



## DoW INSTRUCTION 3000.20

# THREAT MITIGATION IN COMMERCIAL SUPPORT TO OPERATIONS

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**Originating Component:** Office of the Under Secretary of War for Acquisition and Sustainment

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**Approved by:** Michael P. Duffey, Under Secretary of War for Acquisition and Sustainment

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**Purpose:** In accordance with the authority in DoD Directive (DoDD) 5135.02 and the guidance in DoDD 3000.16, this issuance establishes policy, assigns responsibilities, and provides procedures to implement the authorities in Section 841 through 843 of Public Law 113-291 as amended by Section 823 of Public Law 118-31, codified as a note in Subchapter III of Chapter 385 of Title 10, United States Code.

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## SECTION 1: GENERAL ISSUANCE INFORMATION

### 1.1. APPLICABILITY.

This issuance:

a. Applies to OSW, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff (CJCS) and the Joint Staff, the Combatant Commands (CCMDs), the Office of Inspector General of the Department of War, the Defense Agencies, the DoW Field Activities, and all other organizational entities within the DoW (referred to collectively in this issuance as the “DoW Components”).

b. Only applies to actions related to responses from covered persons and entities that are responding to covered solicitations or performing work on covered contracts, grants, or cooperative agreements (CGCAs) performed outside the United States as defined in Section 843 of Public Law 113-291, as amended. This issuance does not apply to other solicitations and CGCAs that are performed entirely inside the United States.

c. Does not apply to authorized intelligence or law enforcement activities of the U.S. Government, entities currently subject to the National Industrial Security Program pursuant to DoD Instruction (DoDI) 5220.31, or entities under foreign ownership, control, or influence pursuant to DoDI 5205.87.

### 1.2. POLICY.

a. DoW identifies covered persons and entities engaging in covered activities that pose unacceptable risk to U.S. missions and forces in accordance with Section 841(b) of Public Law 113-291, as amended.

b. DoW maintains information on the identification of covered persons or entities that are engaging in covered activities and the use of covered procurement actions in accordance with Paragraphs 4.1., 4.4., and 4.14.

c. Vendor records, including prime contractor and subcontractor records, may only be examined pursuant to the conditions of Section 842 of Public Law 113-291, as amended, described in Paragraph 4.15. of this issuance.

d. The authorities in this issuance are in addition to, and not to the exclusion of, any other authorities available to the DoW Components.

e. This issuance does not supersede existing guidance for reporting counterintelligence information in accordance with DoDDs 5240.02 and 5240.06. When vendor threat mitigation (VTM) activities overlap with reporting of sensitive counterintelligence information, coordination and authorization from the appropriate counterintelligence personnel is required before the inclusion of that information in VTM-related threat or risk assessments or reporting.

## **SECTION 2: RESPONSIBILITIES**

### **2.1. UNDER SECRETARY OF WAR FOR ACQUISITION AND SUSTAINMENT (USW(A&S)).**

In addition to the responsibilities in Paragraph 2.7., the USW(A&S):

- a. In coordination with the Under Secretary of War for Intelligence and Security (USW(I&S)), the Under Secretary of War for Policy (USW(P)), and the CJCS, establishes policies and provides procedures and guidance to comply with the requirements in this issuance.
- b. In coordination with the CJCS, submits to the congressional defense committees a report on the use of the authorities exercised pursuant to Section 841 of Public Law 113-291, as amended, in accordance with the reporting criteria in Paragraph 4.14. of this issuance.
- c. In coordination with the USW(I&S), identifies and recommends standards and tools to enable the use of the authorities granted in Sections 841 through 843 of Public Law 113-291, as amended.

### **2.2. DEPUTY ASSISTANT SECRETARY OF WAR FOR LOGISTICS (DASW(LOG)).**

Under the authority, direction, and control of the USW(A&S), through the Assistant Secretary of War for Sustainment, the DASW(Log):

- a. Reviews the Combatant Commander (CCDR) identification packages for completeness described in Paragraph 4.2. and provides these identification packages to the USW(I&S), the Deputy Assistant Secretary of War for Defense Continuity and Mission Assurance (DASW(DC&MA)), and the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP) pursuant to Section 841(b)(1)(B) of Public Law 113-291, as amended.
- b. In conjunction with the Principal Director, DPCAP, develops and maintains processes and procedures for notifying the DoW Component heads of contracting activities (HCAs) of an identification of a covered person or entity by a CCDR.
- c. In conjunction with the CJCS, requires the CCDRs to conduct an annual review on covered persons or entities identified during the previous calendar year to ensure the covered persons or entities still meet the criteria for identification.
- d. Receives the results of the CCDR's annual review of covered persons or entities that were previously identified as engaging in covered activities and provides the results to the USW(I&S), the DASW(DC&MA), and the Principal Director, DPCAP.
- e. Reviews feedback from the USW(I&S), the DASW(DC&MA), and officials in the Office of the Director of National Intelligence, National Counterintelligence and Security Center and the Department of State, Bureau of Administration to inform annual reviews of the CCDR

identifications of covered persons or entities and the sustainment of covered procurement actions conducted in the previous calendar year.

f. Informs the CCDRs and the DoW Component HCAs of feedback from the DASW(DC&MA), the USW(I&S), and officials designated by the Office of the Director of National Intelligence, National Counterintelligence and Security Center and the Department of State, Bureau of Administration on the continued application of the covered procurement actions.

g. In conjunction with the CJCS, the CCDRs, and an official designated by the Secretary of State, establishes and maintains procedures for the use of the waiver authority that is authorized by Section 841(f) of Public Law 113-291, as amended.

### **2.3. PRINCIPAL DIRECTOR, DPCAP.**

Under the authority, direction, and control of the USW(A&S), through the Assistant Secretary of War for Acquisition, the Principal Director, DPCAP:

a. In conjunction with the DASW(Log), develops and maintains processes and procedures for notifying DoW Component HCAs of an identification of a covered person or entity by a CCDR pursuant to Section 841 of Public Law 113-291, as amended.

b. In conjunction with the senior procurement executives of the Military Departments and directors of Defense Agencies, develops and maintains procedures or guidelines for the:

(1) Use of covered procurement actions and notification of such actions taken and rescinded to covered persons and entities.

(2) Notification to other DoW Components of waivers that have been approved pursuant to Section 841(f) of Public Law 113-291, as amended, that authorize the contracting activities of DoW components to award contracts to a covered person or entity.

(3) Administrative reviews of actions taken pursuant to Section 841(c)(2)(A) of Public Law 113-291, as amended.

c. Maintains the Defense Federal Acquisition Regulation Supplement to implement Sections 841 through 843 of Public Law 113-291, as amended, and develops and issues contracting policy, guidance, and procedures to implement these sections of Public Law 113-291, as amended, pursuant to this issuance.

d. Coordinates with the CJCS, the CCDRs, and the DoW Component HCAs, as needed, to identify acquisition requirements for the contracting activities of the DoW Component to use the authorities in Sections 841 and 842 of Public Law 113-291, as amended.

e. Maintains data on DoW Component HCA actions relating to the use of covered procurement actions, the annual review of the lists of covered persons or entities, and the reporting of covered procurement actions by the DoW Component HCAs as described in Paragraphs 4.4., 4.8., and 4.14.

f. Manages information on covered procurement actions in the System for Award Management (SAM) and other systems of records pursuant to Section 841(d) of Public Law 113-291, as amended.

g. Develops and maintains guidelines on the conduct of administrative reviews on covered procurement actions taken by the DoW Component HCAs in accordance with Section 841(c)(2)(A) of Public Law 113-291, as amended.

h. In coordination with the DASW(Log), provides the DoW Component HCAs with the results of the CCDR's annual review of identified covered persons and entities subjected to a covered procurement action in the previous calendar year.

i. Maintains data on the results of the DoW Component HCA annual reviews of the lists of covered persons or entities and updates the SAM and other systems of records as necessary.

#### **2.4. UNDER SECRETARY OF WAR FOR RESEARCH AND ENGINEERING.**

The Under Secretary of War for Research and Engineering updates Subtitle A, Chapter 1, Subpart C of Title 32, Code of Federal Regulations (also known as the "DoD Grant and Agreement Regulations"), to carry out the Office of Management and Budget's revision of the guidance in Part 200 of Title 2, Code of Federal Regulations, to implement the provisions of Sections 841 through 843 of Public Law 113-291, as amended, pursuant to DoDD 3210.06.

#### **2.5. DASW(DC&MA).**

Under the authority, direction, and control of the USW(P), through the Assistant Secretary of War for Homeland Defense and Hemispheric Affairs, the DASW(DC&MA):

a. In coordination with the CJCS, oversees the coordination of anti-terrorism and force protection activities in support of VTM programs.

b. In support of the DASW(Log), and in consultation with other offices of the USW(P), assesses how the identification of a covered person or entity and use of a covered procurement action pursuant to Section 841 of Public Law 113-291, as amended, affects current or pending U.S. national security policy or international relations.

c. Provides feedback to the DASW(Log) to inform annual reviews of the CCDR identifications of covered persons or entities and the sustainment of covered procurement actions conducted in the previous calendar year.

#### **2.6. USW(I&S).**

In addition to the responsibilities in DoDD 5143.01 and in Paragraph 2.7., the USW(I&S):

a. Develops policies, procedures, and guidance for intelligence support to the CCDRs to enable the identification of covered persons or entities engaging in covered procurement

activities. Guidance will include a framework for development of threat assessments and assignment of threat ratings used in the identification of covered persons or entities and requirements for information sharing.

b. Manages the Defense Intelligence Enterprise and the Defense Security Enterprise resources to oversee intelligence and security support for the identification of covered persons or entities.

c. Establishes the protocols for addressing actors who are threats to national security and insider threats; counterintelligence activities; and personnel, industrial, information, and physical security, including physical access to DoW resources and installations, and logical access to DoW information for integration into the DoW implementation of Section 841 of Public Law 113-291, as amended, and National Security Presidential Memorandum 7.

d. In coordination with the USW(A&S), identifies and recommends intelligence-related standards and tools to enable the CCDRs to use the authorities granted in Sections 841 and 842 of Public Law 113-291, as amended.

e. Provides intelligence and security-related feedback to the DASW(Log) to inform annual reviews of the CCDR identifications of covered persons or entities and the sustainment of covered procurement actions conducted in the previous calendar year.

## **2.7. USW(A&S), USW(P), USW(I&S), AND CJCS.**

The USW(A&S), the USW(P), the USW(I&S), and the CJCS develop policies, procedures, and guidance for the programs established by the CCDRs and the DoW Components to implement Sections 841 through 843 of Public Law 113-291, as amended.

## **2.8. SECRETARIES OF THE MILITARY DEPARTMENTS AND DIRECTORS OF DEFENSE AGENCIES.**

The Secretaries of the Military Departments and the Directors of the Defense Agencies, in conducting the duties of the senior procurement executive pursuant to Subpart 202.1 of the Defense Federal Acquisition Regulation Supplement:

a. Oversee their Component's implementation of this issuance.

b. Designate a DoW Component focal point for VTM if the DoW Component has multiple HCAs.

c. In coordination with the Principal Director, DPCAP, develop and maintain procedures or guidance for the:

(1) Use of covered procurement actions and for the notification of such actions to covered persons and entities.

(2) Notification to other DoW Component HCAs of the potential use of a covered procurement action that will require the approval of a waiver pursuant to Section 841(f) of Public Law 113-291, as amended, for continued use of the covered person or entity.

(3) Conduct of administrative reviews on covered procurement actions DoW Component HCAs take pursuant to Section 841(c)(2)(A) of Public Law 113-291, as amended.

## **2.9. CJCS.**

In addition to the responsibilities in Paragraph 2.7., the CJCS:

a. Provides support to the USW(A&S) to collect information and report to the congressional defense committees on use of authorities authorized in Sections 841 and 842 of Public Law 113-291, as amended, by the CCDRs and in any instances in which a CCDR desires to use these authorities but is unable to do so.

b. In conjunction with the DASW(Log), requires the CCDRs to conduct an annual review on covered persons and entities identified during the previous calendar year.

c. In conjunction with the DASW(Log), the CCDRs, and a designated official from the Department of State, Bureau of Administration, establishes and maintains procedures for the use of the waiver authority granted in Section 841(f) of Public Law 113-291, as amended.

## **2.10. CCDRS.**

Through the CJCS, the CCDRs:

a. Pursuant to Sections 841 through 843 of Public Law 113-291, as amended, identify and manage the risks resulting from covered persons or entities engaging in covered activities.

b. Use the least intrusive measures described in Paragraph 4.1. to manage the risk posed by a covered person or entity engaging in covered activities.

c. Establish command policy and execute a VTM program pursuant to DoDD 3000.16 and Section 841 of Public Law 113-291, as amended, to identify and manage risk associated with covered persons and entities responding to covered solicitations or receiving the awards of covered CGCAs and engaging in covered activities in the CCDR's geographic area of responsibility (AOR) or functional area.

d. Coordinate with a designated official from the Department of State, Bureau of Administration before identification of a covered person or entity.

e. Comply with USW(I&S) guidance for developing threat assessments to support identification of covered persons or entities engaging in covered activities and sharing information related to these threat assessments.

- f. Upon identification of a covered person or entity, provide written notification, including the rationale for the identification of a covered person or entity, and a request to consider exercising the authorities granted in Sections 841 and 842 of Public Law 113-291, as amended, to the DoW Component HCA concerned through the USW(A&S).
- g. Provide support, if required, to the DoW Component HCA conducting an administrative review of a covered procurement action that has been taken by the DoW Component HCA when a covered person or entity has requested an administrative review. The CCDRs will review information in opposition to the covered procurement action taken by the DoW Component HCA that has been submitted by the identified covered person who or entity that is challenging such action.
- h. Use the least intrusive measures other than excluding the covered person or entity from an award, terminating the CGCA, or voiding in whole or in part the CGCA to manage the risk assessed during the identification of the covered person or entity.
- i. Conduct an annual review of previously identified covered persons and entities pursuant to Section 841(b)(1) of Public Law 113-291, as amended, to determine whether to sustain or rescind the identification and report the results of the annual review to the DASW(Log).
- j. In conjunction with the DASW(Log), the CJCS, and a designated official from the Department of State, Bureau of Administration, establish and maintain procedures for the use of the waiver authority for continued use of covered persons and entities subjected to a covered procurement action granted in Section 841(f) of Public Law 113-291, as amended.
- k. Oversee and report to the DASW(Log) on use of the waiver authority for continued use of covered persons and entities subjected to a covered procurement action granted in Section 841(f) of Public Law 113-291, as amended.

### **SECTION 3: HCAs**

The DoW Component HCAs:

a. Oversee their Component's use of the authorities granted in Section 841(b)(2) of Public Law 113-291, as amended. The authority to terminate or void, in whole or in part, a CGCA or exclude a covered person or entity from future award, may not be delegated below the level of the DoW Component HCA concerned or the equivalent official for grants and cooperative agreements.

b. Exercise the authorities granted in Sections 841 and 842 of Public Law 113-291, as amended, upon receipt of CCDR identification package of a covered person or entity.

c. Manage and submit data on the use of covered procurement actions to the Principal Director, DPCAP.

d. Upon receipt of the CCDR annual review documentation relating to covered persons or entities that have been the subject of a covered procurement action from the Principal Director, DPCAP, conduct an annual review of the list of covered persons and entities subjected to a covered procurement action by the DoW Component HCA concerned to determine if the covered persons and entities on this list continue to warrant the use of a covered procurement action and report the results of these determinations to the Principal Director, DPCAP.

e. Conduct administrative reviews of actions taken pursuant to Section 841(c)(2)(A) of Public Law 113-291, as amended, as required.

f. Develop and maintain procedures to communicate actions taken pursuant to Section 841(b)(2) of Public Law 113-291, as amended, to contracting activity officials of the DoW Component HCA concerned.

## SECTION 4: PROCEDURES

### 4.1. IDENTIFICATION.

The CCDRs will vet covered persons and entities in their geographic AOR or functional area that are responding to covered solicitations or are awarded covered CGCAs to identify whether they are engaging in covered activities, pursuant to Section 841(b)(1)(A) of Public Law 113-291, as amended.

a. The CCDRs will establish priorities for vetting covered persons and entities based on the likelihood that the contract requirement or the requirement of the grant or cooperative agreement that could be the subject to a covered procurement activity may introduce risk to mission or forces.

(1) Priorities for vetting covered persons and entities will be established within the scope of the CCDR's CCMD VTM program and pursuant to DoDD 3000.16.

(2) The CCDRs are not required to vet all covered persons and entities in their geographic AOR or functional area that are responding to covered solicitations or receiving covered CGCAs.

(3) Before identification of a covered person and entity that has been awarded and is performing external support contracts defined in DoDI 3020.41 or may be providing contractual support to multiple CCMDs, the CCDR will share information relating to the identification and threat assessment with the program manager for the contract and the other CCDRs, in accordance with existing information security law, regulation, and policy including classification requirements for consideration of the impacts to operations outside of their AOR or functional area if the person or entity becomes the subject of an identification package.

b. To identify a covered person and entity pursuant to the provisions of Section 841(b)(1)(A) of Public Law 113-291, as amended, the CCDR must have moderate to high confidence in the threat assessment and designate the covered person and entity with a "critical" or "high" threat rating. If the threat assessment does not meet these standards, the CCDR will use less intrusive measures to manage the risk.

(1) The CCDRs conduct threat assessments that incorporate all source intelligence and conform to analytic standards in accordance with Intelligence Community Directive (ICD) 203 and sourcing requirements in accordance with ICD 206.

(2) The CCDRs will assign threat ratings based on USW(I&S) guidance.

c. If the CCDR requires additional information to support an identification of a covered person or entity engaging in covered activities, the CCDR may use the authority provided in Section 842 of Public Law 113-291, as amended, additional access to contractor and to subcontractor records that is set forth in Paragraph 4.15. of this issuance, to obtain additional information in support of the identification. The contracting officer must make a written determination for the use of this authority that is based upon a finding of the cognizant CCDR

that this examination will support the identification and that less intrusive measures are not reasonably available to manage the risk that is raised by the identification.

d. The CCDRs will consider less intrusive measures than the use of a covered procurement action to manage the risk before finalizing an identification. Less intrusive measures include, but are not limited to:

- (1) Use of force protection authorities such as:
  - (a) Installation barment; or
  - (b) Requiring escorted access to an installation or when in the proximity of U.S. forces or allies and partners.
- (2) Revision of contract requirements to include provisions to manage risk;
- (3) Termination of the contract for convenience;
- (4) Administrative actions such as suspension and debarment; or
- (5) Coordination of remedies with the prime contractor to address the threat, if the covered person or entity is a subcontractor.

e. If a CCDR identifies a covered person or entity that the CCDR asserts is engaged in covered activities pursuant to Section 841(b)(1)(A) of Public Law 113-291, as amended, the CCDR will notify the DASW(Log), of the identification and rationale for the identification. The notification will be included in an identification package of the covered person or entity. The identification package from the CCDR includes:

- (1) A memorandum reviewed by the CCDR's legal advisor and signed by the CCDR, or designated deputy, that:
  - (a) Specifies the name(s) of the identified covered person or entity.
  - (b) States the specified persons or entities meet the definition of a covered person or entity.
  - (c) States the covered person or entity is engaging in covered activities.
  - (d) States less intrusive measures described in Paragraph 4.1.c. were considered and are insufficient to address the identified risk posed by the covered person or entity.
- (2) Supporting documentation that includes:
  - (a) An executive summary or tear line in accordance with ICD 209 of the threat assessment that demonstrates the covered person or entity is or was engaging in covered activities and a risk assessment at the appropriate classification level.

(b) A list of existing CGCAs that the covered person or entity is associated with in the geographic AOR or functional area, if applicable.

(c) A CCMD organization mailbox or point of contact for the identification and requests for further information on the identification.

(d) Any additional information that the CCDR believes is necessary to support a determination on the use of a covered procurement action by a DoW Component HCA or equivalent official for grants and cooperative agreements.

f. All documentation in the identification package will be marked in accordance with the VTM Security Classification Guide and CCMD guidance.

g. The identification package will be retained in a system designated by the DASW(Log) and e-mailed to additional OSW points of contact specified on the VTM Intelink Site, available at <https://intelshare.intelink.gov/sites/atlcoi/vtm/SitePages/VTM%20Implementation%20Plan%20Landing%20Page.aspx>.

## **4.2. REVIEW OF IDENTIFICATION.**

a. The DASW(Log) will:

(1) Review the identification package of the covered person or entity that is submitted by the CCDRs within 2 business days of receipt.

(2) Validate that the CCDR identification package is complete and contains the information in Paragraph 4.1.e.

(3) Consult with the USW(I&S) and the DASW(DC&MA) if an enterprise-wide assessment of potential impact of the identification is required.

(4) Notify the Principal Director, DPCAP, upon confirmation, that the notification package contains the required information as defined in Paragraph 4.1.e. and ensure the identification is available in the system designated by the DASW(Log).

b. The Principal Director, DPCAP will utilize available contracting data to identify additional CGCAs that may be affected by potential covered procurement action that may be taken by the DoW Component HCA in response to the identification of the covered person or entity and communicate the findings to DoW Component HCA staff who are involved in the process that leads to the HCA taking a covered procurement action.

#### **4.3. NOTIFICATION OF IDENTIFICATION TO THE DOW COMPONENT HCAS.**

The Principal Director, DPCAP will:

- a. Notify the DoW Component HCAs and provide them with the validated CCDR identification package of covered persons or entities upon receipt of the package from the DASW(Log).
- b. Include any additional relevant information (e.g., contract data reports) for DoW Component HCAs to use to help make their determinations on use of covered procurement actions.

#### **4.4. USE OF COVERED PROCUREMENT ACTIONS.**

Upon receipt of a CCDR identification package of the covered person or entity, the DoW Component HCA or other equivalent official for grants and cooperative agreements will review the identification package.

- a. The DoW Component HCA or other equivalent official for grants and cooperative agreements will rely upon the identification package to decide whether to take no action following an identification by a CCDR, or to take a covered procurement action by exercising the authority granted in Section 841(b)(2) of Public Law 113-291, as amended, to:
  - (1) Exclude a covered person or entity from a current or future award of a CGCA;
  - (2) Terminate a CGCA with a covered person or entity for default; or
  - (3) Void, in whole or in part, a CGCA with a covered person or entity.
- b. If the DoW Component HCA or equivalent official for grants and cooperative agreements requires information in addition to the identification package to support a determination on the use of a covered procurement action, that official may request information from the CCDR that made the identification using the point of contact for the identification that is provided in the package.
- c. Once the DoW Component HCA or equivalent official for grants and cooperative agreements decides what action to take in response to the identification of a covered person or entity, the DoW Component HCA will notify the CCDR of the determination and notify the covered person or entity pursuant to Paragraph 4.7.d. Within 15 business days, the DoW Component HCA will also report the determination to the Principal Director, DPCAP, in accordance with the criteria described in Paragraph 4.14. and indicate whether:
  - (1) A covered procurement action is taken; or
  - (2) A determination is made to take no action following an identification from a CCDR.

d. The Principal Director, DPCAP will maintain information on the use of covered procurement actions that are taken pursuant to Section 841 (b)(2) of Public Law 113-291, as amended, for the DoW.

e. No later than 30 days before a DoW Component HCA takes a covered procurement action, the DoW Component HCA will notify the covered person or entity of the anticipated action. The notification will cite the applicable authority under Section 841 and detail the reason(s) for the covered procurement action pursuant to the limitations described in Sections 841(c)(2)(B), as amended, relating to the compromise of national security or posing a threat to personnel of the U.S. or its allies and partners and 841(c)(2)(C) relating to the disclosure of classified information of Public Law 113-291, as amended, and Paragraphs 4.11. and 4.12. of this issuance.

#### **4.5. EXCLUSION OF A COVERED PERSON OR ENTITY.**

a. If a DoW Component HCA or other equivalent official decides that a covered person or entity will be excluded from award, the DoW Component HCA will notify the CCDR concerned and the Principal Director, DPCAP.

b. The Principal Director, DPCAP will:

(1) Notify the other DoW Component HCAs of the determination so that the HCAs can coordinate with the officials of their contracting activities to assess the impact of the exclusion action and request a waiver in accordance with Section 841(f) of Public Law 113-291, as amended, if required, in instances where it is in the best interest of national security.

(2) Enter the exclusion into the SAM and reference the authority for covered procurement actions pursuant to Section 841(b)(2) of Public Law 113-291, as amended.

#### **4.6. USE OF OTHER COVERED PROCUREMENT ACTIONS.**

If a DoW Component HCA decides to terminate or void a covered CGCA, the DoW Component HCA will document the determination in the Responsibility and Qualification records in the SAM (formerly the Federal Awardee Performance and Integrity Information System), or other systems of record, and report the action to the CCDR concerned and the Principal Director, DPCAP.

#### **4.7. ADMINISTRATIVE REVIEW.**

DoW Component HCAs will perform an administrative review of a covered procurement action in response to a challenge from a covered person or entity in accordance with Section 841(c)(2)(A) of Public Law 113-291, as amended. The administrative review process will provide the opportunity for additional information that has been submitted by the covered person or entity in response to the covered procurement action the DoW Component HCA concerned

will consider. The administrative review will provide for an opportunity to challenge the underlying identification the CCDR made.

a. The DoW Component HCA or other equivalent official for grants and cooperative agreements will conduct the administrative review using the procedures established by its DoW Component in coordination with the Principal Director, DPCAP.

b. As part of the administrative review process, the DoW Component HCA will review documentation submitted by the covered person or entity through the means deemed appropriate by the DoW Component HCA concerned. If the covered person or entity requests a copy of the CCDR's identification as part of the administrative review process, the CCDR will provide a copy of the identification in response to the request. If the CCDR's underlying identification and its supporting rationale contains intelligence information or classified information, the CCDR will provide a redacted version of the identification in response to the covered person or entity's request.

c. The DoW Component HCA may request support from the CCDR concerned to review documentation the covered person or entity submitted, if needed.

(1) The CCDRs may provide support to the DoW Component HCA by assessing the information included in the administrative review, the contractual requirement, and the risk management options.

(2) If the CCDR conducts an assessment, the CCDR will provide that assessment in writing to the DoW Component HCA.

d. The DoW Component HCA will inform the identified covered person or entity of the results of the administrative review in writing.

e. Sections 841(c)(2)(B) and (C) of Public Law 113-291, as amended, limit the DoW's obligation to disclose certain types of information to the covered person or entity, and those limitations are described in Paragraphs 4.11. and 4.12. of this issuance, respectively.

#### **4.8. ANNUAL REVIEW.**

The CCDRs and DoW Component head HCAs will conduct an annual review of the identified covered persons and entities that are subjected to a covered procurement action to determine if the covered procurement action should be sustained.

a. The CCDRs will review identified covered persons and entities on an annual basis to determine whether to sustain or rescind each identification. As part of the annual review, the CCDRs will:

(1) Consider any new information on the covered person or entity, including information provided by a covered person or entity as part of an administrative review.

(2) Inform the USW(A&S) of the results of the annual review. If the CCDR determines an identification should be rescinded, a signed memorandum documenting this decision will be provided to the DASW(Log) and the Principal Director, DPCAP. The Principal Director, DPCAP will provide the information to the DoW Component HCAs. The memorandum will include the:

(a) Name of the person or entity from which the CCDR is rescinding the identification.

(b) CCDR's rationale for rescinding the identification.

b. In situations where a CCDR determines an identification should be rescinded, the DoW Component HCAs will rescind any determinations to exclude a covered person or entity from future awards.

c. If the DoW Component HCA concerned decides to rescind an exclusion of a covered person or entity from the award of CGCAs, the Principal Director, DPCAP will remove the exclusion from the SAM and the DoW Component HCA will notify the covered person or entity.

d. In situations where a CCDR determines an identification should be sustained, the DoW Component HCAs will conduct an annual review to determine if the covered procurement action should be sustained or rescinded pursuant to Section 841(e) of Public Law 113-291, as amended. The DoW Component HCAs will report the results of their annual reviews to the Principal Director, DPCAP.

e. The DASW(Log) will coordinate the results of the annual reviews with the designated officials from the Office of the Director of National Intelligence, National Counterintelligence and Security Center and the Department of State, Bureau of Administration.

#### **4.9. WAIVERS.**

A waiver for a covered person or entity subjected to a covered procurement action may be granted if it is in the best interest of national security in accordance with Section 841(f) of Public Law 113-291, as amended. A waiver request may be utilized for the single award of a CGCA or for a period of up to 1 year for ongoing support requirements. Waivers may be renewed as required in the interests of national security.

a. The DoW Component supported by the covered contract or contracting activity official will submit a request for a waiver to the CCDR concerned.

b. The CCDR will notify the DoW Component or contracting activity official of the decision regarding the requested waiver.

c. The CCDR will maintain a list of waivers granted for their AOR or functional area.

d. The CCDR will review all active waivers annually.

e. In situations where a CCDR rescinds an identification and the DoW Component HCA rescinds a covered procurement action to exclude the covered person and entity, an existing waiver for the use of the covered person and entity will also be rescinded.

#### **4.10. INFORMATION SHARING AND DATA STORAGE.**

The CCDRs will share information on the identification of covered persons and entities at the lowest possible classification level. In accordance with Section 552a of Title 5, United States Code (also known as the “Privacy Act of 1974”) and DoDI 5400.11, as applicable, all DoW personnel must appropriately safeguard sensitive information, including sensitive personally identifiable information and other sensitive information obtained from publicly and commercially available information. Additional safeguards, including those in DoDD 3115.18, DoDI 5200.48, and DoD Manual 5240.01, as applicable, will be established.

a. The CCDRs and the DoW Component HCAs will use common, searchable platforms to make information on the implementation of authorities granted in Sections 841 and 842 of Public Law 113-291, as amended, available to all DoW personnel.

b. Information on the authorities pursuant to Sections 841 and 842 of Public Law 113-291, as amended, will include:

- (1) Identification memorandums that fulfill the criteria described in Paragraph 4.1.e.
- (2) Covered procurement action reports that fulfill the criteria described in Paragraph 4.14.a.
- (3) Annual review results of identifications and covered procurement actions taken in the previous calendar year.

#### **4.11. LIMITATION ON DISCLOSURE OF INFORMATION.**

Pursuant to Section 841(c)(2) of Public Law 113-291, as amended, the rationale used by the CCDR responsible for the identification of a covered person or entity engaged in covered activities will not be disclosed to the covered person or entity, or their representatives, to the extent that the disclosure would compromise national security or pose an unacceptable threat to personnel of the United States or its allies and partners and consistent with applicable law.

#### **4.12. PROTECTION OF CLASSIFIED INFORMATION FOR COVERED PROCUREMENT ACTIONS.**

Pursuant to Section 841(c)(2)(C) of Public Law 113-291, as amended, classified information relied upon to support a DoW Component HCA determination to take a covered procurement action may not be disclosed to a covered person or entity, or to their representatives, unless a protective order is issued by a court of competent jurisdiction established pursuant to Article I or

Article III of the Constitution of the United States that specifically addresses the conditions under which such classified information may be disclosed.

#### **4.13. DELEGATION OF AUTHORITY.**

a. The CCDR may delegate the authority to identify a covered person or entity engaged in covered activities pursuant to Section 841(b) of Public Law 113-291, as amended, to a specified deputy of such commander who is a general officer/flag officer, or member of the Senior Executive Service.

b. The CCDR is granted the authority to waive a covered procurement action provided by Section 841(f) of Public Law 113-291, as amended. The CCDR may delegate the authority to a specified deputy who is a general officer/flag officer or a member of the Senior Executive Service.

c. Pursuant to Section 841(g) of Public Law 113-291, as amended, the authority to take a covered procurement action, in whole or in part, provided by Section 841(b) of Public Law 113-291, as amended, may not be delegated below the level of the DoW Component HCA or equivalent official for grants and cooperative agreements.

#### **4.14. REPORTING.**

a. The DoW Component HCAs will submit a report to the Principal Director, DPCAP on any covered procurement action taken by the DoW Component HCA outlined in Subsection 841(b)(2) of Public Law 113-291, as amended, or on a determination to not take a covered procurement action. The report will include:

(1) The DoW Component and the DoW Component HCA taking such covered procurement action.

(2) An explanation of the determination to take the covered procurement action, the determination to take no action following an identification from a CCDR, and the determination to rescind an exclusion of the covered person or entity from CGCAs.

(3) The value of all CGCAs associated with the DoW Component concerned and identified covered person or entity that have been voided or terminated by use of the authorities in Sections 841 and 842 of Public Law 113-291, as amended.

(4) The value of all CGCAs that have been awarded to or are associated with the identified covered person or entity with the DoW Component.

(5) For each determination made to not take a covered procurement action following an identification from a CCDR of a covered person or entity, this information will be included in the report:

(a) Identification of the DoW Component HCA.

(b) An explanation of the basis for not taking a covered procurement action.

(6) Specific examples where the authorities in Section 841 of Public Law 113-291, as amended, cannot be used to mitigate national security threats posed by vendors supporting DoW operations because the restriction on using the authorities was only with respect to contingency operations.

b. The CCDRs will submit a report to the DASW(Log) and the CJCS on the use of the waiver authority set forth at Section 841(f) of Public Law 113-291, as amended.

c. Pursuant to Section 841(i) of Public Law 113-291, as amended, the USW(A&S) will create an annual report on the authorities granted pursuant to Sections 841 and 842 of Public Law 113-291, as amended. The USW(A&S) will submit the report to the congressional defense committees no later than March 1 annually based on a notification on the use of these authorities in the preceding calendar year.

(1) The report will include summary information from the reporting requirements described in this section, descriptions of instances where a CCDR pursued the use of the authorities described in this issuance but was unable to use them, and a description of the policies used to perform oversight on the use of these authorities.

(2) The report will be submitted in:

(a) Unclassified form with a classified annex; or

(b) Classified form.

#### **4.15. ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS.**

In accordance with Section 842 of Public Law 113-291, as amended, the authority to examine contractor and subcontractor records to the extent necessary to support the program established pursuant to Section 841 of Public Law 113-291, as amended, may be exercised only when:

a. The CCDR makes a finding that this examination will support the program, and less intrusive measures are not available to reasonably manage the risk.

b. The contracting officer or equivalent official responsible for a covered CGCA makes a written determination stating that the examination will support the program and less intrusive measures are not available to reasonably manage the risk.

## GLOSSARY

### G.1. ACRONYMS.

<b>ACRONYM</b>	<b>MEANING</b>
AOR	area of responsibility
CCDR	Combatant Commander
CCMD	Combatant Command
CGCA	contract, grant, or cooperative agreement
CJCS	Chairman of the Joint Chiefs of Staff
DASW(DC&MA)	Deputy Assistant Secretary of War for Defense Continuity and Mission Assurance
DASW(Log)	Deputy Assistant Secretary of War for Logistics
DoDD	DoD directive
DoDI	DoD instruction
DoW	Department of War
DPCAP	Defense Pricing, Contracting, and Acquisition Policy
HCA	head of contracting activity
ICD	Intelligence Community directive
OSW	Office of the Secretary of War
SAM	System for Award Management
USW(A&S)	Under Secretary of War for Acquisition and Sustainment
USW(I&S)	Under Secretary of War for Intelligence and Security
USW(P)	Under Secretary of War for Policy
VTM	vendor threat mitigation

### G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

<b>TERM</b>	<b>DEFINITION</b>
<b>administrative review</b>	The process an HCA conducts to review a determination to take a covered procurement action in whole or in part in response to a challenge by a covered person or entity.

<b>TERM</b>	<b>DEFINITION</b>
<b>commercial support to operations</b>	The risk-informed integration of commercial capabilities to meet mission requirements across the competition continuum. It is institutionalized in the DoW through the policy areas of operational contract support and VTM.
<b>covered activities</b>	Defined in Section 843 of Public Law 113-291, as amended.
<b>covered CGCA</b>	Defined in Section of 843 Public Law 113-291, as amended.
<b>covered person or entity</b>	Defined in Section 843 of Public Law 113-291, as amended.
<b>covered procurement action</b>	Defined in Section 843 of Public Law 113-291, as amended.
<b>covered solicitation</b>	Defined in Section 843 of Public Law 113-291, as amended.
<b>exclusion</b>	The whole of government exclusion of a covered person or entity from current or future award of a CGCA identified pursuant to the authorities granted in Section 841 of Public Law 113-291, as amended.
<b>HCA</b>	Defined in Section 843 of Public Law 113-291, as amended.
<b>tear line</b>	Defined in the DoD Dictionary of Military and Associated Terms.

## REFERENCES

- Code of Federal Regulations, Title 2, Part 200
- Code of Federal Regulations, Title 32, Subtitle A, Chapter 1, Subpart C (also known as the “DoD Grant and Agreement Regulations”)
- Constitution of the United States of America, as amended
- Defense Federal Acquisition Regulation Supplement, current edition
- DoD Directive 3000.16, “Vendor Threat Mitigation,” July 6, 2022
- DoD Directive 3115.18, “DoD Access to and Use of Publicly Available Information (PAI),” June 11, 2019, as amended
- DoD Directive 3210.06, “Defense Grant and Agreement Regulatory System (DGARS),” February 6, 2014, as amended
- DoD Directive 5135.02, “Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)),” July 15, 2020
- DoD Directive 5143.01, “Under Secretary of Defense for Intelligence and Security (USD(I&S)),” October 24, 2014, as amended
- DoD Directive 5240.02, “Counterintelligence (CI),” March 17, 2015, as amended
- DoD Directive 5240.06, “Counterintelligence Awareness and Reporting (CIAR),” May 17, 2011, as amended
- DoD Instruction 3020.41, “Operational Contract Support Outside the United States,” November 27, 2024
- DoD Instruction 5200.48, “Controlled Unclassified Information (CUI),” March 6, 2020
- DoD Instruction 5205.87, “Mitigating Risks Related to Foreign Ownership, Control, or Influence for Covered DoD Contractors and Subcontractors,” May 13, 2024
- DoD Instruction 5220.31, “National Industrial Security Program,” May 9, 2023
- DoD Instruction 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019, as amended
- DoD Manual 5240.01, “Procedures Governing the Conduct of DoD Intelligence Activities,” August 8, 2016
- Intelligence Community Directive 203, “Analytic Standards,” June 12, 2023
- Intelligence Community Directive 206, “Sourcing Requirements for Disseminated Analytic Products,” January 22, 2015
- Intelligence Community Directive 209, “Tearline Production and Dissemination,” September 6, 2012
- National Security Presidential Memorandum 7, “Integration, Sharing, and Use of National Security Threat Actor Information to Protect Americans,” October 5, 2017
- Office of the Chairman of the Joint Chiefs of Staff, “DoD Dictionary of Military and Associated Terms,” current edition
- Public Law 113-291, “Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015,” December 19, 2014, as amended, codified as a note in Subchapter III of Chapter 385 of Title 10, United States Code

Vendor Threat Mitigation Security Classification Guide, September 20, 2024<sup>1</sup>  
United States Code, Title 5, Section 552a (also known as the “Privacy Act of 1974”)

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<sup>1</sup> Located at  
<https://intelshare.intelink.gov/sites/atlcoi/vtm/shared%20Documents/vtm%20Interim%20Security%20Classification%20Guide%20-%20SEP%202024.pdf>