



Acquisition Letter MV-20-10

8/13/2020

MEMORANDUM FOR THE GSA ACQUISITION WORKFORCE

FROM: JEFFREY A. KOSES, SENIOR PROCUREMENT EXECUTIVE  
OFFICE OF ACQUISITION POLICY (MV)

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SUBJECT: Workforce Guidance on FY2019 NDAA Section 889 “Part B”

**1. Purpose.**

The purpose of this Acquisition Letter (AL) is to provide implementation instructions for the recent interim Federal Acquisition Regulation (FAR) rule (the FAR rule; FAR Case 2019-009) on Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (FY2019) (Public Law 115-232), commonly referred to as “889 Part B”.

This letter:

- (a) [Provides implementing instructions for contracting officers;](#)
- (b) [Explains GSA’s waiver process - \*\*Authority Expired 8/13/2022;\*\*](#)
- (c) [Establishes supplemental waiver procedures for GSA’s emergency acquisitions and real property lease acquisitions - \*\*Authority Expired 8/13/2022;\*\* and](#)
- (d) [Notifies all members of GSA’s acquisition workforce of two new, required training courses specific to 889 Part B.](#)

**2. Background.**

In response to significant national security concerns, as identified in the FAR rule published on July 14, 2020, Congress mandated two prohibitions in Section 889 of the NDAA. The first prohibition, which went into effect on August 13, 2019, prohibited the Federal Government (the Government) from purchasing telecommunications and video surveillance equipment or services manufactured or provided by five named companies and their subsidiaries or affiliates (prohibited telecom)<sup>1</sup>. The five named companies are:

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<sup>1</sup> Section 889 of the NDAA uses the term “covered telecommunications equipment or services.” For ease of understanding, this AL uses the term “prohibited telecom” to mean “covered telecommunication equipment or services.” Section 889 of the NDAA defines “covered telecommunications equipment or services” as: “(A) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (B) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any

Huawei Technologies Company; ZTE Corporation; Hytera Communications Corporation; Hangzhou Hikvision Digital Technology Company; and Dahua Technology Company.

The second, broader prohibition, which takes effect on August 13, 2020, prohibits the Government from entering into a contract (or extending or renewing a contract) with companies that use any equipment, system, or service that uses prohibited telecom as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is obtained or an exception applies.

The FAR rule, published on July 14, 2020, and effective on August 13, 2020, amended the FAR to implement this second prohibition. GSA applied the representation and reporting requirements in the FAR rule to real property lease acquisitions and Commercial Solution Opening procurements (CSOs) via a separate class deviation, [CD-2020-15](#), issued on August 6, 2020, and effective on August 13, 2020. Effective August 13, 2020, the FAR rule and CD-2020-15, taken together, require contracting officers and lease contracting officers (collectively, hereinafter COs) to:

- Include the representation provision at FAR 52.204-24 (AUG 2020) in all solicitations, including solicitations for orders, and the reporting clause at FAR 52.204-25 (AUG 2020) in solicitations for contracts and resultant contracts, including for solicitations issued earlier than August 13, 2020, if award will not be made before August 13, 2020.
- Modify existing indefinite delivery vehicles, including indefinite-delivery-indefinite-quantity contracts (collectively and individually, hereinafter IDVs/IDIQs)<sup>2</sup> to include the reporting clause at FAR 52.204-25 (AUG 2020) prior to placing any future orders.
- Modify existing definite-delivery, otherwise known as stand-alone, non-IDV/IDIQ contracts, including real property lease acquisitions, before extending the period of performance, exercising an option, or renewing the contract.

The representation provision at FAR 52.204-24 (AUG 2020) requires two representations from offerors. The first is regarding whether they will provide prohibited telecom to the Government, and the second is regarding whether they use prohibited telecom, regardless of whether that use is in performance of work under a Federal contract. The reporting clause at FAR 52.204-25 (AUG 2020) requires contractors to report to the CO if they identify prohibited telecom used during contract performance. These disclosures by contractors will drive COs' actions with respect to 889 Part B compliance.

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subsidiary or affiliate of such entities). (C) Telecommunications or video surveillance services provided by such entities or using such equipment. (D) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.”

<sup>2</sup> GSA's IDVs/IDIQs include Federal Supply Schedules (FSS), Government-wide Acquisition Contracts (GWACs), and Multiple-Award Contracts (MACs) contracts.

GSA communications with industry indicate that there may be widespread use of prohibited telecom throughout GSA's industry base. Therefore, this AL provides guidance to COs on how to handle likely scenarios throughout the acquisition lifecycle to best meet mission needs as well as to track mission impact. See Appendix A for additional resources and references, including frequently asked questions. See Appendix B for a matrix to determine representation provision and reporting clause insertion for new solicitations, new contracts, and existing contracts (including real property lease acquisitions).

### **3. Effective Period.**

This AL is effective August 13, 2020, and remains in effect until rescinded, or incorporated into the General Services Administration Acquisition Regulation (GSAR).

### **4. Applicability.**

This AL applies to all GSA contracting activities, including real property lease acquisitions, identified in GSAR part 570, and CSOs, identified in GSAR part 571. GSA contracting activities performing assisted acquisitions shall follow this policy except where identified in section 5 "Requirements".

### **5. Requirements.**

#### **(a) Acquisition Planning.**

- (i) Because 889 Part B applies to all contracts, no matter what supply or service is being acquired, the prohibitions could have a significant impact on the U.S. Federal supply chain.
  - (1) 889 Part B has the potential to disrupt agency missions. Therefore, market research is particularly critical.
  - (2) The acquisition workforce (e.g. COs, Contracting Officer Representatives, and Program and Project Managers) should strive to identify potential suppliers that "do not" use prohibited telecom by making potential suppliers' use of prohibited telecom a core part of market research for all acquisitions.
  - (3) Business lines should update existing market research guidance, tools, and templates to reflect best practices to identify eligible suppliers.
- (ii) If a compliant supplier cannot be identified, the program office and acquisition office should look for other ways to satisfy the requirement, including identifying other acquisition strategies, changing the requirement description, changing the requirement, insourcing, etc.
- (iii) If a compliant supplier cannot be identified, and there are no appropriate alternative procurement methods or ways to satisfy the requirement, the CO may need to be prepared to request a waiver. Review subsection (f) of this section (5) on waivers to understand the complexity involved.

(b) Creating and Updating Solicitations, Including Requests for Quotations (RFQs).

- (i) COs shall include the solicitation-level representation provision at FAR 52.204-24 (AUG 2020) in all new solicitations, including solicitations for orders, issued on or after August 13, 2020.
- (ii) On or after August 13, 2020, prior to placing orders under IDVs/IDIQs (e.g., FSS, GWACs, and MACs), COs shall review the contract to ensure that the reporting clause at FAR 52.204-25 (AUG 2020) has been incorporated in the contract. If the reporting clause at FAR 52.204-25 (AUG 2020) has not been incorporated in the contract, COs shall also include the reporting clause in the RFQ solicitation and resultant order.
  - (1) For FSS contracts, review the contract's current terms and conditions in [Contracts Online](#).
  - (2) For Non-FSS contracts, review contract current terms and conditions at the applicable IDV/IDIQ program website.
- (iii) COs shall include the reporting clause at FAR 52.204-25 (AUG 2020) in all new solicitations for contracts and their resultant contracts, issued on or after August 13, 2020.
- (iv) For solicitations issued before August 13, 2020, but not yet awarded, the CO may either issue an amendment to the solicitation to include the representation provision at FAR 52.204-24 (AUG 2020) or receive the representation from the apparent successful offeror. In either case, the CO must ensure that the reporting clause at FAR 52.204-25 (AUG 2020) is incorporated into the awarded contract.
- (v) COs are not required to include the representation provision at FAR 52.204-24 (AUG 2020) or the reporting clause at FAR 52.205-25 (AUG 2020) in Blanket Purchase Agreements (BPAs), but may do so at their discretion. Orders placed against BPAs are required to include the representation provision and, if necessary the reporting clause, as described above in (b)(ii).
- (vi) Note: A new representation under the provision at FAR 52.204-26, regarding whether entities use prohibited telecom, will be added to the System for Award Management (SAM) via a subsequent FAR rule.<sup>3</sup>

(c) Requirements if the Apparent Successful Offeror Represents That it Will Provide, Uses, or Will Use Prohibited Telecom.

- (i) The prohibition in 889 Part B is a factor for eligibility for award to an offeror, not an evaluation factor for the offeror's proposal/quote. The following procedures apply when an otherwise apparent successful offeror represents that it will provide, uses, or will use prohibited telecom.
- (ii) First, clarify with the apparent successful offeror to make sure that it accurately completed the representation(s). If the offeror did not, advise the offeror to correct and resubmit its representation. If the offeror corrects its submission and no longer represents that it will provide, uses,

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<sup>3</sup> Once the provision at FAR 52.204-26 has been updated, the frequently asked questions available on the Acquisition Portal at <http://insite.gsa.gov/scrm> will be updated accordingly.

- or will use prohibited telecom, the CO may make award to the apparent successful offeror.
- (iii) If the apparent successful offeror confirms that it will provide, uses, or will use prohibited telecom, the CO will need to determine whether or not an existing Office of the Director of National Intelligence (ODNI) waiver or GSA agency-level waiver for the apparent successful offeror exists.
    - (1) GSA will list approved GSA agency-level waivers on the Acquisition Portal at <http://insite.gsa.gov/scrm>.
    - (2) New contracts and orders may be awarded to companies with existing ODNI waivers, pursuant to the terms of the applicable waiver.
    - (3) To determine whether an existing waiver applies, the CO may consult with their acquisition team, technical experts, their management, and request assistance from the SCRM Review Board by contacting [SCRM-Review-Board@gsa.gov](mailto:SCRM-Review-Board@gsa.gov).
  - (iv) If the apparent successful offeror confirms that it will provide, uses, or will use prohibited telecom and an existing waiver does not apply, the CO shall submit a Supply Chain Event Report<sup>4</sup> to the Supply Chain Risk Management (SCRM) Review Board, including, at a minimum:
    - (1) A “critical date,” no less than three business days, for when a response from the SCRM Review Board is requested. The CO may proceed to the next step(s) below if the SCRM Review Board has not responded by the “critical date.”
    - (2) The information provided by the offeror under paragraph (e) of the representation provision at FAR 52.204-24 (AUG 2020).
    - (3) Be aware that the SCRM Review Board may ask for additional information.
  - (v) If the apparent successful offeror confirms that it will provide, uses, or will use prohibited telecom and there is no applicable waiver, the CO will need to determine whether or not an exception applies, if the prohibited telecom is not a substantial or essential component of a system, or if the prohibited telecom is not critical technology as part of any system.
    - (1) The SCRM Review Board will provide to the CO, via response to the Supply Chain Event Report, information as to whether it thinks that award to the apparent successful offeror will result in a violation of either prohibition. If the SCRM Review Board has not responded by the “critical date,” the CO may make a determination without the SCRM Review Board’s input.
    - (2) Resources for assisting the CO in making this determination, based on previous guidance provided by GSA’s SCRM Review Board, will be available on the Acquisition Portal at <http://insite.gsa.gov/scrm>.
    - (3) If, after using such resources, the CO cannot make this determination on their own, the CO should consult with their acquisition team, technical experts, their management, and

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<sup>4</sup> The Supply Chain Event Report is available on the Acquisition Portal at <http://insite.gsa.gov/scrm>.

request additional assistance from the SCRM Review Board by contacting SCRM-Review-Board@gsa.gov.

- (4) If the CO determines that awarding to the apparent successful offeror will not result in a violation of either prohibition, the CO should document the file accordingly and may make an award to the apparent successful offeror.
- (vi) If the CO determines that awarding to the apparent successful offeror will result in a violation, in most cases, the CO should determine that the offeror is not eligible for award and should move to the next offeror in line for award. COs may use language in Appendix C when documenting their determination in the contract file. Repeat these steps until an eligible offeror is found.
- (vii) If, after repeating the above steps, the CO does not identify an eligible offeror, the acquisition team should look to see whether it can identify other acquisition strategies, make partial award, cancel the solicitation, change the requirement description, change the requirement, insource, etc., in accordance with procurement rules to find a source that does not use prohibited telecom.
- (viii) As a last resort, the CO may consider pursuing a waiver for an offeror (see procedures in subsection (f) of this section (5)).

(d) Administering Existing Contracts and Extending Periods of Performance.

- (i) For existing IDVs/IDIQs (including FSS, GWACs, and MACs), on or as soon after August 13, 2020, as possible, the CO shall modify the contract to include the reporting clause at FAR 52.204-25 (AUG 2020).
  - (1) For Government-wide IDV/IDIQ contracts, the IDV/IDIQ Program Manager shall clearly identify to ordering activities (e.g., by updating [Contracts Online](#) for FSS, or updating Program Websites) which contracts have been modified to include the reporting clause at FAR 52.204-25 (AUG 2020).
  - (2) For IDVs/IDIQs, BPAs, and other requisition programs, where orders do not require a solicitation or RFQ, the reporting clause at FAR 52.204-25 (AUG 2020) must be added to the underlying contract before the period of performance of the underlying contract is extended. Orders and BPA “calls” that do not require a solicitation (including an RFQ or a quotation) are not required to include the reporting clause at FAR 52.204-25 (AUG 2020)<sup>5</sup>.
- (ii) For all existing non-IDV/IDIQ contracts, as options to extend periods of performance are exercised, or periods of performance are otherwise extended<sup>6</sup>, all non-IDV/IDIQ contracts, shall be modified to include the reporting clause at FAR 52.204-25 (AUG 2020). The modification should be made with a sufficient amount of time to both provide notice for exercising the option (or otherwise extending the period of performance)

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<sup>5</sup> Examples include 4PL Retail Stores and orders against Global Supply Single-Award BPAs Agreements for the requisition of supplies, Autochoice programs, and the CityPairs Contract.

<sup>6</sup> For example, when using the clause at FAR 52.217-8, Option to Extend Services.

and to provide the contractor with adequate time to comply with the clause. The above process also applies when exercising options to extend periods of performance of orders that were originally awarded before August 13, 2020.

- (iii) If the contractor is unwilling to add the reporting clause at FAR 52.204-25 (AUG 2020), the CO may not exercise the option to extend the contract or order or otherwise extend the period of performance of the contract or order. The CO should identify alternatives (e.g., immediate recompetes) and execute the best alternative that meets the Government's current needs. See the frequently asked questions available on the Acquisition Portal at <http://insite.gsa.gov/scrm> for additional information regarding when an existing contractor will not add the reporting clause at FAR 52.204-25.
- (iv) If the contractor reports use of prohibited telecom, see subsection (e) of this section 5.

(e) Requirements if a Current Contractor Reports Use of Prohibited Telecom.

If the contractor reports that it identified prohibited telecom used during contract performance, pursuant to the reporting clause at FAR 52.204-25 (AUG 2020), the CO shall take the following actions:

- (i) First, clarify with the contractor to make sure that it accurately reported use of prohibited telecom. If the contractor did not, advise the contractor to withdraw its report. If the contractor withdraws its report, document the file accordingly.
- (ii) If the contractor confirms that it identified prohibited telecom used during contract performance, the CO will need to determine whether or not an existing ODNI waiver or GSA agency-level waiver for the contractor exists.
  - (1) GSA will list approved GSA agency-level waivers on the Acquisition Portal at <http://insite.gsa.gov/scrm>.
  - (2) The period of performance of existing contracts and orders with contractors with existing ODNI waivers may be extended, pursuant to the terms of the applicable waiver.
  - (3) To determine whether an existing waiver applies, the CO may consult with their acquisition team, technical experts, their management, and request assistance from the SCRM Review Board by contacting [SCRM-Review-Board@gsa.gov](mailto:SCRM-Review-Board@gsa.gov).
- (iii) If the contractor confirms that it identified prohibited telecom used during contract performance and an existing waiver does not apply, the CO shall submit a Supply Chain Event Report<sup>7</sup> to the SCRM Review Board, including, at a minimum:
  - (1) A “critical date”, no less than three business days, for when a response from the SCRM Review Board is requested. The CO may proceed to the next step(s) below if the SCRM Review Board has not responded by the “critical date”.

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<sup>7</sup> The Supply Chain Event Report is available on the Acquisition Portal at <http://insite.gsa.gov/scrm>.

- (2) The information provided by the offeror under paragraph (d) of the reporting clause at FAR 52.204-25 (AUG 2020).
    - (3) Be aware that the SCRM Review Board may ask for additional information.
  - (iv) If the contractor confirms that it identified prohibited telecom used during contract performance and there is no applicable waiver, the CO will need to determine whether or not an exception applies, if the prohibited telecom is not a substantial or essential component of a system, or if the prohibited telecom is not critical technology as part of any system.
    - (1) The SCRM Review Board will provide to the CO, via response to the Supply Chain Event Report, information as to whether it thinks that continued performance or extension of the contract (or order) will result in a violation of the prohibition. If the SCRM Review Board has not responded by the “critical date”, the CO may make a determination without the SCRM Review Board’s input.
    - (2) Resources for assisting the CO in making this determination, based on previous guidance provided by GSA’s SCRM Review Board, will be available on the Acquisition Portal at <http://insite.gsa.gov/scrm>.
    - (3) If, after using such resources, the CO cannot make this determination on their own, the CO should consult with their acquisition team, technical experts, their management, and request additional assistance from the SCRM Review Board by contacting SCRM-Review-Board@gsa.gov.
    - (4) If the CO determines that continued performance or extension of the contract (or order) will not result in a violation of the prohibition, the CO should document the file accordingly and may continue performance of and/or extend the contract (or order).
  - (v) Normally, if the CO determines that continuing performance of or extending the contract (or order) will result in a violation, the only action required of the CO is to not extend the contract. If stronger action is contemplated (such as contract termination) consult with management and the SCRM Review Board. COs may use language in Appendix C when documenting the contract file with a determination to terminate or cancel the contract (or order) or to not extend a period of performance.
  - (vi) As a last resort, the CO may consider pursuing a waiver for a contractor (see procedures in subsection (f) of this section (5)).
- (f) Requesting a GSA Agency Waiver. - **Authority Expired 8/13/2022**<sup>8</sup>
  - (i) In very limited circumstances, the FAR rule and Section 889 permit GSA to grant a one-time, agency-level waiver for entities (i.e., offerors or contractors) that contract, or wish to contract, with GSA. The FAR rule established agency prerequisites to govern basic eligibility to issue a waiver. GSA has met those prerequisites and is, therefore, eligible to

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<sup>8</sup> Information on ODNI waivers will be posted to the Acquisition Portal at <http://insite.gsa.gov/scrm>, when available.

issue waivers<sup>9</sup>. The waiver process is generally the same for a new award or an existing contract.

- (ii) Waivers should be sought only as a last resort, and therefore, there are only two circumstances in which a GSA CO can pursue a waiver. In either circumstance, the CO must work through the SCRM Review Board.
  - (1) For a new procurement, when there is no other means to make an award in time to avoid mission failure.
  - (2) For on-going contracts, where there is no other means to replace the contractor in time to avoid mission failure.
- (iii) If the CO plans to pursue a waiver, follow the below steps in order. Note that subsections (1)-(8) apply to all waiver requests and that beginning with subsection (9), there are special procedures for emergency acquisition (see subsection (11) below) and for real property lease acquisitions (see subsection (12) below).
  - (1) Review, in accordance with FAR 4.2104(a)(2)(iii), the guidance provided by ODNI that identifies the list of product service codes (PSCs) within ODNI Strategic Supply Chain Security Guidance to determine whether any PSC(s) for the acquisition are “high risk” on the [OMB MAX 889 Guidance Site](#)<sup>10</sup>.
  - (2) Consult with the offeror or contractor to determine whether the offeror or contractor would like to proceed with the waiver process. If the offeror or contractor decides not to proceed with the waiver process, then the CO should follow the procedures in subsections (c)(vii) (for new awards) or (e)(v) (for existing contracts or orders) above.
  - (3) If the offeror or contractor decides to proceed with the waiver process, request the offeror or contractor to provide all of the following (if they have not previously):
    - (a) A full and complete laydown or description of the presence of all covered telecommunications or video surveillance equipment or services in the relevant supply chain in accordance with FAR 4.2104(a)(1). In other words, ask for their inventory of use of prohibited telecom.
    - (b) A phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems in accordance with 4.2104(a)(1). In other words, ask how they plan to stop using the prohibited telecom.
    - (c) If any PSC for procurement is not low risk, the CO shall also request the following information from the offeror or

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<sup>9</sup> For informational purposes, the prerequisites are: (1) GSA must designate a senior agency official for supply chain risk management; and (2) GSA must establish participation in an information-sharing environment when and as required by the Federal Acquisition Security Counsel (FASC).

<sup>10</sup> Prior to downloading this and any other document linked in this policy from OMB MAX, the CO must first request access to the 889 Guidance page on OMB MAX. To do this, visit this link: <https://community.max.gov/x/o9VHg>, then click on the registration link on the left.

contractor regarding the offeror's or contractor's operations, regardless of the products or services being delivered to the Government—

- (i) Information regarding the extent of the offeror's or contractor's involvement in the development of sensitive or critical technologies and/or access to sensitive data<sup>11</sup>; and
- (ii) Information regarding the offeror's or contractor's involvement in critical infrastructure areas or related functions<sup>12</sup>.

(4) Evaluate the information provided by the offeror or contractor to determine in accordance with FAR 4.2104(a)(1) if—

(a) There is a compelling justification to grant the waiver.

Examples of a compelling justification may include any of the following:

- (i) There is no other eligible awardee and the high possibility of mission failure dictates that there is insufficient time to cancel the current procurement and start over.
- (ii) There is insufficient time to initiate a new procurement and there is a high possibility of mission failure occurring before the current period of performance ends.
- (iii) Not issuing a waiver may cause grave harm to GSA or its customer agencies; the CO must explain the grave harm.
- (iv) For real property lease acquisitions, the signed occupancy agreement for leases below prospectus and the signed congressional committee resolution for agreements above prospectus may serve as the compelling justification.

(b) The offeror's or contractor's supply chain laydown and phase-out plan are sufficient for proceeding with the waiver request. Examples of sufficient phase-out plans include:

- (i) A plan that protects the Government from, or mitigates the the effects of, security threats, to the maximum extent practicable for the period of the waiver.
- (ii) A plan that completely eliminates the “use” of prohibited telecom.

(5) After comparing the PSC(s) in the acquisition to ODNI's Supply

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<sup>11</sup> For information on sensitive technologies or sensitive data lists see, the [OMB MAX 889 Guidance Site](#).

<sup>12</sup> For information on critical infrastructure areas or related functions, see the [OMB MAX 889 Guidance Site](#).

Chain Security Guidance<sup>13</sup> described in subsection (1) above--

- (a) If any PSC for the acquisition is identified as a high risk product or service, then the CO shall go directly to subsection (6) below.
  - (b) If none of the PSC(s) for the acquisition are identified as a high risk product or service, the CO may make an assumption that there is no material risk to U.S. national security, and the CO shall skip to subsection (8) below.
- (6) Review the sensitive technologies or sensitive data lists in accordance with FAR 4.2104(a)(2)(iii) on the [OMB MAX 889 Guidance Site](#).
- (a) If the waiver is for an offeror or contractor that is involved in the development of sensitive technology or sensitive data, GSA does not anticipate that the waiver will be granted, and the CO should consider terminating the waiver process.
  - (b) If the waiver is not for an offeror or contractor that is involved in the development of sensitive technology or sensitive data, then the CO shall follow the procedures in subsection (7) below.
- (7) Review ODNI's Critical Infrastructure and Related Functions Best Practices List in accordance with FAR 4.2104(a)(2)(iii) on the [OMB MAX 889 Guidance Site](#).
- (a) If the waiver is for an offeror or contractor that is involved in critical infrastructure areas or related functions, ODNI has advised the CO to use caution in continuing the waiver process. If the CO chooses to continue the waiver process, follow the procedures in subsection (8) below.
  - (b) If the waiver is not for an offeror or contractor involved in critical infrastructure areas nor a related function, then the CO may make an assumption of approval and follow the procedures in subsection (8) below.
- (8) GSA has developed a standard waiver request template and a template congressional notification letter available on the Acquisition Portal at <http://insite.gsa.gov/scrm>. The Acquisition Portal at <http://insite.gsa.gov/scrm> also includes the list of necessary approvals. The CO shall fill out the appropriate waiver template, including drafting the congressional notification letter and obtaining the necessary approvals.
- (9) For emergency acquisitions, skip to subsection (11) below. For real property lease acquisitions and CSOs, skip to subsection (12) below. For all other acquisitions, the CO shall submit the waiver to ODNI and the FASC via the email addresses available on the Acquisition Portal at <http://insite.gsa.gov/scrm>, in accordance with FAR 4.2104(a)(2)(iv).
- (a) If neither ODNI nor the FASC raise additional concerns

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<sup>13</sup> Using this ODNI guidance satisfies the FAR rule's requirement to consult with ODNI.

within 15 days of the CO's submission to them of the waiver, then the waiver is deemed approved by ODNI and the FASC. If either ODNI or the FASC raise additional concerns, these concerns will need to be addressed before the waiver process can continue.

- (b) For pre-award waiver requests, once the waiver has been approved by ODNI and the FASC, award may be made.
- (c) For post-award waiver requests, once the waiver has been approved by ODNI and the FASC, notify the contractor of the terms of the granted waiver and document the contract file accordingly to allow for continued performance or extension of the contract, as applicable.

(10) Once the waiver is approved, the CO shall send the approved waiver and draft congressional notification letter to [GSACongressionalAffairs@gsa.gov](mailto:GSACongressionalAffairs@gsa.gov), who will notify the appropriate congressional committees by a final congressional notification letter no later than 30 days after approval in accordance with 4.2104(a)(4)(ii). For real property lease acquisitions, notification to Congress shall, if applicable, include mention that a tenant relocation will be required.

- (11) For emergency acquisitions under the Stafford Act, waivers may be issued by the Administrator (or designee) on a class basis and may be communicated by the Senior Procurement Executive.
  - (a) Once a class waiver has been granted, the CO may proceed with award and:
    - (i) If the CO determines that it is not practicable to obtain the full and complete laydown prior to making award, the CO must attempt to obtain this laydown within 30 days after award.
    - (ii) If the CO determines that it is not practicable to obtain the phase-out plan prior to making award, the CO must attempt to obtain this plan within 30 days after award.
  - (b) For emergency acquisitions under the Stafford Act, the declaration of major disaster shall constitute the compelling justification.
  - (c) The CO shall notify ODNI and the FASC of the waiver issued under emergency conditions in accordance with subsection (9) above concurrently with the notification to Congress under subsection (10) above.
- (12) For real property lease acquisitions, the CO shall notify ODNI and the FASC<sup>14</sup> of granted waivers concurrently with the notification to Congress under subsection (10).

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<sup>14</sup> The CO shall submit the waiver to ODNI and the FASC via the email addresses available on the Acquisition Portal at <http://insite.gsa.gov/scrm>.

(g) Acquisitions Funded by Another Agency.

- (i) For FAS's assisted acquisitions, where the funding agency is not GSA:
  - (1) Follow the policies of the funding agency.
  - (2) Update Inter-Agency Agreements (IAAs) to address Section 889 of the NDAA and other SCRM issues.
  - (3) If the funding agency does not have a waiver approval process, or does not satisfy the requirements to process waivers, then no agency-level waivers may be initiated. Any waivers issued must align with, and be processed within, the funding agency's process. Waiver approval, processing, and FASC/ODNI/Congress notification is the responsibility of the funding agency unless otherwise identified in the IAA.
  - (4) The Department of Defense issued undated guidance on 889 Part B, which, for example, specifies that all Basic Ordering Agreements and BPAs must be updated to include the reporting clause before any call/order may be placed. DoD Guidance requires completion of the representations required by the provision at 52.204-24 (AUG 2020) by existing contractors before exercising options. Further guidance from the Department of Defense is anticipated.
- (ii) For PBS's Reimbursable Work Authorizations:
  - (1) For work funded by a single customer agency, follow the funding agency's implementation guidance. In the absence of funding agency guidance for the waiver process, follow the GSA guidance regarding whether use is permissible; no agency-level waivers may be initiated.
  - (2) For work funded by multiple customer agencies, or jointly funded by a customer agency and GSA, follow the GSA guidance.

## 6. Workforce Training.

The Federal Acquisition Institute in partnership with the Defense Acquisition University has developed Government-wide training FAC 889, *Section 889: Prohibition on Telecommunication and Video Equipment*. GSA will also create a supplemental training to address GSA-specific guidance outlined in this AL<sup>15</sup>.

All GSA employees with a FAC-C, FAC-COR, FAC-P/PM or LCP certification are required to take the FAI course and the GSA course no later than November 25, 2020.

## 7. Points of Contact.

- Any questions from the GSA acquisition workforce regarding the policy contained in this AL may be directed to [GSARPolicy@gsa.gov](mailto:GSARPolicy@gsa.gov).
- Any questions from the public regarding the FAR rule shall be directed to the Federal Register via regulations.gov with the following instructions:

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<sup>15</sup> Additional details on the GSA-specific training will be available on the Acquisition Portal at <http://insite.gsa.gov/scrm>.

- Submit comments in response to FAR Case 2019–009 via the Federal eRulemaking portal at *Regulations.gov* by searching for “FAR Case 2019–009”. Select the link “Comment Now” that corresponds with FAR Case 2019–009. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2019–009” on your attached document.
- Any media inquiries shall be directed to [press@gsa.gov](mailto:press@gsa.gov).

## **Attachments**

Appendix A – Resources and References

Appendix B – Clause and Provision Checklist

Appendix C – Sample Language Documenting Contract File for Ineligible Awardee/Extension Due to 889 Part B

## MV-20-10 APPENDIX A RESOURCES AND REFERENCES

The following documents are some of the statutes, regulations, and related guidance that govern information and information system security.

- JOHN S. MCCAIN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2019, Public Law 115-232 (available at: <https://www.congress.gov/bill/115th-congress/house-bill/5515/text>)
- FAR Case 2019-009 Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment (available at: <https://www.federalregister.gov/documents/2020/07/14/2020-15293/federal-acquisition-regulation-prohibition-on-contracting-with-entities-using-certain>)
- SCRM FAQ from GSA (available at: <https://insite.gsa.gov/employee-resources/acquisition-purchases-and-payments/acquisition-portal/acquisition-by-topic/prohibited-sources-and-scrm/prohibited-sources-and-scrm-frequently-asked-questions>)
- SCRM Insite Page (available at: <https://insite.gsa.gov/scrm>)
- ODNI's Critical Infrastructure and Related Functions Best Practices List (available at: <https://community.max.gov/pages/viewpage.action?spaceKey=Acquisition&title=Section+889+Guidance+-+Implementation+Page>). This link directs to the MAX landing page for 889. In the box on the right column titled "Strategic Supply Chain Security Guidance" contains the relevant .pdf files. Prior to downloading or viewing this and any other document linked in this policy from OMB MAX, the CO must first request access to the 889 Guidance page on OMB MAX. To do this, visit this link: <https://community.max.gov/x/o9VHg>, then click on the registration link on the left.
- DoD 889 Implementation Memo (available at: <https://www.acq.osd.mil/dpap/policy/policyvault/USA001557-20-DPC.pdf>)
- ODNI Waiver Flow Chart ((available at: <https://community.max.gov/pages/viewpage.action?spaceKey=Acquisition&title=Section+889+Guidance+-+Implementation+Page>). This link directs to the MAX landing page for 889. In the box on the right column titled "Strategic Supply Chain Security Guidance" contains the relevant .pdf files. Prior to downloading or viewing this and any other document linked in this policy from OMB MAX, the CO must first request access to the 889 Guidance page on OMB MAX. To do this, visit this link: <https://community.max.gov/x/o9VHg>, then click on the registration link on the left.
- Class Deviation CD-2020-15 (available at: <http://insite.gsa.gov/node/156283>)
- Class Deviation CD-2019-11 Addendum 1 (available at: <http://insite.gsa.gov/node/146124>)

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## **APPENDIX B PROVISION AND CLAUSE CHECKLIST**

The following provision must be included in new and existing solicitations.

- FAR Provision at 52.204-24 (AUG 2020), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

The following clause must be included in all contracts awarded by GSA on or after August 13, 2020.

- FAR Clause at 52.204-25 (AUG 2020), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

The following clause must be included in all existing contracts and orders, as of August 13, 2020, as options to extend periods of performance are exercised, or periods of performance are otherwise extended.

- FAR Clause at 52.204-25 (AUG 2020), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

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**APPENDIX C**  
**SAMPLE LANGUAGE DOCUMENTING CONTRACT FILE FOR**  
**INELIGIBLE AWARDEE/EXTENSION/TERMINATION/CANCELLATION**  
**DUE TO 889 PART B**

**Instructions:** To use this language, please select your situation from the bold language in bracketed options below, and delete the inapplicable choice as well as the brackets and highlighted “or”. You may change the bold font to normal at your discretion. Note this language may be used for both solicitations/requests for lease proposals and existing contracts.

Pursuant to Public Law No: 115-232, as implemented through FAR 4.2102, the Government is prohibited from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception or waiver applies. [offeror name or contractor name] has [reported or represented] such use and the contracting officer has determined that the use is a substantial or essential component of any system, or as critical technology as part of any system, and that no exception or existing waiver applies. [offeror name or contractor name] is ineligible for [award or contract extension] and the contracting officer is hereby [eliminating the offeror from competition or not extending this contract or terminating (or cancelling) this contract].