

Fed. Acquisition Security Council

§ 201–1.301

(i) Whether a Federal agency has identified the country as a foreign adversary or country of special concern;

(ii) Whether the source or its component suppliers have headquarters, research, development, manufacturing, testing, packaging, distribution, or service facilities or other operations in a foreign country, including a country of special concern or a foreign adversary;

(iii) Personal and professional ties between the source—including its officers, directors or similar officials, employees, consultants, or contractors—and any foreign government; and

(iv) Laws and regulations of any foreign country in which the source has headquarters, research development, manufacturing, testing, packaging, distribution, or service facilities or other operations.

(6) Implications for government missions or assets, national security, homeland security, or critical functions associated with use of the source or covered article;

(7) Potential or existing threats to or vulnerabilities of Federal systems, programs or facilities, including the potential for exploitability;

(8) Capacity of the source or the U.S. Government to mitigate risks;

(9) Credibility of and confidence in available information used for assessment of risk associated with proceeding, with using alternatives, and/or with enacting mitigation efforts;

(10) Any transmission of information or data by a covered article to a country outside of the United States; and

(11) Any other information that would factor into an assessment of supply chain risk, including any impact to agency functions, and other information as the FASC deems appropriate.

(c) *Foreign Ownership.* Nothing in this section shall be construed to authorize the issuance of an exclusion or removal order based solely on the fact of the foreign ownership of a potential procurement source that is otherwise qualified to enter into procurement contracts with the Federal Government.

(d) *Due Diligence.* As part of the analysis performed pursuant to paragraph (b) of this section, the FASC will conduct appropriate due diligence. Such

due diligence may include, but need not be limited to, the following actions:

(1) Reviewing any information the FASC considers appropriate; and

(2) Assessing the reliability of the information considered.

(e) *Consultation with NIST.* NIST will participate in FASC activities as a member and will advise the FASC on NIST standards and guidelines issued under 40 U.S.C. 11331.

§ 201–1.301 Recommendation.

(a) *Content of recommendation.* The FASC shall include the following in any recommendation for the issuance of an exclusion or removal order made to the Secretary of Homeland Security, Secretary of Defense, and/or Director of National Intelligence:

(1) Information necessary to positively identify any source or covered article recommended for exclusion or removal;

(2) Information regarding the scope and applicability of the recommended exclusion or removal order, including whether the order should apply to all executive agencies or a subset of executive agencies;

(3) A summary of the supply chain risk assessment reviewed or conducted in support of the recommended exclusion or removal order, including significant conflicting or contrary information, if any;

(4) A summary of the basis for the recommendation, including a discussion of less intrusive measures that were considered and why such measures were not reasonably available to reduce supply chain risk;

(5) A description of the actions necessary to implement the recommended exclusion or removal order; and,

(6) Where practicable, in the FASC's sole and unreviewable discretion, a description of the mitigation steps that could be taken by the source that may result in the FASC's rescission of the recommendation.

(b) *Information sharing in the absence of a recommendation:* If the FASC decides not to issue a recommendation, information received and analyzed pursuant to the procedures in this section may be shared, as appropriate, in accordance with subpart B of this part.