

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

[Docket No. FAR 2018–0001, Sequence No. 3]

**Federal Acquisition Regulation:
Federal Acquisition Circular 2005–99;
Introduction**

AGENCY: Department of Defense (DoD),
General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–99. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the internet at <http://www.regulations.gov>.

DATES: For effective dates see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–99 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2005–99

Item	Subject	FAR case	Analyst
I	Use of Products and Services of Kaspersky Lab (Interim)	2018–010	Francis.
II	Violations of Arms Control Treaties or Agreements with the United States (Interim)	2017–018	Davis.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–99 amends the FAR as follows:

Item I—Use of Products and Services of Kaspersky Lab (FAR Case 2018–010)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement section 1634 of Division A of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 1634 of this law prohibits the Federal Government’s use on or after October 1, 2018, of hardware, software, and services developed or provided, in whole or in part, by Kaspersky Lab or related entities.

To implement section 1634, the clause at 52.204–23 prohibits contractors from providing any hardware, software, or services developed or provided by Kaspersky Lab or its related entities, or using any such hardware, software, or services in the development of data or deliverables first produced in the performance of the contract. The contractor must also report any such hardware, software, or services discovered during contract performance; this requirement flows down to subcontractors.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant

economic impact on a substantial number of small entities.

This interim rule is being implemented as a national security measure to protect Government information and information systems.

Item II—Violations of Arms Control Treaties or Agreements With the United States (FAR Case 2017–018)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement section 1290 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328, codified at 22 U.S.C. 2593e), which addresses measures against persons involved in activities that violate arms control treaties or agreements with the United States. The interim rule adds a certification provision in each solicitation for the acquisition of products or services (including construction) that exceeds the simplified acquisition threshold, except for solicitations for the acquisition of commercial items.

This interim rule will not have a significant economic impact on a substantial number of small entities.

Dated: June 7, 2018.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2005–99 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–99 is effective June 15, 2018 except for item I, which is effective July 16, 2018.

Dated: June 11, 2018.

Linda W. Neilson,

Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulations System).

Dated: June 8, 2018.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: June 11, 2018.

Monica Y. Manning,

Assistant Administrator, Office of Procurement National Aeronautics and Space Administration.

[FR Doc. 2018–12845 Filed 6–14–18; 8:45 am]

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 1, 4, 13, 39, and 52

**[FAC 2005–99; FAR Case 2018–010;
Item I; Docket 2018–0010, Sequence 1]**

RIN 9000–AN64

**Federal Acquisition Regulation; Use of
Products and Services of Kaspersky
Lab**

AGENCY: Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are
issuing an interim rule amending the
Federal Acquisition Regulation (FAR) to
implement a section of the National
Defense Authorization Act for Fiscal
Year 2018.

DATES:

Effective Date: July 16, 2018.

Applicability Dates:

- Contracting officers shall include the clause at FAR 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab or Other Covered Entities—

- In solicitations issued on or after July 16, 2018, and resultant contracts; and

- In solicitations issued before July 16, 2018, provided award of the resulting contract(s) occurs on or after July 16, 2018.

- Contracting officers shall modify, in accordance with FAR 1.108(d)(3), existing indefinite-delivery contracts to include the FAR clause for future orders, prior to placing any further orders on or after July 16, 2018.

- If modifying an existing contract to extend the period of performance by more than 6 months, contracting officers should include the clause in accordance with 1.108(d).

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 14, 2018 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–99, FAR Case 2018–010, by any of the following methods:

- Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by

searching for “FAR Case 2018–010”. Select the link “Submit a Comment” that corresponds with “FAR Case 2018–010.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2018–010” on your attached document.

- Mail:* General Services

Administration, Regulatory Secretariat (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite FAC 2005–99, FAR Case 2018–010, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at 202–550–0935, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–99, FAR Case 2018–010.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the FAR to implement section 1634 of Division A of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 1634 of this law prohibits the use of hardware, software, and services of Kaspersky Lab and its related entities by the Federal Government on or after October 1, 2018.

Implementation of this rule in the FAR should not impact or impair any other planned or ongoing efforts agencies may undertake to implement section 1634 of Division A of the NDAA for FY 2018, including consideration by agencies of the presence of hardware, software, or services developed or provided by Kaspersky Lab as a technical evaluation factor in the source selection process.

II. Discussion and Analysis

This rule amends FAR part 4, adding a new subpart 4.20, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab, with a corresponding new contract clause at 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities. The rule also adds text in subpart 13.2, Actions at or Below the Micro-Purchase Threshold, to address section 1634 with regard to micro-purchases.

To implement section 1634, the clause at 52.204–23 prohibits contractors from providing any hardware, software, or services developed or provided by Kaspersky Lab or its related entities, or using any such hardware, software, or services in the development of data or deliverables first produced in the performance of the contract. The contractor must also report any such hardware, software, or services discovered during contract performance; this requirement flows down to subcontractors. For clarity, the rule defines “covered entity” and “covered article.” A covered entity includes the entities described in section 1634. A covered article includes hardware, software, or services that the Federal Government will use on or after October 1, 2018.

As the Government considers additional actions to implement section 1634, DoD, GSA, and NASA especially welcome input on steps that the Government could take to better identify and reduce the burden on contractors related to identifying covered articles. For example:

- Is the prohibition scoped appropriately to protect the Government by including situations in which covered articles may be used in the development of data or deliverables first produced during contract performance, for example, under a systems development contract?

- Are the Government’s analysis and estimates in sections VI and VII, including the estimate that 5 percent of contractors would be required to submit reports in accordance with the clause, reasonable? How could these estimates be improved?

- If the Government were to consider establishing a list to publicly share information regarding products identified as meeting the definition of a covered article (*i.e.*, excluded products), including those offered by third parties:

- What protocols should the Government apply prior to placing a product on the excluded list (*e.g.*, who should be reaching out, and to whom)?

- Should different protocols apply depending on whether the product is made by the original equipment manufacturer, sold by a reseller, or customized by a firm?

- When is it appropriate to leave a product on the excluded list indefinitely (*e.g.*, to provide notice for those who have previously acquired the product)?

- Are there steps that the Government can take to avoid inappropriately affecting the producer’s interests (*e.g.*, allowing the firm to demonstrate that there is a new version

of the product that is free from concern and annotating the list accordingly)?

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule adds a new contract clause at 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities, in order to implement section 1634 of the NDAA for FY 2018. Section 1634 of this law prohibits the use of hardware, software, and services developed or provided by Kaspersky Lab and related entities by the Federal Government on or after October 1, 2018.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the simplified acquisition threshold (SAT). Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law if: (i) The law contains criminal or civil penalties; (ii) the law specifically refers to 41 U.S.C. 1905 and states that the law applies to contracts and subcontracts in amounts not greater than the SAT; or (iii) the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Finally, 41 U.S.C. 1907 states that acquisitions of commercially available off-the-shelf (COTS) items will be exempt from a provision of law unless the law (i) contains criminal or civil penalties; (ii) specifically refers to 41 U.S.C. 1907 and states that the law

applies to acquisitions of COTS items; (iii) concerns authorities or responsibilities under the Small Business Act (15 U.S.C. 644) or bid protest procedures developed under the authority of 31 U.S.C. 3551 *et seq.*, 10 U.S.C. 2305(e) and (f), or 41 U.S.C. 3706 and 3707; or (iv) the Administrator for Federal Procurement Policy makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

C. Determinations

The FAR Council has determined that it is in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial items. The Administrator for Federal Procurement Policy has determined that it is in the best interest of the Government to apply this rule to contracts for the acquisition of COTS items.

While the law does not specifically address acquisitions of commercial items, including COTS items, there is an unacceptable level of risk for the Government in buying hardware, software, or services developed or provided in whole or in part by Kaspersky Lab. This level of risk is not alleviated by the fact that the item being acquired has been sold or offered for sale to the general public, either in the same form or a modified form as sold to the Government (*i.e.*, that it is a commercial item or COTS item), nor by the small size of the purchase (*i.e.*, at or below the SAT). As a result, agencies may face increased exposure for violating the law and unknowingly acquiring a covered article absent coverage of these types of acquisitions by this rule.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” under Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this

rule. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771 because the rule is issued with respect to a national security function of the United States.

VI. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

The objective of the rule is to prescribe appropriate policies and procedures to enable agencies to determine and ensure that they are not purchasing products and services of Kaspersky Lab and its related entities for use by the Government on or after October 1, 2018. The legal basis for the rule is section 1634 of the NDAA for FY 2018, which prohibits Government use of such products on or after that date.

Data from the Federal Procurement Data System (FPDS) for FY 2017 has been used as the basis for estimating the number of contractors that may be affected by this rule. Approximately 97,632 unique entities received new awards in Fiscal Year (FY) 2017. Of these entities, 72,447 (74 percent) unique small entities received awards during 2017. It is estimated that the reports required by this rule will be submitted by 5 percent of contractors, or 3,623 small entities.

The rule requires contractors and subcontractors that are subject to the clause to report to the contracting officer, or for DoD, to the website listed in the clause, any discovery of a covered article during the course of contract performance.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

Because of the nature of the prohibition enacted by section 1634, it is not possible to establish different compliance or reporting requirements or timetables that take into account the resources available to small entities or to exempt small entities from coverage of the rule, or any part thereof. DoD, GSA, and NASA were unable to identify any alternatives that would reduce the burden on small entities and still meet the objectives of section 1634.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested

parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018–010) in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

DoD, GSA, and NASA requested and OMB authorized emergency processing of an information collection involved in this rule, as OMB Control Number 9000–0197, consistent with 5 CFR 1320.13. DoD, GSA, and NASA have determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the Paperwork Reduction Act, in view of the deadline for this provision of the NDAA which was signed into law in December 2017 and requires action before the prohibition goes into effect on October 1, 2018.

b. The collection of information is essential to the mission of the agencies to ensure the Federal Government does not purchase prohibited articles, and can respond appropriately if any such articles are not identified until after delivery or use.

c. The use of normal clearance procedures would prevent the collection of information from contractors, for national security purposes, as discussed in section VIII of this preamble.

Passage of the omnibus appropriations bill and the availability of additional funding for FY 18 has increased agency purchasing activity, and the information to be collected is necessary to ensure that this purchasing is done responsibly and consistent with national security.

Moreover, DoD, GSA, and NASA cannot comply with the normal clearance procedures because public harm is reasonably likely to result if current clearance procedures are followed. Not only would agencies be more likely to purchase and install prohibited items, but even if such items were identified prior to the October 1 date, agencies would incur substantial additional costs replacing such items, as well as additional administrative costs for procurement.

DoD, GSA, and NASA intend to provide separate 60-day notice in the **Federal Register** requesting public comment on the information collection contained within this rule.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Use of Products and Services of Kaspersky Lab.

Affected Public: Private Sector—Business.

Total Estimated Number of

Respondents: 4,882.

Average Responses per Respondents: 5.

Total Estimated Number of

Responses: 24,410.

Average Time per Response: 1.5 hour.

Total Annual Time Burden: 36,615.

OMB Control Number: 9000–0197.

The public reporting burden for this collection of information consists of reports of identified covered articles during contract performance as required by 52.204–23. Reports are estimated to average 1.5 hour per response, including the time for reviewing definitions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the report.

The subsequent 60-day notice published by DoD, GSA, and NASA will invite public comments.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. It is critical that the FAR is immediately revised to include the requirements of the law, which prohibits the Federal Government from using hardware, software, or services of Kaspersky Lab and its related entities on or after October 1, 2018.

Although this prohibition does not apply until October 1, 2018, agencies and contractors must begin to take steps immediately to meet this deadline. In this regard, covered articles include hardware, software, and services acquired before October 1, 2018, that the Federal Government will use on or after October 1, 2018. Because so many IT products and services are used for more than a few months, it is critical that contractors be placed on notice as soon as possible of this prohibition so that agencies can ensure that they comply with the law and avoid acquisitions of

covered articles that the Government will continue to use on or after October 1, 2018. Pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subject in 48 CFR Parts 1, 4, 13, 39, and 52

Government procurement.

Dated: June 7, 2018.

William F. Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 4, 13, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 13, 39, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 by adding to the table, in numerical sequence, FAR segment “52.204–23” and its corresponding OMB control number “9000–0197”.

PART 4—ADMINISTRATIVE MATTERS

■ 3. Add subpart 4.20 to read as follows:

SUBPART 4.20—PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB

Sec.

4.2001 Definitions.

4.2002 Prohibition.

4.2003 Notification.

4.2004 Contract clause.

SUBPART 4.20—PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB

4.2001 Definitions

As used in this subpart—
Covered article means any hardware, software, or service that—

(1) Is developed or provided by a covered entity;

(2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or

(3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means—

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

4.2002 Prohibition.

Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91) prohibits Government use on or after October 1, 2018, of any hardware, software, or services developed or provided, in whole or in part, by a covered entity. Contractors are prohibited from—

- (a) Providing any covered article that the Government will use on or after October 1, 2018; and
- (b) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

4.2003 Notification.

When a contractor provides notification pursuant to 52.204–23, follow agency procedures.

4.2004 Contract clause.

The contracting officer shall insert the clause at 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities, in all solicitations and contracts.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

- 4. Amend section 13.201 by adding paragraph (i) to read as follows:

13.201 General.

* * * * *

- (i) Do not purchase any hardware, software, or services developed or provided by Kaspersky Lab that the Government will use on or after October 1, 2018. (See 4.2002.)

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

- 5. Amend section 39.101 by adding paragraph (e) to read as follows:

39.101 Policy.

* * * * *

- (e) Contracting officers shall not purchase any hardware, software, or services developed or provided by Kaspersky Lab that the Government will use on or after October 1, 2018. (See 4.2002.)

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 6. Add section 52.204–23 to read as follows:

52.204–23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities.

As prescribed in 4.2004, insert the following clause:

Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)

(a) *Definitions.* As used in this clause—
Covered article means any hardware, software, or service that—

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means—

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) *Prohibition.* Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91) prohibits Government use of any covered article. The Contractor is prohibited from—

- (1) Providing any covered article that the Government will use on or after October 1, 2018; and
- (2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) *Reporting requirement.* (1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

- (i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or

wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

(End of clause)

- 7. Amend section 52.212–5 by—
- a. Revising the date of the clause;
- b. Redesignating paragraphs (a)(2) through (4) as paragraphs (a)(3) through (5), respectively, and adding a new paragraph (a)(2);
- c. Redesignating paragraphs (e)(1)(iii) through (xxi) as paragraphs (e)(1)(iv) through (xxii), respectively, and adding a new paragraph (e)(1)(iii); and
- d. In Alternate II:
 - i. Revising the date of the alternate; and
 - ii. Redesignating paragraphs (e)(1)(ii)(C) through (S) as paragraphs (e)(1)(ii)(D) through (T), respectively, and adding a new paragraph (e)(1)(ii)(C).

The revisions and additions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Jul 2018)

* * * * *

(a) * * *
____ (2) 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115–91).

* * * * *

(e)(1) * * *
(iii) 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115–91).

* * * * *

Alternate II (Jul 2018). * * * *

* * * * *

- (e)(1) * * * *
- (ii) * * * *
- (C) 52.204–23, Prohibition on Contracting for Hardware, Software, and Services

Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115–91).

* * * * *

■ 8. Amend section 52.213–4 by—

- a. Revising the date of the clause; and
- b. Redesignating paragraphs (a)(1)(ii) through (vii) as paragraphs (a)(1)(iii) through (viii), respectively, and adding a new paragraph (a)(1)(ii).

The revision and addition read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other than Commercial Items) (Jul 2018)

(a) * * *

(1) * * *

(ii) 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115–91).

* * * * *

■ 9. Amend section 52.244–6 by—

- a. Revising the date of the clause;
- b. Redesignating paragraphs (c)(1)(iv) through (xviii) as paragraphs (c)(1)(v) through (xix), respectively, and adding a new paragraph (c)(1)(iv).

The revision and addition read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (Jul 2018)

* * * * *

(c)(1) * * *

(iv) 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115–91).

* * * * *

[FR Doc. 2018–12847 Filed 6–14–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 9, 12, 13, and 52

[FAC 2005–99; FAR Case 2017–018; Item II; Docket No. 2017–0018, Sequence No. 1]

RIN 9000–AN57

Federal Acquisition Regulation: Violations of Arms Control Treaties or Agreements With the United States

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2017 that addresses measures against persons involved in activities that violate arms control treaties or agreements with the United States.

DATES:

Effective: June 15, 2018.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before August 14, 2018 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAC 2005–99, FAR Case 2017–018, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2017–018.” Select the link “Comment Now” that corresponds with “FAR Case 2017–018.” Follow the instructions provided on the screen. Please include your name, company name (if any), and “FAR Case 2017–018” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–99, FAR Case 2017–018, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential

information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–99, FAR Case 2017–018.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule amends the FAR to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 that addresses measures against persons involved in activities that violate arms control treaties or agreements with the United States. This rule amends FAR part 9, Contractor Qualifications, and adds a provision at FAR 52.209–13 to implement section 1290 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328), codified at 22 U.S.C. 2593e.

The President submits annually to Congress a report prepared by the Secretary of State with the concurrence of the Director of Central Intelligence and in consultation with the Secretary of Defense, the Secretary of Energy, and the Chairman of the Joint Chiefs of Staff, on the status of United States policy and actions with respect to arms control, nonproliferation, and disarmament, pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). In this report, the Secretary of State assesses adherence to and compliance with arms control, nonproliferation, and disarmament agreements and commitments by the United States and other countries. This report is submitted in unclassified form, with classified annexes, as appropriate. The Department of State’s most recent unclassified report submitted in April 2018 to Congress is available at <https://www.state.gov/t/avc/rls/rpt/>.

The Secretary of the Treasury is required to submit to the appropriate Congressional committees a report, consistent with the protection of intelligence sources and methods, identifying every person with respect to whom there is credible information indicating that the person is—

- An individual who is a citizen, national, or permanent resident of, or an entity organized under the laws of, a noncompliant country; and

- Has engaged in any activity that contributed to or is a significant factor in the President's or the Secretary of State's determination that such country is noncompliant.

The Secretary of the Treasury also identifies any person that has provided material support for such non-compliance to a person engaged in the noncompliant activities. This information will be posted, as appropriate and consistent with the protection of intelligence sources and methods, as an exclusion record in the System for Award Management (SAM) database. If the contractor is on the SAM Exclusions list, the contractor may not be awarded contracts, including those under the simplified acquisition threshold (SAT) or for commercial items (see FAR 9.405 and 17.207), and contracts may not be renewed or extended.

With some exceptions, the head of any executive agency is prohibited from entering into, renewing, or extending a contract for the procurement of products or services from any person so identified in a report under subsection (a) of 22 U.S.C. 2593e.

II. Discussion and Analysis

This interim rule amends the FAR to add a new section, FAR 9.109, to address the prohibition on contracting with an entity involved in activities that violate arms control treaties or agreements with the United States. In addition to citation of the statute (22 U.S.C. 2593e) and the contracting prohibition therein, FAR 9.109 includes—

- The statutory exception from the contracting prohibition for the procurement of products or services along a major route of supply to a zone of active combat or a major contingency operation;

- Discussion of offeror certification and the remedies for submission of a false certification; and

- Prescription for use of the certification provision in each solicitation for the acquisition of products or services (including construction) that exceeds the SAT, other than solicitations for the acquisition of commercial items.

The interim rule includes a provision at FAR 52.209–13, Violation of Arms Control Treaties or Agreements—Certification, to implement the statutory requirement for a certification from each offeror that the offeror, and any entity owned or controlled by the offeror, has not engaged in any activity that contributed to or is a significant factor in the President's or the Secretary of State's determination that such country

is not in full compliance with its obligations undertaken in all arms control, nonproliferation, and disarmament agreements or commitments to which the United States is a participating state (subsection (a)(1)(A)(ii) of 22 U.S.C. 2593e). The provision also provides procedures to assist offerors in using the Secretary of State report as necessary to complete the certification. Initially, in this interim rule, this certification will not be included in the annual representations and certifications, because implementation considerations that will ensure minimum burden to prospective contractors are in development. The certification is not required for acquisitions under the SAT or for acquisition of commercial items, but if a contractor's activities related to violations of arms control treaties results in the contractor being added to the SAM Exclusions list, the contractor may not be awarded contracts, including those under the SAT or for commercial items. The rule also establishes that the remedies for rendering a false certification are debarment or suspension for not less than 2 years or termination of any contract resulting from the false certification.

The Government will not consider the offer of an offeror that has not provided a certification in paragraph (b)(1) of the provision at 52.209–13, unless the offeror provides with its offer information that the President of the United States has waived application under 22 U.S.C. 2593e(d) or (e) or determined under 22 U.S.C. 2593e(g)(2) that the entity has ceased all activities for which measures were imposed under 22 U.S.C. 2593e(b).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

Consistent with 41 U.S.C. 1905–1907, DoD, GSA, and NASA do not intend to apply the certification required by 22 U.S.C. 2593e to contracts at or below the SAT, or to contracts for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items. However, when acquiring products or services (including construction) the Government is still prohibited from contracting with entities listed as excluded in the System for Award Management database.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold.

41 U.S.C. 1905 governs the applicability of laws to contracts or

subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. This law does not contain criminal or civil penalties and the FAR Council does not intend to make a written determination. Therefore, the certification required by this rule will only be included in solicitations that exceed the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

41 U.S.C. 1906 governs the applicability of laws to contracts and subcontracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts and subcontracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts and subcontracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to COTS items, and provides the Administrator for Federal Procurement Policy with the decision authority to determine that it is in the best interest of the Federal Government to apply a provision of law to acquisitions of COTS items. The FAR Council and the Administrator for Federal Procurement Policy do not intend to make such determinations, and the certification required by the statute will not be included in contracts and subcontracts for the acquisitions of commercial items, including COTS items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant

regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This interim rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule is issued with respect to a national security function of the United States. See section 4(a) of E.O. 13771.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Nevertheless, an Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

This rule implements section 1290 of the National Defense Authorization Act for Fiscal Year 2017, codified at 22 U.S.C. 2593e.

The objective of the rule is to prohibit award to offerors that violate arms control treaties or agreements with the United States, or own or control entities that do so; and terminate contractors, and suspend or debar offerors and contractors that have provided false certifications regarding such violations. The statutes which are the legal basis for the FAR are 40 U.S.C. 121(c), 10 U.S.C. Chapter 137, and 51 U.S.C. 20113.

Using Federal Procurement Data System (FPDS) data for FY 2016, this rule will apply to 7,616 small entities that are required to fill out the required certification.

This rule will require certification from each offeror that submits an offer in response to a Government solicitation that exceeds the simplified acquisition threshold (SAT) and is not for the acquisition of a commercial item, including commercially available off-the-shelf (COTS) items. Initially, in this interim rule, this certification will not be included in the annual representations and certifications, because implementation considerations that will ensure minimum burden to prospective contractors are in development.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA considered whether to apply the certification provision to contracts at or below the SAT and to the acquisition of commercial items, including COTS items, or to exempt such acquisitions in accordance with 41 U.S.C. 1905–1907. DoD, GSA, and NASA did not sign determinations that the provision should apply to contracts at or below the SAT and to the acquisition of commercial items, including COTS items, thus minimizing the impact on small business to the extent permitted by law.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small

Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2017–018), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

DoD, GSA, and NASA requested and OMB authorized emergency processing of an information collection involved in this rule, as OMB Control Number 9000–0198, consistent with 5 CFR 1320.13. DoD, GSA, and NASA have determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the Paperwork Reduction Act.

b. The collection of information is essential to the mission of the agencies to ensure the Federal Government does not award contracts to offerors, and any entity owned or controlled by the offeror that has engaged in any activity that violates arms control treaties or agreements with the United States.

c. The use of normal clearance procedures would prevent the collection of information from contractors, for national security purposes, as discussed in Section VIII of this preamble.

Section 1290 of Public Law 114–328 (codified at 22 U.S.C. 2593e) went into effect on December 23, 2016. The implementation of this FAR case will protect against doing business with entities that engage in any activity that contributed to or is a significant factor in a country's failure to comply with arms control treaties or agreements with the United States. This action is necessary because of statutory requirements relating to a national security function of the United States.

Moreover, DoD, GSA, and NASA cannot comply with the normal clearance procedures because public harm is reasonably likely to result if current clearance procedures are followed.

DoD, GSA, and NASA intend to provide separate 60-day notice in the **Federal Register** requesting public comment on the information collections contained within this rule.

Some numbers below are rounded.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Violations of Arms Control Treaties or Agreements with the United States.

Affected Public: Private Sector—Business.

Total Estimated Number of Respondents: 11,634.

Average Responses per Respondents: 8.6.

Total Estimated Number of Responses: 99,796.

Preparation Hours per Response: .4 hours.

Total Annual Time Burden: 40,478.

OMB Control Number: 9000–0198.

The public reporting burden for this collection of information consists of a certification that the offeror and no entity owned or controlled by the offeror has engaged in any activity that contributes to the violation of arms control treaties or agreements with the United States. Public reporting burden for this collection of information is estimated to average .4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

In the subsequent 60 day notice published by DoD, GSA, and NASA will invite public comments.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because of statutory requirements relating to a national security function of the United States. Section 1290 of Public Law 114–328 (codified at 22 U.S.C. 2593e) went into effect on December 23, 2016. The implementation of this FAR case will protect against doing business with

entities that engage in any activity that contributed to or is a significant factor in a country's failure to comply with arms control treaties or agreements with the United States. Arms control, nonproliferation, and disarmament agreements can limit or reduce threats to the security of the United States and our allies, contributing to transparency and stability on a global and regional scale. Failure of participating countries to comply with the obligations and adhere to the commitments they have undertaken can present serious national security challenges. Therefore, robust compliance enforcement is a critical aspect of U.S. national security planning. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 9, 12, 13, and 52

Government procurement.

Dated: June 7, 2018.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 9, 12, 13, and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 1, 9, 12, 13, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

1.106 [Amended]

- 2. Amend section 1.106, in the table following the introductory text, by adding in numerical sequence, FAR segment "52.209-13" and its corresponding OMB control number "9000-0198".

PART 9—CONTRACTOR QUALIFICATIONS

- 3. Add sections 9.109, 9.109-1, 9.109-2, 9.109-3, 9.109-4, and 9.109-5 to read as follows:

9.109 Prohibition on contracting with an entity involved in activities that violate arms control treaties or agreements with the United States.

9.109-1 Authority.

This section implements 22 U.S.C. 2593e.

9.109-2 Prohibition.

Contracting officers shall not award, renew, or extend a contract for the procurement of products or services with an entity identified as excluded in the System for Award Management database, specifically for this subpart, on the basis of involvement in activities that violate arms control treaties or agreements with the United States.

9.109-3 Exception.

The prohibition in 9.109-2 does not apply to contracts for the procurement of products or services along a major route of supply to a zone of active combat or major contingency operation, as specified in statute or by the cognizant Combatant Commander, in consultation with the Chief of Mission. As of May 10, 2018, countries along the major route of supply to support operations in Afghanistan are Afghanistan, Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, and Turkmenistan.

9.109-4 Certification by the offeror.

(a) In order to be eligible for contract award, an offeror is required to—

(1)(i) Certify that it does not engage and has not engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available via the internet at <https://www.state.gov/t/avc/rls/rpt/>; and

(ii) Similarly certify with regard to any entity owned or controlled by the offeror; or

(2) Provide with its offer information that the President of the United States has—

(i) Waived application under 22 U.S.C. 2593e(d) or (e); or

(ii) Determined under 22 U.S.C. 2593e(g)(2) that the entity has ceased all activities for which measures were imposed under 22 U.S.C. 2593e(b).

(b) If certifying in accordance with 52.209-13(b)(1), the Offeror is required to submit the certification with the offer. It is not included in the annual

representations and certifications in the System for Award Management database.

(c) The contracting officer may rely on an offeror's certification unless the contracting officer has reason to question the certification.

(d) An offeror that falsely certifies under 52.209-13 will be subject to such remedies as suspension or debarment for a period of not less than 2 years, subject to the procedures set forth in subpart 9.4 (including 9.406-1 or 9.407-1), or termination of any contract resulting from the false certification.

9.109-5 Solicitation provision.

Unless the exception at 9.109-3 applies, the contracting officer shall include the provision at 52.209-13, Violation of Arms Control Treaties or Agreements—Certification, in each solicitation for the acquisition of products or services (including construction) that exceeds the simplified acquisition threshold, other than solicitations for the acquisition of commercial items.

- 4. Amend section 9.405 by adding a sentence to the end of paragraph (b) to read as follows:

9.405 Effect of listing.

* * * * *

(b) * * * In addition, agencies shall not extend contracts with contractors that have been declared ineligible pursuant to 22 U.S.C. 2593e.

* * * * *

- 5. Amend section 9.406-4 by revising paragraphs (a)(1)(i) and (ii) and adding paragraph (a)(1)(iii) to read as follows:

9.406-4 Period of debarment.

(a)(1) * * *

(i) Debarment for violation of the provisions of 41 U.S.C. chapter 81, Drug-Free Workplace (see 23.506) may be for a period not to exceed 5 years;

(ii) Debarments under 9.406-2(b)(2) shall be for 1 year unless extended pursuant to paragraph (b) of this section; and

(iii) Debarments pursued as a remedy under 9.109-4(d), for a false certification regarding violations of arms control treaties or agreements with the United States, shall be for a period of not less than 2 years.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

- 6. Amend section 12.503 by—
- a. Redesignating paragraphs (b)(1) through (3) as paragraphs (b)(2) through (4), respectively; and

■ b. Adding a new paragraph (b)(1) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

* * * * *

(b) * * *

(1) 22 U.S.C. 2593e, Requirement for a certification under Measures Against Persons Involved in Activities that Violate Arms Control Treaties or Agreements with the United States (see 9.109).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 7. Amend section 13.005 by adding paragraph (a)(11) to read as follows:

13.005 List of laws inapplicable to contracts and subcontracts at or below the simplified acquisition threshold.

(a) * * *

(11) 22 U.S.C. 2593e (Measures Against Persons Involved in Activities that Violate Arms Control Treaties or Agreements with the United States). (The requirement at 22 U.S.C. 2593e(c)(3)(B) to provide a certification does not apply).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Add section 52.209–13 to read as follows:

52.209–13 Violation of Arms Control Treaties or Agreements—Certification.

As prescribed in 9.109–5, insert the following provision:

Violation of Arms Control Treaties or Agreements—Certification (JUN 2018)

(a) This provision does not apply to acquisitions below the simplified acquisition threshold or to acquisitions of commercial items as defined at FAR 2.101.

(b) *Certification.* [Offeror shall check either (1) or (2).]

(1) The Offeror certifies that—

(i) It does not engage and has not engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available via the internet at <https://www.state.gov/t/avc/rls/rpt/>; and

(ii) No entity owned or controlled by the Offeror has engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available via the internet at <https://www.state.gov/t/avc/rls/rpt/>; or

(2) The Offeror is providing separate information with its offer in accordance with paragraph (d)(2) of this provision.

(c) Procedures for reviewing the annual unclassified report (see paragraph (b)(1) of this provision). For clarity, references to the report in this section refer to the entirety of the annual unclassified report, including any separate reports that are incorporated by reference into the annual unclassified report.

(1) Check the table of contents of the annual unclassified report and the country section headings of the reports incorporated by reference to identify the foreign countries listed there. Determine whether the Offeror or any person owned or controlled by the Offeror may have engaged in any activity related to one or more of such foreign countries.

(2) If there may have been such activity, review all findings in the report associated with those foreign countries to determine whether or not each such foreign country was determined to be in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the United States is a party, or to be not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. For clarity, in the annual report an explicit certification of non-compliance is equivalent to a determination of violation. However, the following statements in the annual report are not equivalent to a determination of violation:

- (i) An inability to certify compliance.
- (ii) An inability to conclude compliance.
- (iii) A statement about compliance concerns.

(3) If so, determine whether the Offeror or any person owned or controlled by the Offeror has engaged in any activity that contributed to or is a significant factor in the determination in the report that one or more of these foreign countries is in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. Review the narrative for any such findings reflecting a determination of violation or non-adherence related to those foreign countries in the report, including the finding itself, and to the extent necessary, the conduct giving rise to the compliance or

adherence concerns, the analysis of compliance or adherence concerns, and efforts to resolve compliance or adherence concerns.

(4) The Offeror may submit any questions with regard to this report by email to NDAA1290Cert@state.gov. To the extent feasible, the Department of State will respond to such email inquiries within 3 business days.

(d) Do not submit an offer unless—

(1) A certification is provided in paragraph (b)(1) of this provision and submitted with the offer; or

(2) In accordance with paragraph (b)(2) of this provision, the Offeror provides with its offer information that the President of the United States has—

- (i) Waived application under U.S.C. 2593e(d) or (e); or
- (ii) Determined under 22 U.S.C. 2593e(g)(2) that the entity has ceased all activities for which measures were imposed under 22 U.S.C. 2593e(b).

(e) *Remedies.* The certification in paragraph (b)(1) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly submitted a false certification, in addition to other remedies available to the Government, such as suspension or debarment, the Contracting Officer may terminate any contract resulting from the false certification.

(End of provision)

[FR Doc. 2018–12848 Filed 6–14–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2018–0001, Sequence No. 3]

Federal Acquisition Regulation: Federal Acquisition Circular 2005–99; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared consistent with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005–99, which amends the Federal

Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–99,

which precedes this document. These documents are also available via the internet at <http://www.regulations.gov>.
DATES: June 15, 2018.
FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the

analyst whose name appears in the table below. Please cite FAC 2005–99 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2005–99

Item	Subject	FAR case	Analyst
* I	Use of Products and Services of Kaspersky Lab (Interim)	2018–010	Francis.
* II	Violations of Arms Control Treaties or Agreements with the United States (Interim)	2017–018	Davis.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–99 amends the FAR as follows:

Item I—Use of Products and Services of Kaspersky Lab (FAR Case 2018–010)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement section 1634 of Division A of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 1634 of this law prohibits the Federal Government’s use on or after October 1, 2018, of hardware, software, and services developed or provided, in whole or in part, by Kaspersky Lab or related entities.

To implement section 1634, the clause at 52.204–23 prohibits contractors from providing any hardware, software, or services developed or provided by Kaspersky

Lab or its related entities, or using any such hardware, software, or services in the development of data or deliverables first produced in the performance of the contract. The contractor must also report any such hardware, software, or services discovered during contract performance; this requirement flows down to subcontractors.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

This interim rule is being implemented as a national security measure to protect Government information and information systems.

Item II—Violations of Arms Control Treaties or Agreements With the United States (FAR Case 2017–018)

This interim rule amends the Federal Acquisition Regulation (FAR) to

implement section 1290 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328, codified at 22 U.S.C. 2593e), which addresses measures against persons involved in activities that violate arms control treaties or agreements with the United States. The interim rule adds a certification provision in each solicitation for the acquisition of products or services (including construction) that exceeds the simplified acquisition threshold, except for solicitations for the acquisition of commercial items.

This interim rule will not have a significant economic impact on a substantial number of small entities.

Dated: June 7, 2018.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

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