

ALERT

DOD Issues Final Rule Addressing Conflicts of Interest in Certain Consulting Contracts

August 28, 2025

WHAT: The U.S. Department of Defense (DOD) published a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to prohibit contracting officers from awarding contracts assigned certain North American Industry Classification System (NAICS) codes to offerors that hold contracts for consulting services with certain covered foreign entities related to the governments of China, Russia, and other countries of concern – unless the offeror has an approved conflict-of-interest mitigation plan. The final rule, implementing Section 812 of the National Defense Authorization Act for Fiscal Year 2024 (FY2024 NDAA), incorporates some changes from the proposed rule, most significantly by expanding the contractor certification to include subcontracts under contracts with covered entities. We previously covered the proposed rule here.

WHEN: DOD published the final rule on August 25, 2025. The final rule will take effect October 24, 2025.

WHAT IT MEANS FOR INDUSTRY: After the final rule takes effect, DOD contracting officers will be prohibited from awarding contracts assigned a NAICS code starting with 5416 to offerors that hold contracts or subcontracts that involve consulting services with covered foreign entities, unless the offeror has an approved conflict-of-interest mitigation plan. We expect the requirement for offerors to certify whether they hold such contracts to start appearing in DOD solicitations under those NAICS codes after the final rule takes effect. Federal contractors providing consulting services to DOD will need to assess whether they, along with any subsidiaries or affiliates, provide consulting services to covered entities and, if so, implement mitigation plans that must be approved by the contracting officer and may be audited by other government entities.

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Practice Areas

Government Contracts

Key Provisions in the Final Rule

Scope: This final rule will apply to all DOD solicitations, including FAR Part 12 solicitations for commercial services, that are assigned a NAICS code beginning with 5416 – even those at or below the simplified acquisition threshold (SAT).

Prohibition on contracting: The final rule enshrines at DFARS 209.572 a provision that prohibits contracting officers from awarding contracts assigned a NAICS code beginning with 5416 and involves consulting services to an offeror that (1) cannot certify that neither the offeror nor its subsidiaries or affiliates hold a contract or subcontract involving consulting services with a covered foreign entity, and (2) does not have an approved conflict-of-interest mitigation plan.

Solicitation provision: DFARS 252.209–7012, Prohibition Relating to Conflicts of Interest in Consulting Services – Certification, will be used in solicitations assigned a NAICS code beginning with 5416 that involve consulting services. The provision will require offerors to certify whether they, or an affiliate or subsidiary, hold contracts or subcontracts that involve consulting services with one or more covered foreign entities and whether they maintain a conflict-of-interest mitigation plan that is approved by the contracting officer and meets the requirements of the clause.

If the offeror cannot complete that certification, the offeror may contact the contracting officer for guidance on submitting a conflict-of-interest mitigation plan. If the offeror’s plan is approved, the contracting officer will incorporate the plan into the resulting contract.

Conflict-of-interest mitigation plan requirements: The mitigation plan must be auditable to a “contract oversight entity” such as the contracting officer, Defense Contract Management Agency, Office of Inspector General, or Government Accountability Office, and include the following elements:

- Identify covered contracts with a covered foreign entity (if confidentiality obligations prohibit identifying an entity, they may be referred to generically as a “covered foreign entity”);
- Provide a written analysis, including a course of action for avoiding, neutralizing, or mitigating the actual or potential conflict of interest of such a covered contract with DOD;
- Describe the procedures adopted by an entity to ensure that individuals who will be performing a covered contract will not, for the duration of such contract, also provide any consulting services to any covered foreign entity; and
- Describe the procedures by which an entity will submit to the contract oversight entities a notice of an unmitigated conflict of interest with respect to a covered contract within 15 days of determining that such a conflict has arisen.

Responses to Comments

DOD received comments from four parties on the proposed rule. In response to those comments, DOD:

- Added that the prohibition and certification requirements apply to an offeror that is a subcontractor on contracts with a covered foreign entity, even though subcontracts were not specified in Section 812;
- Lightly revised the definition of “consulting services” for clarity; and
- Lightly revised the prohibition at DFARS 209.572(c) to clarify that it would apply only to offerors that “both” (1) cannot complete the certification, and (2) do not have a conflict-of-interest mitigation plan.

DOD declined to adopt several other recommendations. Notably, DOD declined to: further clarify what must be included in a conflict of interest mitigation plan; amend the certification language to state that it is based on the best knowledge of the offeror; add definitions for “avoiding,” “neutralizing,” or “mitigating”; or provide an online repository of all covered foreign entities.

Commenters also asked about whether the rule would cover later-obtained contracts with covered foreign entities. In response to those comments, DOD noted that the FY2024 NDAA did not require post-award monitoring of covered foreign entity lists for contractors that are not required to submit a mitigation plan, and thus it declined to add such a monitoring requirement. For contractors with conflict-of-interest mitigation plans, however, DOD emphasized that the DFARS 252.209-7012 clause does require that a mitigation plan include procedures for notifying contract oversight entities of any unmitigated conflicts of interest within 15 days of when they arise. While less than clear, contractors with conflict-of-interest mitigation plans should consider how they (and their affiliates and subsidiaries) will monitor for new conflicts of interest that might arise during performance of a covered DOD consulting contract.

Wiley's Government Contracts Practice has extensive experience helping clients navigate evolving law and policy in this area. We are continuing to monitor developments and are ready to help our clients navigate these changes.