



# Legislative Update

MSFC SBELT 18 April 2023



# Topics for Conversation

## ❑ Open FAR Case Updates

- Credit for Lower-Tier Small Business Subcontracting
- Preventing OCI in Federal Acquisition
- Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk

## ❑ Open DFAR Cases Highlight

- Executive Orders & DoD Contracts
- Defense Contract Management Agency (DCMA) & Incurred Cost Settlement

## ❑ Recent Interesting SBA JV Size Protest

# Credit for Lower-Tier Small Business Subcontracting

- The proposed rule published on June 6, 2019, at 84 FR 30071, is withdrawn as of 30 Mar 2023.
- Due to statutory changes, the FAR Council believed credit for lower-tier subcontracting should be accomplished under a new FAR case.

## **AGENCY:**

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

## **ACTION:**

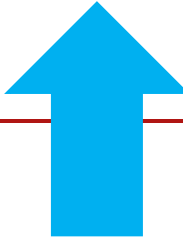
Proposed rule; withdrawal.

## **SUMMARY:**

DoD, GSA, and NASA are withdrawing this proposed rule. The decision not to proceed with a final rule was made because the underlying statute has been changed. Accordingly, this proposed rule is withdrawn, and the FAR case is closed.

# Credit for Lower-Tier Small Business Subcontracting

2023-009	19, 42	(S) Credit for Lower-Tier Subcontracting	Implements section 1614 of the NDAA for FY 2014 (Pub. L. 113-66), as implemented in SBA's final rule published on December 23, 2016 (81 FR 94246), and section 870 of the NDAA for FY 2020 (Pub. L. 116-92) as implemented in SBA's proposed rule published on December 19, 2022 (87 FR 77529), which allows prime contractors to receive credit toward goals in their small business subcontracting plans for subcontracts awarded by their subcontractors.	03/08/2023 DARC Director tasked Acquisition Small Business (FAR) Team to draft proposed FAR rule. Report due 05/03/2023.
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# Preventing OCI in Federal Acquisition

2023-006	9	(S) Preventing Organizational Conflicts of Interest in Federal Acquisition	Implements Pub. L. 117-324 with the exception of paragraph (a)(4) of the statute, as it pertains to agency actions in accordance with their agency-specific procedures. The statute requires amending the FAR to provide and update definitions related to specific types of organizational conflicts of interest (OCI), including unequal access to information, impaired objectivity, and biased ground rules; and updates the procedures at 9.506 to permit contracting officers to take into consideration professional standards and procedures to prevent OCI to which an offeror or contractor is subject.	02/15/2023 DARC Director tasked Acquisition Law Team to draft proposed FAR rule. Report due 04/19/2023.
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*Actions - S.3905 - 117th Congress (2021-2022): Preventing Organizational Conflicts of Interest in Federal Acquisition Act | Congress.gov | Library of Congress*



# Preventing OCI in Federal Acquisition

**Public Law No: 117-324 (12/27/2022)**

**Preventing Organizational Conflicts of Interest in Federal Acquisition Act**

This act addresses conflicts of interest in federal acquisitions.

Specifically, the act directs the Federal Acquisition Regulatory Council to revise the Federal Acquisition Regulation (FAR) to provide and update

- definitions related to specific types of organizational conflicts of interest;
- definitions, guidance, and illustrative examples related to relationships of contractors with public, private, domestic, and foreign entities that may cause contract support to be subject to potential organizational conflicts; and
- illustrative examples of situations related to the potential organizational conflicts identified.

Further, the council must revise the FAR to

- provide executive agencies with solicitation provisions and contract clauses to avoid or mitigate organizational conflicts, for agency use as needed, that require contractors to disclose information relevant to potential organizational conflicts and limit future contracting with respect to potential conflicts with the work to be performed under awarded contracts;
- allow agencies to tailor such solicitation provisions and contract clauses as necessary to address risks associated with conflicts of interest and other considerations that may be unique to the agency;
- require agencies to establish or update agency conflict of interest procedures to implement the revisions to the FAR made under this act and periodically assess and update such procedures as needed to address agency-specific conflict issues; and
- update FAR procedures to permit contracting officers to take into consideration professional standards and procedures to prevent organizational conflicts of interest to which an offeror or contractor is subject.

**LAW**

Hide Overview ✕

**Sponsor:** [Sen. Peters, Gary C. \[D-MI\]](#) (Introduced 03/23/2022)

**Committees:** Senate - Homeland Security and Governmental Affairs

**Committee Meetings:** [05/25/22 11:00AM](#) [03/30/22 11:00AM](#)

**Latest Action:** 12/27/2022 Became [Public Law No: 117-324](#). ([All Actions](#))

**Roll Call Votes:** There has been [1 roll call vote](#)

**Tracker:** 

Introduced

Passed Senate

Passed House

To President

**Became Law**



# Disclosure of Greenhouse Gas Emission and Climate-Related Financial Risk

2021-015

1, 4, 9, 23, 52

Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk

Implements section 5(b)(i) of Executive Order 14030, Climate-Related Financial Risk, which directs the FAR Council to consider amending the FAR to require major Federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk and to set science-based reduction targets.

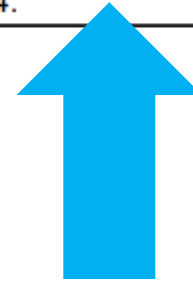
02/24/2023 DARC Director tasked Acquisition Environmental and Contract Management Team to review public comments, draft final FAR rule. Report due 04/19/2023.

- Public Comment Period ended 13 Feb 2023
- OASIS+ Draft RFP No.2 Cover Letter\_06 March, 2023
  - Removed sustainability-related evaluation criteria for OASIS+
  - Removed the post-award Greenhouse Gas (GHG) reporting requirements from OASIS+ UR, remaining in compliance with the current regulatory requirements.



# Open DFAR Cases in 2023

2023-D008	243	(S) Treatment of Certain Clauses Implementing Executive Orders	Implements section 805 of the NDAA for FY 2023 (Pub. L. 117-263) which requires that the unilateral insertion of a clause implementing an Executive Order into an existing Department of Defense contract or order be treated as a change subject to the Changes Clause at FAR 52.243-4.	01/25/2023 DARC Director tasked DFARS Acquisition Environmental & Contract Management Team to draft proposed DFARS rule. Report due 03/15/2023. Report due date extended to 04/26/2023.
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2022-D021	242.302	Contract Administration Office Functions Relating to Direct Costs	This case considers revisions to the DFARS to clarify the role and authority of Defense Contract Management Agency Contract Administration Offices in settling questioned direct costs resulting from incurred cost audits.	03/22/2023 Published final DFARS rule in Federal Register (88 FR 17354). Effective upon publication.
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This rule explicitly allows delegation of authority from the procuring contracting office to the Government contract administration office **to negotiate and settle direct costs questioned in incurred cost audits**





## Small Business Administration's (SBA) Joint Ventures (JVs)

- ❑ We know contractors must comply with the SBA JV regulations, which require certain JVs to have detailed and specific JV agreements.
- ❑ A recent case reminds contractors that failing to comply with **state laws** can cause a JV to be ineligible for a contract award.

In the [Size Appeal of SysCom, Inc.](#), SBA No. SIZ-6195 (Mar. 7, 2023), OHA reversed an SBA Area Office decision finding SNI United, LLC (SNI)—a JV between an 8(a) participant and a small business—eligible for award of an 8(a) contract because SNI did not comply with the state laws of Michigan, SNI's state of organization and because its bylaws allowed its non-8(a) member to exert negative control over SNI.

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