

# GA Supplier Day 2022

## Breakout Session: Regulation Watch

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# Introduction

- Regulation Watch

- Regulation Watch provides a quick refresh on important issues affecting Subcontractor compliance today. We will touch on big changes to the Buy American Act, the increasing importance of Cybersecurity and ongoing customer efforts, industry-wide struggles with the transition from the Data Universal Numbering System (DUNS) to the Unique Entity Identifier (UEI), and review updates to commercial item and service definitions.

# Presenters



## **Megan English** **Contracts Compliance**

Ms. English earned a J.D. from the University of San Diego Law in 2011. She previously ran a Quality Management program for 10 years as a Quality Manager for an Aerospace metals distributor. Some of her responsibilities included compliance, FAR/DFARS flowdown review, terms and conditions review, and lead registrar and third-party audits, to name a few. She now serves as a Contracts Compliance Specialist supporting General Atomics with generating subcontractor flowdowns, terms and conditions and monitoring regulation updates.



## **Cynthia Salazar** **Manager, Purchasing Compliance**

Ms. Salazar has over a decade of experience in government contract compliance. She graduated from San Diego State University with a Bachelors degree in Liberal Studies and has completed certifications in Subcontract Management and Contracts Management. She has held various Compliance and Training roles at General Atomics. She is currently the Purchasing Compliance Manager in the Contracts, Procurement and Proposals Management Organization.

# Agenda

- **Buy American**
  - FAR
  - DFARS
- **Cybersecurity**
- **SAM – DUNS to UEI**
- **Commercial Item Redefined**

# Regulation Watch

Buy American

# Buy American – Federal Acquisition Regulation (FAR)

- **President Biden’s Executive Order 14005, *Ensuring the Future is Made in All of America by All of America’s Workers***
- **Proposed Rule – July 30, 2021**
- **Final Rule – March 7, 2022**
  - Increases domestic content requirement to 60% - **Effective October 25, 2022**
  - Successive increases – 65% in 2024 and up to **75%** by 2029
- **Key Changes**
  - Increase domestic content requirements (% necessary to qualify as “domestic end product”)
  - “Fallback” threshold – if no products that meet the new threshold or unreasonable cost (expires in 2030)
  - Creates a price preference for new “critical” items/components to make and buy in the US
- **US Content rule applies in the year of delivery (except if waived)**

# Buy American - FAR

## • **Clauses Affected**

- FAR 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services
- FAR 52.213-4, Terms and Conditions— Simplified Acquisitions (Other Than Commercial Products and Commercial Services)
- FAR 52.225-1, Buy American— Supplies
- FAR 52.225-2, Buy American Certificate
- FAR 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act
- FAR 52.225-4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate
- FAR 52.225-9, Buy American— Construction Materials
- FAR 52.225-11, Buy American— Construction Materials Under Trade Agreements

## • **The new Rule creates alternates for the clauses at FAR -**

- FAR 52.225-1, Buy American—Supplies
- FAR 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act
- FAR 52.225-9, Buy American— Construction Materials
- FAR 52.225-11, Buy American— Construction Materials Under Trade Agreements

Federal Acquisition Institute has created a five-minute [micro-learning video](#) to help understand the changes which took effect on October 25, 2022.

# Buy American – Defense Federal Acquisition Regulation Supplement

- **Maximizing the Use of American-Made Goods, Products and Materials ([DFARS Case 2019-D045](#))**
- **Implements EO 13881 which calls for more aggressive implementation of the Buy American statute to maximize the Government's procurement of American-made goods, products and materials.**
  - **Threshold increased from 50% to 55%**
  - **Changes to definition of Domestic End Product and Domestic Construction Materials**
    - Maintains the exception for qualifying countries
  - **Adds definition of “steel” and “predominantly of iron or steel or combination of both”**



# Buy American - DFARS

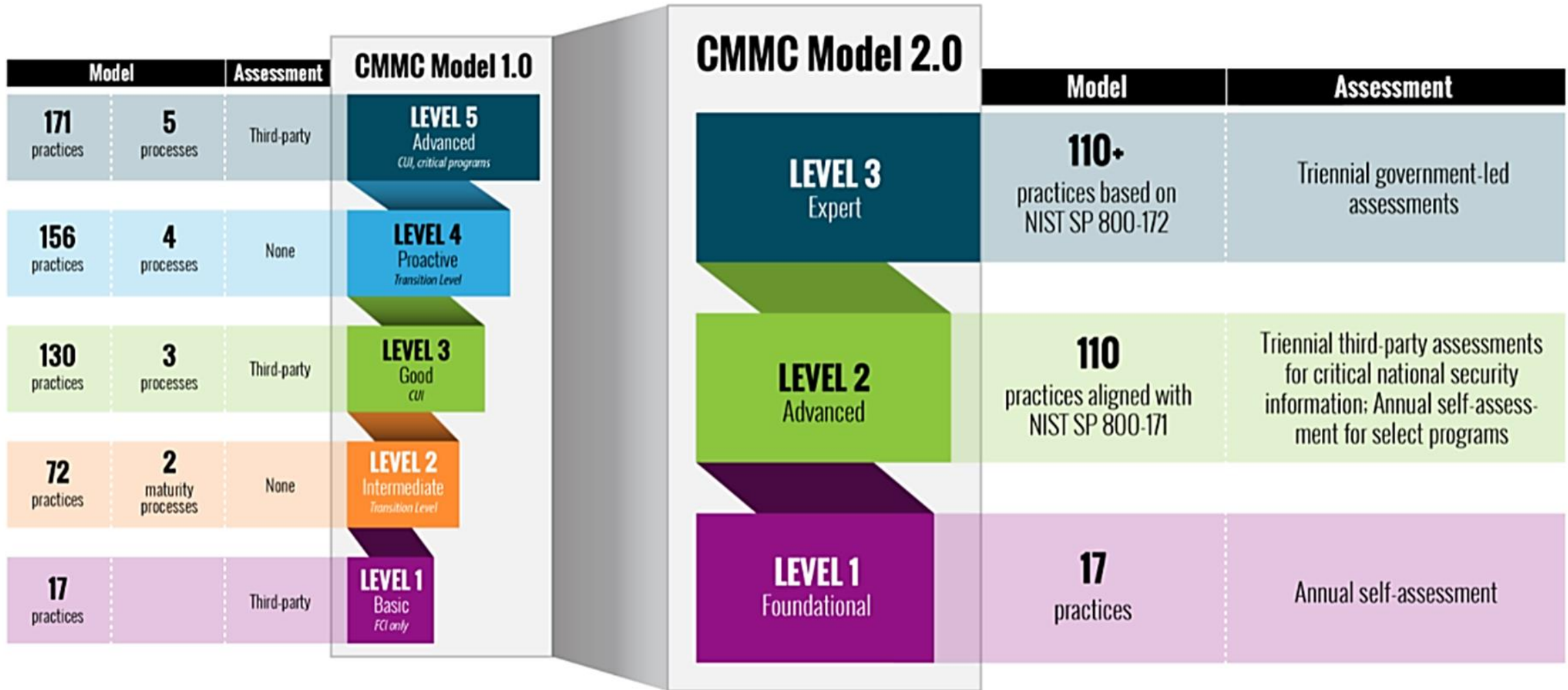
- **Clauses affected**

- DFARS 252.225-7001 Buy American and Balance of Payments Program (Basic & Alt I)
- DFARS 252.225-7036 Buy American – Free Trade Agreements – Balance of Payments Program (Basic & Alts I-V)
- DFARS 252.225-7044 Balance of Payments Program – Construction Material (Basic & Alt I)
- DFARS 252.225-7045 Balance of Payments Program – Construction Material (Basic & Alts I-III)

# Regulation Watch

Cybersecurity

# Cybersecurity Maturity Model Certification (CMMC)



# FY 2022 NDAA Impact Assessment

- **Section 848: REPORT ON CYBERSECURITY MATURITY MODEL CERTIFICATION EFFECTS ON SMALL BUSINESS**
  - Report due by end of June 2022; to include:
    - (1) the estimated costs of complying with each level of the framework;
    - (2) any decrease in the number of small business concerns that are part of the defense industrial base resulting from the implementation and use of the framework; and
    - (3) an explanation of how the Department of Defense will mitigate the negative effects to small business concerns that are part of the defense industrial base resulting from the implementation and use of the framework."

# FY 2022 NDAA Impact Assessment

- **Section 1543: IMPLEMENTATION OF CERTAIN CYBERSECURITY RECOMMENDATIONS; CYBER HYGIENE AND CYBERSECURITY MATURITY MODEL CERTIFICATION FRAMEWORK**
  - Report within 180 days on the Department's plans for the CMMC program, including, among other things: the rulemaking process, communications with industry, reimbursing contractors for the cost of compliance, and the role of prime contractors with respect to the cybersecurity of their subcontractors.
  - The report must address the DoD's plans for reimbursing small and non-traditional defense contractors for the cost of certification and ensuring that companies seeking a DoD contract for the first time are reimbursed for their cost of compliance in the event they are not awarded a contract

# FY 2022 NDAA Impact Assessment

- **Section 1540: ASSESSMENT OF CONTROLLED UNCLASSIFIED INFORMATION PROGRAM**

- Report due by end of June 2022; to include an assessment of the 'DoD CUI Program' and Department of Defense compliance with the responsibilities specified in DoD Instruction (DoDI) 5200.48, 'Controlled Unclassified Information (CUI),' including the following
  - DoDs compliance with marking CUI
  - Recommendations to ensure consistency and clarity in CUI identification
  - Circumstances under which commercial information is CUI and the impacts of such decision
  - The extent to which DoD delineates FCI and CUI
  - Examples of CUI, and scenarios illustrating when information is NOT CUI.

# Next Steps

- **What can I do now?**

- Comply with the NIST SP 800-171 controls; complete outstanding action plans
- Conduct proper flowdown of FAR and DFARS clauses
- Submit your self-assessment scores to the Supplier Performance Risk System (SPRS)
- Secure information wherever it sits
- Pay attention to the Defense Industrial Base Cyber Assessment Center (DIBCAC)
- Undergo a third-party assessment
- Identify information correctly

For more information, visit our Cybersecurity Corner breakout session

# Regulation Watch

SAM: Transitioning from DUNS to UEI



# Transitioning from DUNS to UEI

- **General Services Administration (GSA) transitioned from the Dun & Bradstreet (D&B) Data Universal Number System (DUNS) to the Government-Sponsored Unique Entity Identifier (UEI), effective April 4, 2022**
- **UEI is a 12-character alphanumeric identifier, now owned and managed by the government**
- **Connects agencies and companies throughout federal award lifecycle**
- **Required to do business with the federal government**

# Transition from DUNS to UEI – Problem Central

- **Plagued with registration processing delays**
  - Name changes, address changes, mergers or other transactions, corporate entities with multiple SAM-registered physical locations, foreign entities, older documentation, unregistered DBA names
- **Affecting contractor payments, awards and ability to bid on opportunities**
- **Trouble ticket submissions**
  - Long wait times
  - No response
  - Unable to help

# How BAD is it?

- **House Committee on Oversight and Reform**
  - Letter expressing concern over the delays
  - Requested info on what GSA is doing to fix the issues
  - Find the letter [here](#)
- **DoD issued Class Deviation 2022-O0009**
  - Allows active registration within 30 days of contract award or three days prior to submission of the first invoice
  - Permits COs to include FAR 52.204-7 Alt I in solicitations
  - Find the deviation [here](#)
  - Has not been rescinded

# DUNS to UEI – Key Takeaways

- **Key Takeaways**
  - Update EARLY
    - To be early is to be on time, to be on time is to be late
  - Be prepared with all documentation
  - Give clear descriptions
- **Download a guide and checklist of what documentation to provide [here](#)**

# Regulation Watch

Commercial Item

# "Commercial Item" Redefined

- **FAR Case 2018-018**

- This final rule removes the definition of “commercial item” and replaces it with the definitions of “commercial product” and “commercial service”. The rule makes numerous conforming changes throughout the FAR. The rule implements section 836 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232).
- Effective December 6, 2021

# "Commercial Product" Defined

- **(1) A product, other than real property, that is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes, and–**
  - Has been sold, leased, or licensed to the general public; or
  - Has been offered for sale, lease, or license to the general public;
- **(2) A product that evolved from a product described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;**

# "Commercial Product" Defined

- **(3) A product that would satisfy a criterion expressed in paragraph (1) or (2) of this definition, except for-**
  - Modifications of a type customarily available in the commercial marketplace; or
  - Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. “Minor modifications” means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;



# "Commercial Product" Defined

- **(4) Any combination of products meeting the requirements of paragraph (1), (2), or (3) of this definition that are of a type customarily combined and sold in combination to the general public;**
- **(5) A product, or combination of products, referred to in paragraphs (1) through (4) of this definition, even though the product, or combination of products, is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or**
- **(6) A nondevelopmental item, if the procuring agency determines the product was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments or to multiple foreign governments.**

# "Commercial Service" Defined

- **(1) Installation services, maintenance services, repair services, training services, and other services if–**
  - Such services are procured for support of a commercial product as defined in this section, regardless of whether such services are provided by the same source or at the same time as the commercial product; and
  - The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

# "Commercial Service" Defined

- **(2) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services–**
  - Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
  - Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors; or

# "Commercial Service" Defined

- **(3) A service referred to in paragraph (1) or (2) of this definition, even though the service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.**

# Key Takeaways

- **Commercial Item is no longer defined in the FAR**
  - Effective December 6, 2021
- **Commercial Product has 6 sub definitions**
- **Commercial Service has 3 sub definitions**
- **The definition for “Commercially available off-the-shelf (COTS) items” only had a minor change to replace “commercial item” with “commercial product”**
- **Definitions can be found in FAR 2.101**

# Regulation Watch

Where to learn more

# Where to Learn More

- [Acquisition.gov](https://www.acquisition.gov) - FAR, DFARS, etc.
- [Federalregister.gov](https://www.federalregister.gov) - Daily journal of US Government
- [R46748 \(congress.gov\)](https://www.congress.gov) - Congressional Research Service article on Buy American
- [SAM.gov](https://www.sam.gov) - System for Award Management
- [CISA.gov](https://www.cisa.gov) - Cybersecurity and Infrastructure Security Agency
- [NIST.gov](https://www.nist.gov) - National Institute of Standards and Technology (Cyber)
- [FAI.gov](https://www.fai.gov) - Federal Acquisition Institute (education and Buy American tools)
- [GSA.gov](https://www.gsa.gov) - General Services Administration
- <https://www.dcma.mil/Commercial-Item-Group/>
  - [https://www.dcma.mil/Portals/31/Documents/CIIG/Commercial Product and Service Definition.pdf](https://www.dcma.mil/Portals/31/Documents/CIIG/Commercial_Product_and_Service_Definition.pdf)

# Regulation Watch

Questions



# Questions?



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