The FAR Basic Safeguarding Rule

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Agenda

• Regulatory landscape
• FAR Rule
  • History
  • Requirements
  • Harmonization
  • Subcontract issues
• What’s next?
Regulatory Landscape

• Contractors faced with patchwork of legal requirements
  – FISMA
  – Industry/agency-specific requirements (e.g., DOD, NASA, GSA, DOE)
  – SEC disclosures for material cyber incidents
  – HIPAA requirements
  – FTC treatment of breaches as unfair trade practice
  – State-specific breach notification laws
  – International requirements
  – Private sector requirements (e.g., PCI DSS, subcontract requirements)
The Proposed FAR Safeguarding Rule

• Proposed rule (77 Fed. Reg. 51,496 (Aug. 24, 2012))
  • Done under authority of FISMA
  • Proposed rule intended to be broadly applicable to information systems containing non-public information provided by or generated for the government

• Rule contained security standards applicable to various information security areas:
  • Use of public computers or websites
  • Transmission of electronic information
  • Transmission of voice/fax information
  • Physical and electronic barriers
  • Sanitization
  • Intrusion protection
  • Transfer limitations

• Basis for security controls unclear
The Final FAR Safeguarding Rule

• Effective June 15, 2016 (81 Fed. Reg. 30,439 (May 16, 2016))

• Intended to establish a basic level of safeguarding for all federal government contractors

• “Intent is that the scope and applicability of this rule [will] be very broad.”
  • Prime and subcontract level
  • Commercial items (but not COTS)
  • Small businesses
Applicability

• Applies to contractor information systems that process, store, or transmit “federal contract information”
  • Nonpublic information “that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government”
    • Contract must be for development or delivery of product or services
    • Information need not be

• No marking requirements
Applicability (cont.)

• Information “provided by” the government would include any government-furnished information

• Information “generated for” the government would cover:
  • Any information required by a CDRL
  • Technical data
  • Cost data (labor rates, indirect costs)
  • Project controls reporting/EVMS data

• Does not include “simple transactional information, such as necessary to process payments”
Requirements

• Intended to create a baseline of controls for federal contractors
  • Other controls (e.g., DOD) will overlay

• Imposes 15 different security requirements on contractors
  • Selected from NIST 800-171 “basic and derived” controls
  • Compliance with all 100+ controls not required
  • Controls are static, not cross-referenced to NIST 800-171

• No grace period for implementation; controls mandatory at the time of award
• Required controls:
  • Limit system access to authorized users
  • Limit system access to the types of transactions/functions users are permitted to execute
  • Verify/control/limit connections to external systems
  • Control publicly accessible information
  • Identify users, devices, or processes
  • Authenticate or verify user identifies prior to permitting access to information systems
  • Sanitize or destroy information system media
  • Limit physical access to authorized individuals
  • Escort visitors and monitor visitor activity; maintain audit logs of access
Requirements (cont.)

- Required controls (cont.):
  - Monitor and protect organization communications at external and key internal boundaries
  - Implement subnetworks for publicly accessible system components that are physically/logically separated from internal networks
  - Identify, report, and correct information and information system flaws in a timely manner
  - Protect from malicious code
  - Update malicious code protection mechanisms
  - Perform periodic/real-time scans of information system and files
The FAR Safeguarding Rule – Requirements (cont.)

• Controls do **not** include:
  • Security policies and procedures
  • Training requirements
  • Multi-factor authentication
  • Incident response plans
  • Tracking of incidents internally and externally
  • Control of removable media/prohibition on use of portable storage devices
  • Personnel screening
  • Security assessments
  • Prohibition of password reuse
Relationship to DOD Rule

• DFARS CDI clause requires compliance with all 15 FAR clause requirements
  • Contractors should prioritize implementation of FAR controls in any implementation plan
• FAR rule more limited than DFARS rule
  • No cyber incident reporting
  • No grace period
  • No pre-award representation of compliance/use of alternative approaches
  • No post-award disclosures of non-compliances
  • No broad government audit/access right
Supply Chain Issues

• Prime contractor responsible for flowing down clauses – but who will government hold responsible for incident?

• Possible prime contractor approaches:
  • Conduct some form of system verification through audit
  • Require subcontractor representation of compliance
  • Establish contract mechanisms for system audit rights, NDA and indemnification for breaches/challenges
  • Educate suppliers
  • Flow down clause and do nothing more
Supply Chain Issues (cont.)

• If contractor learns that subcontractor cannot/will not comply with clause requirements, prime should:
  • Find a compliant subcontractor
  • Preclude subcontractor from handling federal contract information (if possible)
  • Identify/document the subcontractor’s security capabilities and ask subcontractor to attest to the adequacy of those capabilities
    • Any other factors showing trustworthiness
    • Confirm prompt reporting is in place
Supply Chain Issues (cont.)

• Subcontractor “avoidance” options:
  • Determine whether you are in fact a subcontractor
  • Assess whether you need/will have federal contract information
  • Attempt to resist inclusion of clause or reach agreement that it is inapplicable
  • Clarify existence of covered defense information (if applicable)
  • Limit/control covered defense information locations (if applicable)

• Self-assess compliance with FAR clause controls and develop implementation plan
  • FAR rule likely the first step
  • “A prudent business person would employ this most basic level of safeguarding, even if not covered by this rule.”
Consequences of Noncompliance

• Source selection impacts
  • *But see Discover Technologies LLC, GAO B-412773*

• Breach of contract
  • Termination for default
  • FCA liability (no express certification currently required)
  • Negative past performance evaluations
  • Declination of options (USIS)
  • Suspension and debarment
Final Considerations

• Know what data/information you have and applicable requirements
• Obtain management buy-in, proactive approach
• Have a plan providing guidance if crisis develops
• Consider supply chain considerations/partner
• Document risk management decisions and compliance efforts
• More developments coming
• Read your contracts!
What’s Next?

• Additional FAR rule forthcoming in conjunction with NARA program for controlled unclassified information (CUI)
  • Final NARA rule (32 C.F.R. Part 2002) confirms that a forthcoming FAR clause will extend the federal CUI security controls to contractors
  • The FAR rule will require contractors dealing with CUI to implement at least some subset of the NIST SP 800-171 controls
  • FAR Council will look to NIST SP 800-171 as source for any mandatory controls for CUI basic and CUI specified information, as established in the CUI Registry
  • The timeline of the forthcoming FAR rule remains uncertain

• Contractors would be wise to prepare a plan for implementation of both the CUI basic and CUI specified controls
Questions?

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