express its appreciation for the opportunity to provide comments on these proposed changes. It is AUECO’s position that the proposed clause for Basic Safeguarding of Contractor Information Systems is potentially quite burdensome and that due care should be taken to prevent the results of fundamental research from being included in the applicability of the proposed requirements. Additionally, AUECO concurs with COGR/AAU’s recommendation that modifications or qualifications to the term “generated for” will be necessary.

Sincerely,



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Chair

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² See 15 C.F.R. § 734.8(a), 22 C.F.R. § 120.11(8).

³ See 44 U.S.C. 3502: [T]he term “public information” means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public;