

CLIENT ALERT

More Storms Ahead for the Defense Sector Supply Chain? GAO to Conduct Review of Climate Change-Driven Security Risks

May.29.2019

Through a [letter](#) made public earlier this month, the U.S. Government Accountability Office (GAO) accepted a [joint request](#) made by Senators Jack Reed (D-RI, Ranking Member of the Committee on Armed Services) and Elizabeth Warren (D-MA) to perform an investigation of “potential threats to national security resulting from the impacts of climate change on defense contractors and the defense supply chain . . .” The GAO review marks just the latest example of the mounting scrutiny of potential threats to the security of defense contractors and their supply chains, and has the potential to break new ground in the government’s growing efforts to require increasingly heightened levels of oversight on supply chain security by merging such oversight with one of the most politically charged issues of the day.

Scope of the Review and Timeframe for Completion

In requesting that GAO undertake the review, Senators Reed and Warren stressed that “while there has been analysis of the impact of climate change on military facilities, there has been no comprehensive analysis of the risks of climate change on the [global] network of military contractors. . . .” More specifically, the Senators requested an “investigation” into at least the following questions:

1. “To what extent does climate change pose a threat to the facilities and operations of key private sector DoD contractors, and how do contractors’ climate change vulnerabilities affect military operations and readiness?”
2. To what extent are contractors required to disclose . . . any potential threats to their facilities or operations as a result of climate change?
3. To what extent do DoD contracting officials, during the procurement process, take into consideration: (a) the actions taken by contractors to improve energy efficiency and reduce carbon emissions and their history of compliance with the nation’s environmental laws; and (b) the potential threats to contractors’ facilities and operations as a result of climate change?”

The GAO has indicated that it will possess the resources necessary to begin the investigation within the next several months, with the expectation of being able to meet the Senators’ request to be briefed on the results of the review by February 2020.

Reasons to Take Note

- The results and any recommendations flowing from GAO’s review ultimately could serve as the basis for new contract requirements imposed through the DoD’s Defense Federal Acquisition Regulation Supplement (DFARS), and required to be flowed down through the supply chain. This model is well-established, as exemplified most recently by the government’s [ongoing tightening of cybersecurity standards](#)—and the extension of those standards to the supply chain—through the DFARS Safeguarding Clause, DFARS 252.204-7012.

- Determining the appropriate response of the federal government to the range of threats posed by climate change continues to emerge as a central issue for debate in the early stages of the 2020 presidential cycle, and many of the Democratic candidates for president are already competing to position themselves as having the most aggressive platform for climate change regulation. Despite such positioning, the prospects for new, stand-alone climate change legislation likely will remain uncertain at best—even after the 2020 elections. In that scenario, presenting climate change as a risk to national security and addressing through additions to the annual National Defense Authorization Act (NDAA) might offer the most viable path for proponents for a federal response to climate change.
- The portion of GAO’s review that will focus on the disclosure of climate change risks is likely to be particularly troublesome for prime contractors, both with regard to direct risks to their own operations, as well as risks to their supply base. In another parallel to contractors’ cybersecurity challenges, many publicly traded companies continue to struggle with the manner in which climate change risks are disclosed, if at all, in routine filings with the Securities and Exchange Commission (SEC). The nature and quality of those disclosures consistently has been the subject of scrutiny by activists, investors, and even states attorney generals. New disclosure responsibilities imposed through the context of government contracts likely would further complicate the tightrope of climate change disclosures currently navigated by many companies.
- In general, the investigation to be conducted by GAO appears calculated by Senators Reed and Warren to be an initial step toward ultimately driving government contractors and supply base participants to move beyond mere compliance, and, as is being sought with the response to cybersecurity risks emanating from the supply chain more generally, to view the effective assessment, disclosure, and response to climate change-driven security risks as a competitive advantage in the federal defense sector procurement process.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Paul Freeman

Senior Counsel – New York
Phone: +1 212.895.4251
Email: pfreeman@crowell.com

Robert Meyers

Partner – Washington, D.C.
Phone: +1 202.624.2967
Email: rmeyers@crowell.com

Adelicia R. Cliffe

Partner – Washington, D.C.
Phone: +1 202.624.2816
Email: acliffe@crowell.com

Kate M. Growley, CIPP/G, CIPP/US

Partner – Washington, D.C.
Phone: +1 202.624.2698
Email: kgrowley@crowell.com

Peter Eyre

Partner – Washington, D.C.

Phone: +1 202.624.2807

Email: peyre@crowell.com