February 21, 2020

MEMORANDUM FOR: REGIONAL COMMISSIONERS, PBS
REGIONAL LEASING DIRECTORS
REGIONAL LEASE ACQUISITION OFFICERS

FROM: JOHN D. THOMAS
ACTING ASSISTANT COMMISSIONER FOR OFFICE OF LEASING – PR

SUBJECT: LEASING ALERT (LA-20-01) – Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Replaces LA-19-05)

1. **Purpose.** This Leasing Alert issues revised leasing guidance to implement Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA) for the Public Buildings Service (PBS) leasing program. This new Leasing Alert, which replaces LA-19-05, reflects the following changes to the original policy issued on August 16, 2019.

   a) Revises guidance in response to the *second interim rule* issued under Federal Acquisition (FAR) Case 2018-017, issued December 13, 2019.

   b) Includes charts for clarity (Attachments 1 and 2)

   c) Issues an updated version of FAR provision 52.204-24, “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment” (Attachment 3)

   d) Issues an updated version of General Clause Addendum to the Lease, FAR 52.204-25 and GSAR 552.204-70 (Attachment 4).

2. **Background.**
Section 889(a)(1)(A) of the NDAA prohibits the Federal Government from procuring or obtaining, or extending or renewing, a contract to procure or obtain covered\(^1\) telecommunications equipment and services from several named entities. A first interim rule was issued under Federal Acquisition Regulation (FAR) Case 2018-17 to implement Section 889 (a)(1)(A). In response to this FAR Case, the General Services Administration (GSA) issued Class Deviation CD-2019-11, attached to this Leasing Alert, which provides further implementation guidance, including confirmation that, although real property leases are generally not covered by the FAR, GSA interprets Section 889 of the NDAA to apply to lease acquisitions. On December 13, 2019, a second interim rule (discussed under subparagraph 2.f below), was also issued under FAR Case 2018-017. This Leasing Alert, which replaces LA-19-05, supplements the interim rules and the Class Deviation by providing revised operational guidance specifically for the leasing program.

On August 13, 2019, Section 889(a)(1)(A) of the John S. McCain NDAA went into effect and prohibits the head of an executive agency from procuring or obtaining or extending or renewing a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component\(^2\) of any system, or as critical technology as part of any system.

On August 13, 2020, Section 889(a)(1)(B) of the John S. McCain NDAA goes into effect and prohibits the head of an executive agency from entering into a contract (or extending or renewing a contract) with an entity that uses any equipment, system, or service that uses covered

---

\(^1\) “Covered telecommunications equipment or services” as defined under FAR 52.204-25, means -
(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
(2) 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 subsidiary or affiliate of such entities);
(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of 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.

\(^2\) “Substantial or essential component” as defined under FAR 52.204-25 means any component necessary for the proper function or performance of a piece of equipment, system, or service.
telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

d. **FAR 4.2105(a)**, which was originally issued through a first interim rule under FAR Case 2018-017 “Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment,” requires the representation provision at FAR 52.204-24, entitled “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment,” to be inserted into all solicitations issued on or after August 13, 2019. The provision at FAR 52.204-24 requires offerors to complete a representation that they “[ ] will or [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.” However, GSA interprets this representation to mean the purchasing of covered telecommunication equipment or services by the Government and not ancillary services provided as part of the contract. For leases, the offeror in most cases may be able to answer on the representation form that it is not providing such covered equipment, unless the lease specifically requires that the Lessor provide telecommunications equipment or services. As an example, this representation would not apply to HVAC equipment components. It also would not apply to a Lessor’s pre-existing general building security system. These are considered “ancillary” and are not being provided as requirements under the lease contract. However, this representation would apply to items such as security cameras specifically outlined as a requirement in the lease and to be installed by the Lessor.

e. Additionally, **FAR 4.2105(b)**, originally issued as a part of the same interim rule, requires the reporting clause at FAR 52.204-25, entitled “Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment,” to be inserted into all solicitations and contracts. The clause at FAR 52.204-25 requires contractors that identify covered telecommunications equipment or services used during contract performance to report that information to the Contracting Officer.

f. A second interim rule, issued on December 13, 2019, added a new representation provision (FAR 52.204-26, Covered Telecommunications Equipment or Services – Representation), to be completed by offerors as part of the online Representations and Certifications within the System for
Award Management (SAM). This new representation reflects an annual representation by the entity and applies to the performance of any Government contract. This interim rule also allows for Contracting Officers to rely upon this annual SAM representation; an offeror who responds “does not” to the SAM representation 52.204-26 does not need to complete the representation under FAR 52.204-24 (Attachment 3).

3. **Effective Date.** This Leasing Alert is effective as of the date of issuance unless modified, canceled, or reissued.

4. **Applicability.** This Leasing Alert and its attachments are mandatory and apply to all GSA real property leasing activities and activities delegated by GSA to other Federal agencies.

5. **Cancellation.** Leasing Alert LA-19-05.

6. **Instructions and Procedures.** Guidance concerning implementation of Section 889(a)(1)(A) of the NDAA is as follows:

   a. **RLPs issued on or after the effective date of this Leasing Alert**

   RLP packages must include the FAR representation, 52.204-24, entitled “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment” (Attachment 3). However, completion of this is contingent upon the entity’s response to FAR representation 52.204-26, Covered Telecommunications Equipment or Services.” LCOs or his/her designee must review the online representations and certifications in SAM, including the new FAR representation 52.204-26, Covered Telecommunications Equipment or Services”. **If an offeror responds “does not” to this SAM representation, the offeror does not need to complete the 52.204-24 representation included with the RLP package. If an offeror responds “does” to this representation or has not made any representation in FAR 52.204–26, then the offeror must complete the 52.204-24 representation (Attachment 3).**

   All RLP packages (except for those using the Simplified Model) must also include the updated General Clauses, GSA Forms 3517 or 3517A, dated October 2019, issued via Leasing Alert LA-19-10 (or subsequent versions).
which incorporates the following FAR and GSAR clauses addressing Section 889(a)(1)(A) compliance. [Note that the Simplified Model Lease already incorporates the updated General Clauses within the Lease template.]

- **FAR 52.204-25**, entitled “Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment,” and
- **GSAR 552.204-70**, entitled “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.”

**FAR 52.204-25** and **GSAR 552.204-70** clauses must be included in the lease contract; **FAR representation 52.204-24** (Attachment 3) does not.

b. For RLPs issued prior to the effective date of this Leasing Alert, LCOs or his/her designee should follow the following guidance

1) RLPs issued after August 16, 2019 (the effective date of Leasing Alert LA-19-05) but prior to October 1, 2019 (the effective date Leasing Alert LA-19-10, Revised General Clauses):

The LCO must include the following documents in the solicitation/RLP package:

A) General Clause Addendum to the Lease (Attachment 4) with the following clauses:

- **FAR 52.204-25**, entitled “Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment,” and
- **GSAR 552.204-70**, entitled “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.”

B) FAR representation, **52.204-24**, entitled “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment” (Attachment 3).
Only the Addendum containing FAR 52.204-25 and GSAR 552.204-70 clauses must be included in the lease contract; FAR representation 52.204-24 (Attachment 3) does not.

2) For lease projects, where GSA has issued the RLP as of August 16, 2019 (the effective date of Leasing Alert LA-19-05), but had not issued a request for Final Proposal Revisions (FPR) by that date, the LCO must issue an RLP amendment transmitting the General Clause Addendum (Attachment 4) and FAR representation FAR 52.204-24 (Attachment 3).

All offerors must acknowledge receipt of the RLP amendment, by signing it and returning it, along with both attachments. In addition (if applicable as outlined under the guidance under sub-paragraph 6.a above) offerors must complete and sign the “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment” (Attachment 3). Only the General Clause Addendum (Attachment 4) must be included in the signed lease contract.

3) For lease projects, where GSA has issued the RLP, but FPR were due prior to August 16, 2019 (the effective date of Leasing Alert LA-19-05), the LCO is not required to amend the RLP and reopen negotiations. However, the LCO must transmit the General Clause Addendum (Attachment 4) and FAR representation 52.204-24 (Attachment 3) to the apparent successful offeror.

The apparent successful offeror must acknowledge receipt of the General Clause Addendum. In addition (if applicable as outlined under the guidance under sub-paragraph 6.a above), the apparent successful offeror must complete and sign FAR representation 52.204-24. Only the General Clause Addendum (Attachment 4) must be included in the signed lease contract.

c. For offers received through the Automated Advanced Acquisition Platform (AAAP), the FY20 RLP package has been updated to include the revised Representation (Attachment 3). LCOs will obtain the completed Representation as part of the due diligence process, if applicable, as noted above under sub-paragraph 6.a of this Leasing Alert.

d. Lease extensions or renewal actions
Prior to executing an extension or exercising an option, the LCO must modify the lease to include the General Clause Addendum (Attachment 4). Note that the GSAR representation clause 552.204-70 must be completed by the Lessor.

e. **Steps for an affirmative representation**

If an offeror responds that it “will” be providing covered telecommunications equipment or services under FAR representation 52.204-24, or an existing Lessor responds that it “will” be providing covered telecommunications equipment or services under GSAR representation 552.204-70, then LCOs should take the following actions:

1) Ensure the offeror provides the information as required under subparagraph e of the representation and review for completeness;
2) Submit a [Supply Chain Event Report](http://insite.gsa.gov/scrm) and consult with the supply chain POC listed on [insite.gsa.gov/scrm](http://insite.gsa.gov/scrm);
3) Consult with regional counsel; and
4) Based on consultation, determine whether the proposed use by the contractor violates the prohibition in the FAR, or whether remedial actions should be taken; document the contract file accordingly.

As a general matter, contractors proposing to use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system to be provided under the contract, are not eligible for award unless a waiver is granted (see (f) below). For existing contracts or orders, use normal contract administration enforcement tools to bring the contractor into compliance.

If the apparent successful offeror or an existing Lessor provides a negative response, the contracting officer may rely on the representation unless the LCO has an independent reason to question the representation. In that case, the LCO should consult with the supply chain POC listed on [insite.gsa.gov/scrm](http://insite.gsa.gov/scrm) and assigned legal counsel on how to proceed to ensure that the procurement does not violate the prohibition.

See [GSAM 504.7005](http://insite.gsa.gov/scrm) for more details.

f. **Waivers**
LCOs should consult with the Supply Chain Risk Management (SCRM) Review Board, their assigned legal counsel, and their Head of Contracting Activity (HCA) to determine if a waiver should be requested and submit draft waiver requests to the Senior Procurement Executive (SPE) for review. The SPE will handle Administrator approval.

There is no provision under the NDAA or FAR for a complete waiver, except by the Director of National Intelligence, if the Director determines the waiver is in the national security interests of the United States. Instead, as outlined under FAR 4.2104, the head of an executive agency may, on a one-time basis, waive the prohibition, for a period not to extend beyond August 13, 2021, with the submission of the following:

1) A compelling justification for the additional time to implement the requirements under FAR 4.2102(a), as determined by the head of the executive agency.

2) A full and complete laydown or description of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain and a phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems

The head of the executive agency shall, not later than 30 days after approval, submit to the appropriate congressional committees the full and complete laydown or description of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain and the phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

- **Attachment 1**, FAR/GSAR Provisions and Clauses Chart
- **Attachment 2**, Process Flowcharts
- **Attachment 3**, FAR clause 52.204-24, “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.” (revised December 2019)
- **Attachment 4**, General Clause Addendum to the Lease, FAR 52.204-25 and GSAR 552.204-70.
- **Attachment 5**, Office of Governmentwide Policy Class Deviation CD-2019-11, FAR and GSAR Class deviation – Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
## Attachment 1
### FAR/GSAR Provisions and Clauses Chart

<table>
<thead>
<tr>
<th>FAR Prepresentation 52.204-26</th>
</tr>
</thead>
<tbody>
<tr>
<td>• (New) Representation added to SAM online reps and certs (eff. 12/13/19)</td>
</tr>
<tr>
<td>• To be filled out by new SAM registrants or as part of annual SAM re-registration process</td>
</tr>
<tr>
<td>• &quot;Will&quot; response (or no response): Obtain FAR representation 52.204-24</td>
</tr>
<tr>
<td>• &quot;Will not&quot; response: FAR representation 52.204-24 not necessary</td>
</tr>
<tr>
<td>• Include FAR report in lease file but not in lease contract (incorporated by reference per FAR 52.204-19)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FAR Representation 52.204-24</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Include in all RLP packages (Attachment 3)</td>
</tr>
<tr>
<td>• To be filled out only if offeror responds &quot;will&quot; (or has not responded) to representation 52.204-26 in SAM (eff. 12/13/19)</td>
</tr>
<tr>
<td>• &quot;Will&quot; response: Additional disclosure information required; to be reviewed by GSA SCRM board; consult with legal for next steps</td>
</tr>
<tr>
<td>• Include representation in lease file but not in lease contract (incorporated by reference per FAR 52.204-19)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FAR Clause 52.204-25</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Include in all RLP packages or extension/renewal actions</td>
</tr>
<tr>
<td>• General Clause Addendum (Attachment 4), or</td>
</tr>
<tr>
<td>• Incorporated into General Clauses eff. 10/1/19</td>
</tr>
<tr>
<td>• Include in lease contract/lease amendment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>GSAR Clause 552.204-70</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Include in all RLP packages or extension/renewal actions</td>
</tr>
<tr>
<td>• General Clause Addendum (Attachment 4), or</td>
</tr>
<tr>
<td>• Incorporated into General Clauses eff. 10/1/19</td>
</tr>
<tr>
<td>• For RLPs: representation does not need to be completed</td>
</tr>
<tr>
<td>• Include in lease contract/lease amendment</td>
</tr>
</tbody>
</table>
I have an **existing** lease, CSO, contract, or order.

What must I do to be compliant?

Do you have a lease?

**Yes**

- Mod to include GSAR representation and FAR reporting clauses when extending PoP.

**No**

Do you have a CSO?

**Yes**

- Mod to include GSAR representation and FAR reporting clauses in contract by 12/31/19.

**No**

Do you have an IDV?

**Yes**

- Mod to include GSAR representation and FAR reporting clauses when extending PoP or by 3/31/20, whichever is sooner.

**No**

Do you have an order?

**Yes**

- Is the order under a high risk IDV or for ICT?

**No**

**Yes**

**No further action required.**

**You have an independent contract.**
I have an **existing solicitation** for a lease, CSO, or contract. What must I do to be compliant?

Has solicitation closed?

- Yes: Send the representation provision to the apparent successful offeror(s) before award.
- No: Amend the solicitation.

Did the offeror submit an affirmative representation?

- No: Proceed with the award and include GSAR representation and FAR reporting clauses in resulting contractual instrument.
I have an **existing solicitation** for an order. What must I do to be compliant?

1. Is the order under a high risk IDV or for ICT?
   - Yes: No further action required (regardless of whether the IDV master contract has been modified).
   - No: Proceed with the award.

2. Has solicitation closed?
   - Yes: Send the representation provision to the apparent successful offeror(s) before award.
   - No: Amend the solicitation.

3. Did the offeror submit an affirmative representation?
   - No: Proceed with the award.
I have a **new solicitation** for a lease, CSO, or contract. What must I do to be compliant?

Include FAR representation provision and GSAR representation and FAR reporting clauses in solicitation.

Did the offeror submit an affirmative representation?

- **Yes**
  - Review provided info and fill out Supply Chain Event Report at insite.gsa.gov/scrm.

- **No**
  - Proceed with the award and include GSAR representation and FAR reporting clauses in resulting contractual instrument.
I have a **new solicitation** for an order. What must I do to be compliant?

- Is the order under a high risk IDV or for ICT?
  - Yes: Include FAR representation provision in solicitation.
  - No: No further action required (regardless of whether the IDV master contract has been modified).

- Did the offeror submit an affirmative representation?
  - No: Proceed with the award.
Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment

See instructions within the representation regarding whether or not completion of this form is required. If required, complete appropriate boxes, sign the form, and return form, along with any other required disclosure information, to LCO or his/her designee.

NOTE: The "Offeror," as used on this form, is the owner of the property offered, not an individual or agent representing the owner.

52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (DEC 2019)

The Offeror shall not complete the representation in this provision if the Offeror has represented that it “does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument” in the provision at 52.204-26, Covered Telecommunications Equipment or Services-Representation, or in paragraph (v) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Items.

(a) Definitions. As used in this provision—“Covered telecommunications equipment or services”, “critical technology”, and “substantial or essential component” have the meanings provided in clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibition. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, 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. Contractors are not prohibited from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (https://www.sam.gov) for entities excluded from receiving federal awards for “covered telecommunications equipment or services”.

(d) Representation.

The Offeror represents that—
it □ will, □ will not provide covered telecommunications equipment or services to the
Government in the performance of any contract, subcontract or other contractual instrument
resulting from this solicitation.

(e) Disclosures. If the Offeror has represented in paragraph (d) of this provision that it “will"
provide covered telecommunications equipment or services”, the Offeror shall provide the following
information as part of the offer--

(1) A description of all covered telecommunications equipment and services
offered (include brand; model number, such as original equipment manufacturer (OEM) number,
manufacturer part number, or wholesaler number; and item description, as applicable);

(2) Explanation of the proposed use of covered telecommunications equipment
and services and any factors relevant to determining if such use would be permissible under the
prohibition in paragraph (b) of this provision;

(3) For services, the entity providing the covered
telecommunications services (include entity name, unique entity identifier, and Commercial and
Government Entity (CAGE) code, if known); and

(4) For equipment, the entity that produced the covered telecommunications
equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the
OEM or a distributor, if known).

OFFEROR OR
LEGALLY
AUTHORIZED
REPRESENTATIVE

NAME, ADDRESS (INCLUDING ZIP CODE)

TELEPHONE NUMBER

____________________________________
Signature

____________________________________
Date
52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2019)

(a) Definitions. As used in this clause—

“Covered foreign country” means The People’s Republic of China.

“Covered telecommunications equipment or services” means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) 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 subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of 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.

“Critical technology” means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—
(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or


“Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining or extending or renewing a contract to procure or obtain, 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. The Contractor is prohibited from providing to the Government 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 at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104.

(c) Exceptions. This clause does not prohibit contractors from providing:

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at https://dibnet.dod.mil. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at https://dibnet.dod.mil.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

***

552.204-70 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2019)
(a) **Definitions.** As used in this clause-
“Covered telecommunications equipment or services”, “Critical technology”, and
“Substantial or essential component” have the meanings provided in FAR 52.204-25,
Prohibition on Contracting for Certain Telecommunications and Video Surveillance
Services or Equipment.

(b) **Prohibition.** Section 889(a)(1)(A) of the John S. McCain National Defense
Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an
executive agency on or after August 13, 2019, from procuring or obtaining, or extending
or renewing a contract to procure or obtain, 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. Contractors
are not prohibited from providing-

1. A service that connects to the facilities of a third-party, such as
backhaul, roaming, or interconnection arrangements; or
2. Telecommunications equipment that cannot route or redirect user data
traffic or permit visibility into any user data or packets that such equipment
transmits or otherwise handles.

(c) **Representation.** The Offeror or Contractor represents that it [ ] will or [ ] will not
[Contractor to complete and submit to the Contracting Officer] provide covered
telecommunications equipment or services to the Government in the performance of
any contract, subcontract, order, or other contractual instrument resulting from this
contract. This representation shall be provided as part of the proposal and resubmitted
on an annual basis from the date of award.

(d) **Disclosures.** If the Offeror or Contractor has responded affirmatively to the
representation in paragraph (c) of this clause, the Offeror or Contractor shall provide the
following additional information to the Contracting Officer--

1. All covered telecommunications equipment and services offered or
provided (include brand; model number, such as original equipment
manufacturer (OEM) number, manufacturer part number, or wholesaler number;
and item description, as applicable);

2. Explanation of the proposed use of covered telecommunications
equipment and services and any factors relevant to determining if such use
would be permissible under the prohibition in paragraph (b) of this provision;

3. For services, the entity providing the covered telecommunications
services (include entity name, unique entity identifier, and Commercial and
Government Entity (CAGE) code, if known); and

4. For equipment, the entity that produced the covered
telecommunications equipment (include entity name, unique entity identifier,
CAGE code, and whether the entity was the OEM or a distributor, if known).
(End of clause)
MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

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

SUBJECT: FAR and GSAR Class Deviation - Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

A. Purpose.

GSA supports the Federal Government’s efforts to combat a national security threat posed by certain telecommunications equipment and services identified by Congress in Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (the NDAA). This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) that will accomplish three actions.

First, this class deviation adds to the General Services Administration Acquisition Regulation (GSAR) a requirement for a new annual representation for all GSA contracts, commercial solution opening procurements (CSOs), and lease acquisitions through GSAR Clause 552.204-70.

Second, this class deviation changes the applicability of FAR 4.2105, added through FAR Case 2018-017, under which contractors are required to represent at both the contract and order level whether they will provide covered telecommunications equipment or services to the Government. As a result, certain low and medium risk General Services Administration (GSA) contracts, for which there is a reduced likelihood of covered telecommunications equipment or service being utilized, will require the representation only at the contract level rather than at both the contract and order level.

Finally, this class deviation establishes GSA-specific implementation timelines for new solicitations, for pending awards, and for existing contracts.

B. Background.

The NDAA prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain “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.”
FAR 4.2105(a) was issued through an interim rule for FAR Case 2018-017. It requires the representation provision at FAR 52.204-24 be inserted into all solicitations issued on or after August 13, 2019 and resultant contracts, including solicitations for orders, or notices of intent to place orders, under indefinite delivery contracts.¹

The provision at FAR 52.204-24 requires offerors to complete a representation that they “will [or] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.”²

Additionally, FAR 4.2105(b), issued as a part of the same interim rule, requires the reporting clause at FAR 52.204-25 to be inserted into all solicitations and contracts. The clause at FAR 52.204-25 requires contractors that identify certain covered telecommunications equipment or services provided during contract performance to report information to the contracting officer.

GSA is committed to the most effective and efficient implementation of the prohibitions in Section 889(a)(1)(A) of the NDAA while maintaining its ability to meet its mission and to support the mission needs of Federal agencies across the Government.

This class deviation takes a risk-based approach by: (i) requiring the use of a new representation clause at GSAR 552.204-70 in all existing and new GSA contracts, including existing indefinite delivery contracts, CSOs, and lease acquisitions; (ii) changing the applicability of FAR 4.2105(a)'s order-level representation requirement; and (iii) establishing a GSA-specific implementation timeline for contracting officers to modify existing contracts, recognizing the difficulty associated with modifying over 18,000 indefinite delivery contracts and thousands of non-indefinite delivery contracts. GSA will update this class deviation as necessary.

First, this class deviation requires a new representation clause at GSAR 552.204-70 that applies to all existing and new GSA contracts. This new GSAR representation clause will be included in all existing and new GSA contracts, including existing indefinite delivery contracts, as well as existing task and delivery orders under indefinite delivery order contracts that are not covered by the FAR deviation as they are modified to extend their periods of performance, including the exercise of options, or by March 31, 2020, whichever is sooner. For lease acquisitions, the GSAR representation clause and the FAR reporting clause at FAR 52.204-25 shall be included in all new leases and existing leases as they are modified to extend their periods of performance, including the exercise of options.

Second, this class deviation changes the applicability of FAR 4.2105. Due to the tremendous volume of orders (resulting from notices of intent to place an order or solicitations for an order) flowing through GSA indefinite delivery contracts at this time, and the limited likelihood of prohibited items being involved, GSA is not applying the order-level representation requirement.

¹ Contracting officers are also required to include the provision in solicitations issued before August 13, 2019 where award of the resulting contract occurs on or after August 13, 2019, and in solicitations for an order, or notices of intent to place an order, under indefinite delivery contracts where performance will occur on or after August 13, 2019.
² Covered telecommunications equipment and services is defined at FAR 52.204-25(a).
in FAR 4.2105 to the majority of orders placed under indefinite delivery contracts that have a low or medium risk of including covered telecommunications equipment or services.

For indefinite delivery contracts that have a low or medium risk of including covered telecommunications equipment or services, including single-award indefinite delivery contracts, this class deviation will only require a representation at the contract level, and will not require an additional, duplicative representation from the same contractor at the order level, unless the contracting officer determines that the order could potentially include information technology or communication technology. Contracting officers have full discretion to apply the FAR representation requirement at the order level and shall do so for any order likely to include information technology or communication technology.

Finally, this class deviation tailors the implementation of the representation requirement at FAR 4.2105(a)(2) in order to recognize GSA’s unique Federal Supply Schedule program, multi-agency contracts (MACs), and other Governmentwide indefinite delivery contracting vehicles and the nature of end-of-fiscal-year demands. GSA is also amending the GSAR to apply the same protections to CSOs and lease acquisitions.

As part of the implementation timeline, this class deviation requires that the new GSAR representation clause and the FAR reporting clause be included in all existing GSA indefinite delivery contracts as soon as practicable, and in all cases no later than the first quarter of Fiscal Year 2020.

This risk-based approach is intended to ensure that all GSA contractors follow, and are aware of, the prohibition against supplying covered telecommunications equipment and services. This class deviation will pave the way for proposed changes to the System for Award Management (SAM) and GSA’s implementation of the prohibition in paragraph (a)(1)(B) of Section 889 of the NDAA, which prohibits the Federal Government from entering into, 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, and will be effective on August 13, 2020.

To promote clarity, the effects of this class deviation are discussed in the paragraphs below.

1. GSA’s High Risk Procurements – No FAR Deviation.

The existing representation provision at FAR 52.204-24 will continue to apply to all orders under GSA indefinite delivery contracts that have a high risk of including covered telecommunications equipment or services. Because this class deviation requires all GSA contracts to include the new GSAR representation clause, GSA high risk procurements will include not only the representation provision at FAR 52.204-24 but also the new GSAR representation clause. GSA will amend this class deviation if other high risk GSA procurements are identified. Additional high risk procurements should be brought to the attention of GSA’s Senior Procurement Executive, via the point of contact in Section G (below).
The following are GSA's high risk procurements, to which the FAR deviation does not apply:

- Telecommunications Contracts (Networx, Enterprise Infrastructure Solutions, Connections II, and Local Telecommunications)
- Federal Supply Schedules 36, 58 I, 70, and 84 (or the equivalent SINs under the MAS Reform Structure)
- IT Governmentwide Acquisition Contracts (GWACs) (Alliant 2, Alliant 2 SB, VETS 2, and 8(a) STARS III)
- Commercial Solution Opening Procurements (CSOs)

See Attachment C for additional information about the application of the FAR interim rule and this GSA class deviation to GSA procurement programs.

2. GSA's Medium Risk Procurements -- FAR Deviation, Except for Certain Orders.

For orders under GSA indefinite delivery contracts that have a medium risk of including covered telecommunications equipment or services, the representation provision at FAR 52.204-24 will generally not apply. However, if GSA contracting officers consider there may be potential for information technology or communication technology, they shall include FAR 52.204-24 in the notice of intent to place an order or the solicitation for an order under a medium risk indefinite delivery contract. All GSA contracts will include the new GSAR representation clause.

The following are GSA’s medium risk procurements:

- One Acquisition Solution for Integrated Services (OASIS) and OASIS Small Business
- Human Capital and Training Solutions (HCaTS)
- Building Automation System (BAS) orders under:
  - 03FAC Facilities Maintenance and Management
  - Building Maintenance and Operations (BMO)
  - Other Operations and Maintenance Indefinite Delivery Contracts
  - Repair and Alteration Indefinite Delivery Contracts

See Attachment C for additional information about the application of the FAR interim rule and this GSA class deviation to GSA procurement programs.

3. GSA's Low Risk Procurements -- FAR Deviation, Except for Certain Orders.

All other GSA indefinite delivery contracts are considered to have a low risk of including covered telecommunications equipment or services. For these low risk procurements, the FAR deviation will apply. However, if GSA contracting officers consider there may be potential for information technology or communications technology, they shall include the representation provision at FAR 52.204-24 in the notice of intent to place an order or the solicitation for an order under a low risk indefinite delivery contract. All GSA contracts will include the new GSAR representation clause.

See Attachment C for additional information about the application of the FAR interim rule and this GSA class deviation to GSA procurement programs.
4. GSA's Real Property Lease Acquisitions -- FAR Applies.

GSA interprets Section 889 of the NDAA to apply to leases and extends the requirements of Section 889 of the NDAA to GSA's lease acquisitions via this class deviation.

See Attachment C for additional information about the GSAR change which makes the FAR rule applicable.

5. GSA's Assisted Acquisition Services -- No FAR Deviation.

GSA performs assisted acquisition services in both the Federal Acquisition Service (FAS) and the Public Buildings Service (PBS). When providing assisted acquisitions on behalf of other Federal agencies under FAS programs, GSA contracting officers are required to follow the funding agency's rules. When performing acquisitions on behalf of the Department of Defense (DoD), FAS and PBS contracting officers are required to follow DoD's rules and this FAR deviation will not apply.

See Attachment C for additional information about the application of the FAR interim rule and this GSA class deviation to GSA procurement programs.

C. Applicability.

1. Deviation Implementation.

a. FAR Class Deviation.

The FAR class deviation to the order-level representation requirement at FAR 4.2105(a)(2) applies to GSA orders under GSA indefinite delivery contracts except the following high risk procurements: (1) telecommunications contracts (Networx, EIS, Connections II, and Local Telecommunications); (2) Federal Supply Schedules 36, 58 I, 70, and 84 (or the equivalent SINs under the MAS Reform Structure); (3) IT GWACs (Alliant 2, Alliant 2 SB, VETS 2, and 8(a) STARS III); and (4) CSOs. The FAR class deviation also does not apply to orders under medium or low risk procurements that could potentially include information technology or communication technology. See Attachment A for the FAR deviation text implementing this class deviation.

Note that some Governmentwide users may request order-level representations when placing orders under deviated GSA indefinite delivery contracts. In this case, contractors must comply with ordering agency requirements.

Additionally, when providing assisted acquisitions on behalf of other Federal agencies under FAS programs, GSA contracting officers are required to follow the funding agency's rules. When performing acquisitions on behalf of DoD, FAS and PBS contracting officers are required to follow DoD's rules.

b. GSAR Class Deviation.

The first part of the GSAR class deviation, requiring the inclusion of the representation clause at GSAR 552.204-70 in new and existing contracts, applies to all GSA contracts, including
indefinite delivery contracts, CSOs, and lease acquisitions. The second part of the GSAR class deviation applies the representation and reporting requirements at FAR 4.2105 to CSOs and lease acquisitions. See Attachment B for the GSAR deviation text implementing this class deviation.

2. Implementation Timelines.

a. Representation Provision at FAR 52.204-24.

All new contract-level solicitations, issued on or after August 13, 2019, shall, per FAR 4.2105(a)(1), include the representation provision at FAR 52.204-24.

All new order-level solicitations, issued on or after August 13, 2019, under indefinite delivery contracts not covered by the FAR deviation, shall, per FAR 4.2105(a)(2), include the representation provision at FAR 52.204-24.

For solicitations that were issued prior to August 13, 2019 that have not closed, or awards that have not been made by August 13, 2019, the contracting officer shall either amend the solicitation to include the representation provision at FAR 52.204-24 or incorporate it into the award of the apparent successful offeror.

b. Reporting Clause at FAR 52.204-25.

All contracts awarded on or after August 13, 2019 shall, per FAR 4.2105(b), include the reporting clause at FAR 52.204-25.

All existing indefinite delivery contracts shall, per FAR 4.2105(b), be modified to include the reporting clause at FAR 52.204-25 as soon as practicable, and in all cases no later than the first quarter of Fiscal Year 2020.

All existing non-indefinite delivery contracts and task and delivery orders under indefinite delivery order contracts that are not covered by the FAR deviation, shall, per FAR 4.2105(b), be modified to include the reporting clause at FAR 52.204-25 as they are modified to extend their periods of performance, including the exercise of options, or by March 31, 2020, whichever is sooner.

All existing lease acquisitions shall, per FAR 4.2105(b), be modified to include the reporting clause at FAR 52.204-25 as they are modified to extend their periods of performance, including the exercise of options.

c. Representation Clause at GSAR 552.204-70.

All contracts awarded on or after August 13, 2019 shall include the representation clause at GSAR 552.204-70.

All existing indefinite delivery contracts shall be modified to include the representation clause at GSAR 552.204-70 as soon as practicable, and in all cases no later than the first quarter of Fiscal Year 2020.
All existing non-indefinite delivery contracts and task and delivery orders under indefinite delivery order contracts that are not covered by the FAR deviation, shall be modified to include the representation clause at GSAR 552.204-70 as they are modified to extend their periods of performance, including the exercise of options, or by March 31, 2020, whichever is sooner.

All existing lease acquisitions shall be modified to include the representation clause at GSAR 552.204-70 as they are modified to extend their periods of performance, including the exercise of options.

D. Authority.

This class deviation is issued under the authority of FAR 1.404 and General Services Administration Acquisition Manual (GSAM) 501.404.

This class deviation is issued following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a) and GSAM 501.404(a).

E. Effective Date.

This class deviation is effective on August 13, 2019 and remains in effect until rescinded or incorporated into the GSAR. See Section C.2 for implementation timelines.

F. FAS, PBS, and Office of Administrative Services Guidance.

Upon approval of this class deviation, FAS, PBS, and the Office of Administrative Services will revise applicable policies, such as solicitation and ordering guides, issue implementation guidance, revise contract templates, and provide training, as appropriate, to align with this class deviation.

G. Point of Contact.

Questions regarding this class deviation should be directed to gsarpolicy@gsa.gov.

Attachment A - FAR Deviation Text
Attachment B - GSAR Deviation Text
Attachment C - GSA Program-By-Program Explanation
ATTACHMENT A

FAR Deviation Text

- Additions to baseline made by proposed rule are indicated by [bold text in brackets]
- Deletions to baseline made by proposed rule are indicated by strikethroughs
- Five asterisks (*** *) indicate that there are no revisions between the preceding and following sections
- Three asterisks (**) indicate that there are no revisions between the material shown within a subsection

FAR Baseline: Change 2019-05 effective 08/13/2019

Part 4-Administrative and Information Matters

*****

Subpart 4.21-Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

*****

4.2105 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment—

(1) [i]n all solicitations for contracts, not including— and

(2) Under indefinite delivery contracts, in all notices of intent to place an order; or solicitations for an order [under indefinite delivery contracts ](i.e., subpart 8.4 and 16.505).

*****
ATTACHMENT B

GSAR Deviation Text

- Additions to baseline made by proposed rule are indicated by [bold text in brackets]
- Deletions to baseline made by proposed rule are indicated by strikethroughs
- Five asterisks (****) indicate that there are no revisions between the preceding and following sections
- Three asterisks (***) indicate that there are no revisions between the material shown within a subsection

GSAR Baseline: Change 101 effective 07/17/2019

Part 504-Administrative Matters

****

[Subpart 504.21-Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

504.2101 [Reserved]

504.2102 [Reserved]

504.2103 Procedures.

If an offeror or contractor provides an affirmative response to the representations at, or discloses information in accordance with paragraphs (c) and (d) of, the provision at FAR 52.204-24 or the clause at GSAR 552.204-70, follow the procedures at 504.70.

504.2104 [Reserved]

504.2105 Contract clause.

The contracting officer shall insert the clause at 552.204-70, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations and resulting contracts.]

****

Part 552-Solicitation Provisions and Contract Clauses

****

Subpart 552.2-Text of Provisions and Clauses

****
As prescribed in 504.2105, insert the following clause:

**REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (DATE)**

(a) **Definitions.** As used in this clause—“Covered telecommunications equipment or services”, “Critical technology”, and “Substantial or essential component” have the meanings provided in FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) **Prohibition.** Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, 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. Contractors are not prohibited from providing—

1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) **Representation.** [Contractor to complete and submit to the Contracting Officer] The Offeror or Contractor represents that it [ ] will or [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, order, or other contractual instrument resulting from this contract. This representation shall be provided as part of the proposal and resubmitted on an annual basis from the date of award.

(d) **Disclosures.** If the Offeror or Contractor has responded affirmatively to the representation in paragraph (c) of this clause, the Offeror or Contractor shall provide the following additional information to the Contracting Officer—

1. All covered telecommunications equipment and services offered or provided (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);
2. Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;
(3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and

(4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

(End of clause)

Part 570-Acquiring Leasehold Interests in Real Property

Subpart 570.1-Applicability

(c) The following GSAM provisions apply to acquisitions of leasehold interests in real property. These are in addition to the GSAR requirements identified in 570.101(b).

<table>
<thead>
<tr>
<th>GSAM Applicable to Acquisitions of Leasehold Interests in Real Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>* * *</td>
</tr>
<tr>
<td>[504.21 504.70] * * *</td>
</tr>
</tbody>
</table>

Subpart 570.7-Solicitation Provisions and Contract Clauses

570.701 FAR provisions and clauses.

Include provisions or clauses substantially the same as the FAR provisions and clauses listed below.

<table>
<thead>
<tr>
<th>(a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>For all GSA lease acquisitions...</td>
</tr>
<tr>
<td>52.204-24</td>
</tr>
<tr>
<td>-----------</td>
</tr>
<tr>
<td>52.204-25</td>
</tr>
</tbody>
</table>

(b)]

<table>
<thead>
<tr>
<th>If...</th>
<th>Then include...</th>
</tr>
</thead>
</table>

* * *

570.703 GSAR contract clauses.

* * *

<table>
<thead>
<tr>
<th>[552.204-70</th>
<th>Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.]</th>
</tr>
</thead>
<tbody>
<tr>
<td>* * *</td>
<td></td>
</tr>
</tbody>
</table>

* * * * * *

Part 571-Pilot Program for Innovative Commercial Items

Subpart 571.1-General

571.101 Scope.

* * *

(c) Procurements under the CSO Pilot Program must be compliant with the requirements in this part and the requirements in the GSA Procurement Innovation Resource Center (PIRC) CSO Guide available at https://www.gsa.gov/pirc.

[(d) Procurements under the CSO Pilot Program must be compliant with the requirements at FAR 4.21 and GSAR 504.21.]

* * * * * *
ATTACHMENT C

GSA Program-By-Program Explanation

This attachment provides a description and high-level risk assessment for select General Services Administration (GSA) procurement programs.

A. FAS Programs.


GSA Federal Supply Schedules (FSS) are long-term governmentwide contracts with commercial firms providing Federal, state, and local government buyers access to more than 11 million commercial supplies and services at volume discount pricing. GSA has conducted a preliminary risk assessment of its FSS contracts considering scope, GSAAAdvantage! catalog data, and potential mission impact and critical data compromise. The vast majority of GSA's FSS contracts are considered low risk contracts because they do not involve information technology or communication technology. GSA, however, has identified several schedules as high risk, based on the scope of the schedule's offerings and a review of GSAAAdvantage! product catalog data for potentially prohibited items. Orders under these schedules are more likely to include information technology or communication technology and have a higher likelihood of mission impact or critical data compromise. The schedules identified as high risk are:

- Schedule 36 The Office, Imaging, and Document Solution
- Schedule 58 I Professional Audio/Video Telemetry/Tracking, Recording/Reproducing and Signal Data Solutions
- Schedule 70 General Purpose Commercial Information Technology Equipment, Software, and Services;
- Schedule 84 Total Solutions for Law Enforcement, Security, Facilities Management, Fire, Rescue, Clothing, Marine Craft and Emergency/Disaster Response

In addition, GSA has identified Schedule 03FAC Facilities Maintenance and Management as medium risk based on the scope of offerings. Under Schedule 03FAC, GSA offers a vast array of innovative, customer-focused facilities products and services. Services offered under this schedule include smart building service integration, building management services, commissioning services, elevator maintenance, heating, ventilation, and air conditioning (HVAC) maintenance, electrical maintenance, and fire alarm system maintenance and repair. Given that many of these services may involve building control systems with embedded communications technology and many enabled via the Internet, GSA considers orders placed under Schedule 03FAC medium risk.

2. GSA FAS Office of General Supplies and Services.

a. GSA Global Supply and GSA Retail Operations.

Under the GSA General Supplies and Services Program (Global Supply) and GSA Retail Operations, GSA fulfills hundreds of thousands of requisition orders per year in support of the Department of Defense and other Federal agencies. To the extent possible, GSA pre-positions
contracts and Blanket Purchase Agreements (BPAs), so that orders are placed on a first-pass basis. When there is not a pre-positioned solution in place, however, GSA issues solicitations for individual orders. Under FAR 4.2105(a)(2), this process could result in contractors completing numerous representations per week, greatly disrupting the ordering process, slowing vital product delivery, and increasing costs. These programs are considered low risk because few orders for hardware supplies and office products are likely to involve information technology or communication technology.


The Building Maintenance and Operations (BMO) strategic sourcing solution is a comprehensive and flexible solution covering all high-demand BMO services. It is an open market, multiple-award, indefinite-delivery/indefinite-quantity (IDIQ) contract vehicle supporting the strategic sourcing initiative to reduce costs and drive efficient purchasing by Federal agencies. There are both unrestricted and small business (SB) set-aside programs available in the BMO vehicle to allow for large and small business participation.

The scope of BMO and BMO SB includes the primary services required to provide a total solution to maintain and operate Federal buildings and assets, including building management services, commissioning services, elevator maintenance, heating, ventilation, and air conditioning (HVAC) maintenance, electrical maintenance, and fire alarm system maintenance and repair. Given that many of these services may involve building control systems with embedded communications technology and many enabled via the Internet, GSA considers orders placed under BMO contracts medium risk.

c. GSA Emergency Response and Recovery.

GSA Emergency Response and Recovery provides on-site support to the Department of Homeland Security and other response agencies in all activities related to emergency response operations such as natural disasters, technological emergencies, terrorism consequences, resource shortages, and other disasters. Under this program, GSA fulfills requisition requests, provides assisted acquisition services, and awards GSA contracts and other GSA funded orders in support of customer agencies. Orders placed by GSA for the purpose of fulfilling a Government-to-Government requisition are covered by this class deviation. When buying on behalf of another Federal agency, GSA contracting officers are required to follow the funding agency's rules; this class deviation does not apply to assisted acquisition services.

Generally, GSA purchases recovery related items such as hygiene kits, tents, stoves and office supplies under this program. Since this program does not generally purchase products or services that involve information technology or communication technology, GSA has determined that this program is low risk. Furthermore, requiring representation at the order level would slow the delivery of mission-critical products. Therefore, this class deviation applies to GSA-funded orders awarded using the flexibilities in FAR Subpart 18.2 in support of an emergency declared by the President.
3. GSA Travel, Transportation and Logistics (TTL) Category.

a. GSA Fleet.

As the mandatory source for all non-tactical motor vehicles for the Government worldwide, GSA Fleet owns over 219,000 vehicles and purchases around 45,000 new vehicles each year. GSA Fleet is comprised of various vehicle types including, but not limited to, sedans, station wagons, sport utility vehicles, full & mid-size pickup trucks, full & mid-size vans, ambulances, law enforcement vehicles, school & transport buses, medium and heavy duty trucks, and wrecker & carrier transport vehicles. A high volume of individual vehicle requisitions are placed each year. Risk associated with delivery, cost, and performance is primarily managed at the indefinite delivery contract level. Since order-level representation does not substantially mitigate any additional risk and will significantly impact efficiency and cost sustainability, GSA has categorized GSA Fleet low risk and will only require contractor representation at the indefinite contract level.

GSA Fleet also maintains maintenance control and accident management centers. GSA Fleet executes approximately 1.2 million GSA-funded repair transactions each year, of which only 6,000 cost more than $2,500. The vast majority of these repairs do not involve information technology or communication technology. In fact, since the beginning of 2018, only nine of over two million transactions involved telecommunications (specifically, the installation and removal of law enforcement radio equipment). Furthermore, cameras installed in vehicles are part of a “closed loop system” which means they do not transmit data outside of the vehicle. GSA has categorized repair transaction through GSA Fleet’s maintenance control and accident management centers as low risk. Requiring order level representation would not mitigate additional risk and would unduly burden customer agencies and businesses, most of which are small, providing the repair service. As provided in this class deviation, for those very few instances when information technology or communication technology is involved, the contracting officer will add the order level representation requirement.

b. GSA City Pair.

GSA awards contracts to airlines for Federal employees to travel under the City Pair Program. Under the City Pair Program, delivery, cost, and performance risk is managed at the contract level. Orders under the City Pair Program are transactional in nature and are placed directly by Federal travelers when they purchase a seat on a particular flight. Because Federal travelers place hundreds of thousands of orders every year and risk is primarily managed at the contract level, GSA will leverage the existing framework and require contractor representation at the indefinite delivery contract level only. Representations at the individual flight level are not required by the FAR rule as no order level solicitation is issued.

4. GSA Professional Services and Human Capital (PSHC) Category.

a. GSA SmartPay.

The GSA SmartPay “master” contracts provide for commercial payment services which enable the participating agency to acquire a broad spectrum of products and services from a wide
range of vendors through purchase, travel, and fleet charge accounts. Annual program volume totals more than $30 billion through 100 million transactions.

Representations will not be required for GSA task orders under the master contracts because repetitive representations will not mitigate additional risk and will significantly reduce efficiency and increase costs. The Center for Charge Card Management will ensure contractor bank master contract representations are made available for inspection by GSA SmartPay participating agencies. When placing task orders on behalf of a participating agency, GSA contracting officers are required to follow the participating agency's rules.

b. One Acquisition Solution for Integrated Services (OASIS).

OASIS and OASIS Small Business (OASIS SB) are multiple award, indefinite-delivery/indefinite-quantity (IDIQ) contracts that provide flexible and innovative solutions for complex professional services. The core disciplines within the scope of these contracts include program management, management consulting, logistics, engineering, scientific, and financial services. OASIS and OASIS SB are designed to address agencies' need for a full range of service requirements that integrate multiple professional service disciplines and ancillary services/products with the flexibility for all contract types and pricing at the task order level.

While the scope of these contracts does not directly require the use of telecommunications and video surveillance equipment, OASIS and OASIS SB orders could have small or large ancillary information technology or communication technology components offered to the Government as a part of a total solution. As a result, GSA has categorized orders under OASIS contracts as medium risk.

c. Human Capital and Training Solutions (HCaTS).

HCaTS is comprised of two indefinite-delivery/indefinite-quantity (IDIQ) governmentwide contract vehicles: HCaTS Unrestricted (HCaTS U) and HCaTS Small Business (HCaTS SB). These vehicles provide reliable, flexible, fast, and efficient ways to obtain best-value, customized solutions for human capital management and training requirements. HCaTS services include customized training and development, customized human capital strategy, and customized organizational performance improvement.

While the scope of these contracts does not directly require the use of telecommunications and video surveillance equipment, HCaTS orders could have small or large ancillary information technology or communication technology components offered to the Government as part of a total solution. As a result, GSA has categorized orders under HCaTS as medium risk.

5. Office of Information Technology Category (ITC).

a. Telecommunications Contracts (Networx, Enterprise Infrastructure Solutions, Connections II, and Local Telecommunications).

GSA establishes indefinite delivery contracts for GSA's various telecommunications programs, including Networx, Enterprise Infrastructure Solutions (EIS), Connections II, and Local
Telecommunications. Agencies compete and award orders under each indefinite delivery contract and then place service requests (e.g., to move, add, change, or disconnect phone lines) under the agency orders. Agency orders under these contracts are high risk because they are more likely to include the use of covered telecommunications equipment or services than other GSA contracts. This class deviation, therefore, does not apply to GSA’s telecommunications contracts and for the purposes of FAR 4.2105(a), representations are required both at the contract level and at the agency order level.

Individual service orders or service requests, such as the addition, cancellation, or removal of lines do not result from a separate solicitation. Per the FAR, no representation is required for individual service orders or service requests.

b. IT Governmentwide Acquisition Contracts (Alliant 2, Alliant 2 SB, VETS 2, and 8(a) STARS III).

GSA offers several Governmentwide Acquisition Contracts (GWACs) that allow the Government to buy cost-effective, innovative solutions for IT requirements. Orders under these contracts are high risk because they are more likely to include the use of information technology or communication technology than other GSA contracts and, therefore, have a higher likelihood of mission impact or critical data compromise. This class deviation, therefore, does not apply to these contracts and representations are required at the contract level and at the order level for all GWACs, to include Alliant 2, Alliant 2 SB, VETS 2 and 8(a) STARS III.

6. FAS Technology Transformation Services (TTS) Acquisitions.

The Technology Transformation Service (TTS) mission is to improve the public’s experience with the Government by helping agencies build, buy, and share technology that allows them to better serve the public. TTS is delegated authority to conduct GSA-funded acquisitions and a limited number of assisted acquisitions. Because TTS acquisitions support IT modernization, software development, cloud migration, and other IT-related solutions, this class deviation does not apply to TTS acquisitions unless placing orders under a GSA contract vehicle that is otherwise covered.

When buying on behalf of another Federal agency, TTS contracting officers are required to follow the funding agency’s rules.


GSA has established a pilot program in accordance with Section 880 of the National Defense Authorization Act for Fiscal Year 2017 and GSA Acquisition Manual (GSAM) Part 571 to competitively procure innovative commercial items, technologies, and services using commercial solution opening procurements (CSOs). This program has been implemented outside the normal FAR requirements to engage traditional and non-traditional Government contractors and provide a streamlined approach for acquiring innovative commercial products and services. CSOs are designated as high risk because of the high likelihood that CSOs may involve information technology or communication technology.
B. PBS Programs.

1. Major Construction Projects.

Major construction projects could potentially include the installation of building automation system (BAS) hardware that falls into the category of information technology or communication technology. These projects can number up to thirty per year and are typically procured through individual contracts rather than indefinite delivery contracts. Because there are typically no orders to consider, the standard FAR requirements apply and representations are required at the contract level.


Architect and engineer (A/E) contracts for GSA construction and alteration projects entail development and review of drawings produced by a contractor, supplier, manufacturer, or subcontractor that show how a design is intended to be implemented and installed. A/E services may be provided through independent contracts or indefinite delivery contracts and typically do not involve information technology or communication technology. As such, A/E services are considered low risk. Representations are required at the contract level and for any orders that could potentially include information technology or communication technology.

3. Repair and Alteration (R&A) Projects.

Much of the repair and alteration work in GSA-owned buildings involves tenant improvements, including installation or modification of framing, walls, doors, paint, and carpet and the repair or replacement of specific building systems and components such as roofs, plumbing system equipment and components, or exterior paving. This work does not involve the installation of information technology or communication technology used by tenant agencies. In addition, each tenant agency directly contracts for its own information technology or communication technology.

Most of GSA’s repair and alteration work is accomplished via task orders issued under indefinite delivery contracts. Only a small subset of task orders under these indefinite delivery contracts may involve the installation or repair of building automation system (BAS) systems, heating, ventilation, and air conditioning (HVAC), lighting, fire protection, or elevator systems that may contain information technology or communication technology components. As such, repair and alteration contracts are considered low risk. Representations are required at the contract level and for any orders that could potentially include information technology or communication technology.


Custodial contracts for GSA-owned buildings entail services such as cleaning restrooms and restocking them with supplies, cleaning floors by sweeping, mopping, or vacuuming them, and emptying trash bins. Most of GSA's custodial contracts are with AbilityOne Program providers, for whom a key mission is to provide employment for individuals with disabilities. Landscaping contracts for GSA-owned buildings involve tasks such as mowing, trimming, edging, removing trash, mulching, and weed control. As such, custodial and landscaping services are considered
low risk. Representations are required at the contract level and for any orders that could potentially include information technology or communication technology.

5. Building Operation and Maintenance (O&M) Services.

Each GSA-owned building is operated and maintained via a recurring service contract for preventive and corrective maintenance of electrical systems and equipment, mechanical, plumbing, heating, ventilation, and air conditioning (HVAC) systems and equipment, fire protection and life safety systems and equipment, architectural and structural systems, fixtures, and equipment, landscape irrigation systems, elevator and vertical transportation systems, and roofing.

Operations and maintenance (O&M) services are typically provided through single-award indefinite delivery contracts. If this type of contract is used, GSA normally issues one initial task order under the indefinite delivery contract for performance of routine O&M services and additional task orders for above-standard O&M services. Although above-standard O&M services may be frequent in large buildings, much of this work will be activities that do not involve information technology or communication technology. As such, building O&M services are considered low risk. Representations are required at the contract level and for any orders that could potentially include information technology or communication technology.

If O&M services are acquired through a Blanket Purchase Agreement (BPA) under the 03FAC Schedule, order level representations are required for orders that could potentially include information technology or communication technology, including the procurement of address building control systems with embedded technology.


Under Energy Savings Performance Contracts (ESPCs), agencies can contract with an energy service company to improve energy efficiency in Federal facilities at no direct cost to the Government. Energy service companies finance the capital costs of implementing energy and water conservation measures and receive, in return, a contractually determined share of the cost savings that result. Under Utility Energy Service Contracts (UESCs), agencies contract with regulated utility companies for energy management services that produce measurable energy or water reductions or measurable amounts of demand reduction. Energy conservation measures under both ESPCs and UESCs may include installation or modification of information technology or communication technology, but are considered low risk. Representations are required at the contract level and for any orders that could potentially include information technology or communication technology.


Utility services involve the provision of electricity, gas, water, sewer, and steam services to GSA-owned buildings. GSA has approximately 5,000 accounts for regulated and deregulated utility services. Regulated utilities purchased by GSA are no longer subject to all FAR Part 41
requirements. Regulated and non-regulated utility procurements are low-risk contracts because they normally do not involve information technology or communication technology. Representations, therefore, will not be required for any GSA task orders under areawide contracts because repetitive representations will not mitigate additional risk and will significantly reduce efficiency and increase costs.

8. GSA Leases.

GSA holds 8,100 real property leases. About half (185 million square feet) of GSA's building space is leased. GSA's lessors do not provide information technology or communication technology (e.g., building automation system (BAS) or video surveillance service) directly to the government as part of the lease, but they may be required by the lease to provide WiFi service or other information technology or communication technology to GSA in GSA-leased space, which adds a degree of risk to leases. In addition, GSA occasionally exercises an option to purchase a leased building, which could include BAS components. Lease acquisitions do present some risk in this area, and GSA extends the requirements of Section 889 of the NDAA to GSA's lease acquisitions its class deviation to mitigate this risk.

9. GSA Leasing Support Services (GLS).

Under the GSA Leasing Support Services (GLS) Program, GSA has established multiple-award indefinite delivery contracts with leasing brokers to provide leasing support services (e.g., market surveys, site visits, document preparation, negotiation) for GSA's lease contracting officers. Almost 350 task orders are issued under these contracts each year. The services provided under these task orders do not typically involve information technology or communication technology and are, therefore, low risk. Representations are required at the contract level and for any orders that could potentially include information technology or communication technology.

---

3 FAR and GSAM Class Deviation - Streamlined Procedures for Acquiring Utility Services from Regulated Utilities, Class Deviation 2019-06.