
Defense Department Requires New Bid Representation Regarding Consultants Who Lobby for Chinese Military Companies

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Companies submitting bids or proposals to the Department of Defense (DoD) should be aware of two new representations required in DoD solicitations. The one likely to affect the broadest range of contractors concerns outside consultants who engage in lobbying for companies designated by DoD as Chinese military companies. A second, separate certification concerns whether the contractor itself is a Chinese military company under a different statutory definition.

Under the Defense Federal Acquisition Regulation Supplement (DFARS) 252.240-7995, offerors must represent that neither they nor their parent or subsidiary companies are parties to a contract with a “covered lobbyist.” A covered lobbyist is an entity that engages in “lobbying activities”—broadly defined to include direct lobbying contacts as well as planning, research, and coordination—for a Chinese military company appearing on DoD’s Section 1260H list.

As a result, a contractor may be ineligible for an award if it retains a consultant that separately engages in lobbying activities for a Section 1260H entity—even if the lobbying is unrelated to the contractor’s work. In other words, the restriction turns on who the consultant represents—not why the contractor retained the consultant.

Separate Representation Concerning the Contractor Itself

A separate solicitation provision, DFARS 252.240-7996, requires an offeror to represent that it is not itself a Chinese military company or controlled by one. Unlike the covered-lobbyist representation, this provision relies on a broader statutory definition of “Chinese military company,” which encompasses additional categories of entities beyond those appearing on the Section 1260H list.

The Covered-Lobbyist Safe Harbor

Although the statute provides a safe harbor for contractors that conduct reasonable inquiries, the DFARS provision does not specify what those inquiries must include. In the absence of further guidance, contractors should adopt and consistently apply a documented inquiry process, which may include signed written certifications, questionnaires, or letters asking that consultants disclose any covered lobbying activities by a certain date and notify the contractor promptly if their status changes. Although the DFARS provision does not prescribe any particular methodology, contractors should select an approach that creates a reliable written record of the inquiry process.

Practical Steps

Contractors submitting DoD bids or proposals should confirm the following:

- **Timing:** The inquiry process is complete and documented before submitting any bid or proposal containing the provision
- **Corporate Family:** The process covers the offeror and its parent and subsidiary companies
- **Prioritization:** Higher-risk consultant relationships have been addressed. Larger companies, in particular, may wish to prioritize lobbying firms, large law firms with international or lobbying practices, and PR and public affairs firms
- **Contract Protections:** New and renewed engagement agreements include appropriate representations, notice obligations, and termination rights to allow the contractor to respond promptly if a consultant's status changes
- **Ongoing Monitoring:** The company has a process in place to reassess consultant relationships when the Section 1260H list is updated and before making representations in future offers

Contractors that have already completed and documented their inquiry process should be well positioned to make this new representation. Those that have not should act promptly; the availability of the safe harbor may ultimately depend less on the particular form of the inquiry than on whether the contractor can demonstrate that it conducted a reasonable, well-documented, consistently applied inquiry process.

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