



FOREIGN ENTITY VETTING (FEV) PROGRAM

NDTA – October 22, 2018

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Agenda



- Background
- National Authorities
- USTRANSCOM FEV Program
- Questions



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USTRANSCOM FEV Program



- **Background**

- Precursor to the FEV Program was the Theater Express Foreign Flag Subcontractor List. Theater Express was a contract to deliver cargo in the CENTCOM AOR, specifically Iraq
 - U.S.-flag air carriers were prohibited from flying into Iraq, therefore, US-flag air carriers utilized foreign-flag air carriers
- Concerned the external government agencies lists did not encompass all the security threats inherent to foreign-flag air carrier use
 - USTRANSCOM began vetting foreign-flag air carriers to determine if they posed a security threat to Theater Express shipments in 2010
- Provided a list to US-flag air carriers identifying foreign-flag air carriers who posed a security risk and were unsuitable to move Theater Express shipments

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National Authorities



- National Authorities – permit non-use on a Government-wide basis
 - FAR
 - Section 841
 - Department of State
 - Department of Treasury
 - Department of Commerce

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Federal Acquisition Regulation (FAR)



- FAR Subpart 9.1

- Non-responsibility determination is made after the contract award for the prime contractor and can result in a suspension or debarment
 - Standard is present responsibility and focuses on past performance as an indicator of future performance.
 - Adequate financial resources, meet requirements, satisfactory performance record, and satisfactory record of integrity and business ethics
- Prospective prime contractors are responsible for determining the responsibility of their subcontractors
- Used for prime contract awardees
- Limited to each contract, no class responsibility determinations
- Federal Awardee Performance and Integrity Performance Systems (FAPIIS)

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Federal Acquisition Regulation (FAR)



- Suspension/Debarment

- Fraud or crime in connection with a public contract, embezzlement, bribery, false statements, and other offenses affecting present responsibility
- Agency Suspension and Debarment Official (SDO)
 - USTRANSCOM uses Air Force SDO
- Due process
- Listed on System for Award Management (SAM)
 - Formerly Excluded Parties List System (EPLS)
 - <https://www.sam.gov/portal/SAM/#1>

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Section 841



- **Never Contract with the Enemy**

- “actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities”
 - only provides authority to debar or terminate contracts with vendors supporting entities actively opposed to U.S. forces in a defined contingency theater
- Combatant Commanders – AFRICOM, CENTCOM, EUCOM, PACOM, SOUTHCOM, and USTRANSCOM
- SECDEF responsible for sharing info
- Listed in FAPIIS and SAM

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Department of State



- **Foreign Terrorist Organizations (FTOs)**

- Foreign organizations that are designated by the Secretary of State in accordance with section 219 of the Immigration and Nationality Act (INA)
- Means of curtailing support for terrorist activities and pressuring groups to get out of the terrorism business
- Unlawful to knowingly provide "material support or resources" to a designated FTO
- If the Secretary of State, in consultation with the Attorney General and the Secretary of the Treasury, decides to make the designation, Congress is notified of the Secretary's intent to designate the organization and given seven days to review the designation.
- Bureau of Counterterrorism list
 - <https://www.state.gov/j/ct/rls/other/des/123085.htm>

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Department of Commerce



- Lists of Parties of Concern

- Denied Persons List - a list of individuals and entities that have been denied export privileges and any dealings with a party on this list that would violate the terms of its denial order are prohibited.
- Entity List - identifies foreign parties that are prohibited from receiving certain items unless the exporter secures a license. Those persons present a greater risk of diversion to weapons of mass destruction (WMD) programs, terrorism, or other activities contrary to U.S. national security or foreign policy interests.
- Unverified List – ineligible to receive certain items
- Consolidated Screening List
 - <http://apps.export.gov/csl-search#/csl-search>

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USTRANSCOM FEV Program



- FEV Program Mission

- Provides a mechanism to quickly address situations creating risk to U.S. personnel, equipment, and installations from acts of espionage, sabotage, or other intelligence activities
- Stopgap during the period prior to action by established external government agencies (e.g. Departments of Commerce, State, and Treasury), as well as Service counter-intelligence, law enforcement, or contract processes
- Supplements USTRANSCOM's ability to address security threats not addressed by external government agencies or existing authorities (e.g. Section 841/842, Prohibition on Contracting with the Enemy)

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USTRANSCOM FEV Program



- USTRANSCOM Instruction 14-1

- Identify foreign intelligence, terrorist, and criminal control or exploitation of foreign vendors used as prime contractors and/or subcontractors
- Prevent contract dollars from funding foreign intelligence entities (FIE), terrorists, entities engaged in criminal activity, or other entities hostile to the U.S.
- Protect U.S. personnel, equipment, and installations from acts of espionage, sabotage, or other intelligence activities.
- Develop mitigation strategies for use of foreign vendors in support of USTRANSCOM contracts
- Leverage authorities and capabilities of external government agencies (e.g. Departments of Commerce, State, and Treasury), as well as Service counterintelligence and law enforcement organizations to ensure whole-of-government support for the Command's FEV program

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USTRANSCOM FEV Program



- Process

- Requesting prime contractor will complete a Foreign Contractor Information Sheet (FCIS) on each foreign vendor to the satisfaction of the Contracting Officer (CO), IAW contract requirements
 - vetting process will include criminal background information; financial analysis; intelligence, counterintelligence, and law enforcement information; open source, commercial, and classified analysis; and community collaboration
- Multifunctional team – led by TCJ3
- Operational needs are part of the analysis
- Approval authority to determine a foreign entity as unsuitable is the Commander, USTRANSCOM
- Unsuitability determination prohibits a prime contractor from using the foreign entity as a subcontractor

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- Notification

- If an entity is determined as unsuitable by TCCC or is on a national debarment, suspension, or excluded parties listing, the CO will notify the prime contractors. The prime shall then take appropriate action to notify the subcontractor

USTRANSCOM deems the following vendor(s) unsuitable for use on current contracts; [name of vendor]. This determination applies to movements executed under USTRANSCOM programs and does not preclude a vendor from nominating the noted company(ies) for consideration on future USTRANSCOM contracts. However, USTRANSCOM will not reconsider any entity listed in the U.S. Government Consolidated Screening List (see http://export.gov/ecr/eg_main_023148.asp) or otherwise prohibited per Subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation.

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- **Legislative Proposal**

- Expands authority to all Combatant Commands

- Eliminates \$50K threshold

- Expanded definition of “covered entities ” means a person

- engaging in acts of violence against personnel of the United States or coalition forces;
- providing financing, logistics, training, or intelligence;
- engaging in foreign intelligence activities against the United States or against coalition forces;
- engaging in transnational organized crime or criminal activities; or
- engaging in other activities that present a direct or indirect risk to the national security of the United States or coalition force

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- Targeted Contract Approach
 - Requirements based approach to FEV clause inclusion
 - Operation risk analysis to determine the threat

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Conclusion



QUESTIONS

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