



OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION
AND SUSTAINMENT

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Contractual Remedies to Ensure Contractor Compliance with Defense Federal Acquisition Regulation Supplement Clause 252.204-7012, for contracts and orders not subject to Clause 252.204-7020; and Additional Considerations Regarding National Institute of Standards and Technology Special Publication 800-171 Department of Defense Assessments

The protection of controlled unclassified information on contractor information systems is critically important to the Department of Defense (DoD). To that end, Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.204-7012, "Safeguarding Covered Defense Information and Cyber Incident Reporting," requires contractors to provide adequate security on all covered contractor information systems, defined as an unclassified information system owned or operated by or for a contractor, and that processes, stores, or transmits covered defense information. Adequate security measures include, as applicable, implementation of the security requirements in the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" in effect at the time the solicitation is issued or as authorized by the contracting officer.

On November 30, 2020, interim DFARS rule 2019-D041 took effect and required use of DFARS clause 252.204-7020, NIST SP 800-171 DoD Assessment Requirements, in all future DoD solicitations and contracts, task orders, or delivery orders, except those solely for the acquisition of commercial off the shelf items. If included in the contract and applicable, the clause requires contractors to post summary level scores of all NIST SP 800-171 DoD Assessments, including the Basic self-assessment, in the Supplier Performance Risk System (SPRS) and provide access to its facilities, systems, and personnel necessary for the Government to conduct a High or Medium NIST SP 800-171 DoD Assessment.

A High or Medium assessment is a tool that allows DoD personnel to validate the results of a Basic NIST SP 800-171 self-assessment to assess if the contractor has, in fact, properly implemented the NIST SP 800-171 security requirements. DFARS clause 252.204-7020 was not promulgated or prescribed for use in DoD contracts until November 30, 2020; therefore, not all contractors are contractually obligated to comply with the assessment and access requirements set forth in the clause. Contracting Officers are reminded, however, that where applicable, DFARS 252.204-7012 requires contractor to implement the security requirements of NIST SP 800-171, and alternative remedies and tools are available for use to ensure compliance.

Contractual Remedies to Ensure Compliance with DFARS Clause 252.204-7012

DFARS clause 252.204-7012 requires a contractor to implement, at minimum, the NIST SP 800-171 security requirements on covered contractor information systems. Contractors must implement all of the NIST SP 800-171 requirements and have a plan of action and milestones (per NIST SP 800-171 Section 3.12.2) for each requirement not yet implemented. Failure to have or to make progress on a plan to implement NIST SP 800-171 requirements may be considered a material breach of contract requirements. Remedies for such a breach may include: withholding progress payments; foregoing remaining contract options; and potentially terminating the contract in part or in whole. Contracting Officers should consult with legal counsel as well as the program office or requiring activity to discuss appropriate remedies for the specific circumstances surrounding individual contracts.

Additional Considerations Regarding NIST SP 800-171 DoD Assessments

Under DFARS clause 252.204-7020, the DoD determines whether to conduct a High or Medium NIST SP 800-171 DoD Assessment, which are ordinarily conducted by the Defense Contract Management Agency (DCMA) Defense Industrial Base Cyber Assessment Center (DIBCAC), for contracts administered by DCMA, or by the cognizant DoD program office or requiring activity. Contracting Officers are encouraged to direct the program office or requiring activity to the DCMA DIBCAC for recommendations and best practices on assessment processes and procedures.

Contracting Officers are reminded that they cannot unilaterally levy a requirement for High or Medium NIST SP 800-171 DoD Assessments under contracts that do not include DFARS clause 252.204-7020. However, as appropriate, they may negotiate bilateral modifications to incorporate DFARS clause 252.204-7020. Before doing so, Contracting Officers should consult DCMA DIBCAC or the component program office or requiring activity regarding the necessity of a High or Medium NIST SP 800-171 DoD Assessment, and the availability of DoD resources to conduct such an assessment.

Contracting Officers are also reminded, in accordance with DFARS 204.7303(b)(2), if a contractor is required by a contract containing DFARS clause 252.204-7012 to implement NIST SP 800-171 on a covered contractor information system relevant to a new contract, option exercise, contract extension or new procurement modification, task order, or delivery order; the Contracting Officer must verify, prior to award, the contractor has the summary level score of a

current NIST SP 800-171 DoD Assessment for that system posted in SPRS. This requirement applies even if the new award does not include DFARS clause 252.204-7020.

Please provide broad distribution of this memorandum to Contracting Officers, program offices, and requiring activities. Direct any questions regarding DCMA DIBCAC, to include recommendations and best practices on High and Medium NIST SP 800-171 DoD Assessment processes and procedures, to Mr. John Ellis at john.a.ellis.civ@mail.mil. Direct all other questions to Defense, Pricing and Contracting, Contract Policy, at osd.pentagon.ousd-as.mbx.asda-dp-c-contractpolicy@mail.mil.

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Defense Pricing and Contracting