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July 22, 2026

Re: FAR Case 2026-001, Docket No. FAR-2026-0001, RIN 9000-AO86, Federal Acquisition Regulation: Revolutionary Federal Acquisition Regulation Overhaul, Part 40

To the Federal Acquisition Regulatory Council:

The Net Effect, LLC ("TNE") respectfully submits the following comments in response to the proposed rule published at FAR Case 2026-001 ("the proposed rule" or "the RFO"). TNE is an information consulting firm specializing in helping members of the Defense Industrial Base ("DIB") meet their contractual security requirements. Many of our clients are small and medium business subcontractors ("SMBs") at Tier 1 and beyond, and it is with their interests in mind that we put forth these comments.

While TNE supports the stated goals of the RFO, we have concerns that the proposed rule as written presents a risk that prime contractors and their subcontractors will continue to unnecessarily shift the compliance burden down the supply chain, especially to SMBs less capable of dealing with that burden. The unforseen consequences of these actions are significant, including the exit of many SMBs from the DIB. Our comments herein are focused on incremental improvements in the text of the proposed rule to address these concerns.

Require Prime Contractors to Evaluate Applicability Before Flowing Down Clauses and Protected Data

Arguably the most significant compliance burden on SMBs in the DIB is the unnecessary flow down of clauses and protected data from prime contractors. Primes routinely use document templates with default markings without reviewing whether the content of the document itself warrants those markings. Further, it is commonplace for primes to share documents with far more data than is warranted for the job at hand.

Flowing down unnecessary, improperly-marked and/or overly-broad documents to subcontractors creates unnecessary strain on the supply chain, since these documents often must be shared with Tier 2 and beyond, creating additional compliance burdens and administrative overhead for these SMBs.

The proposed rule includes an applicability standard for contracting officers, before they impose requirements on a prime contractor (at FAR 40.304-3(b)). We respectfully request that this standard be applied to primes before they impose requirements on their subcontractors.

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Specifically, TNE recommends the FAR Council include implementation guidance directing prime contractors to:

- Evaluate applicability before flowing clauses downstream, consistent with the standard already established at FAR 40.304-3(b);
- Flow down only those requirements necessitated by regulation or by the terms of the prime contract.

Clarify the Content of Flowdowns

TNE supports the proposed Standard Form XXX as a positive step toward a uniform process for identifying Controlled Unclassified Information (“CUI”). However, the flowdown obligation at FAR 52.240-7(g)(2), which requires a prime contractor to provide *“any applicable information within the SF XXX to indicate to the subcontractor what CUI applies to the subcontract”* does not specify a minimum standard of specificity. Without such a standard, a prime contractor could satisfy the letter of paragraph (g)(2) with a general statement that all technical data is considered CUI, rather than the Government's actual CUI identification for that scope of work.

TNE observes this inconsistency in practice today and therefore recommends the final rule clarify that satisfying FAR 52.240-7(g)(2) requires conveying the Government's actual CUI identification for the relevant scope of work. TNE further recommends that the FAR Council require prime contractors to identify the specific requirements applicable to a given subcontract, rather than forwarding complete contract packages.

Targeted flow-downs would improve compliance while reducing administrative burden on both the subcontractor and the prime.

Conclusion

The FAR Council can simplify the FAR itself, but if implementation guidance does not also simplify how prime contractors communicate and flow requirements to their suppliers, the regulatory burden the RFO is intending to eliminate will migrate downstream rather than disappear.

TNE appreciates the opportunity to comment on FAR Case 2026-001 and would welcome the opportunity to provide additional detail on any of the recommendations above.

Respectfully submitted,

Glenda R. Snodgrass
President