



August 24, 2020

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

FROM: JOHN D. THOMAS DocuSigned by:
John D. Thomas
843ABD9FD7914DC
ACTING ASSISTANT COMMISSIONER FOR OFFICE OF
LEASING – PR

SUBJECT: LEASING ALERT (LA-20-11) – Prohibition on Contracting for
Certain Telecommunications and Video Surveillance
Services or Equipment (Replaces LA-20-01)

1. **Purpose.** This Leasing Alert issues leasing guidance for implementation of Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232) for the Public Buildings Service (PBS) leasing program. This Leasing Alert replaces LA-20-01, issued on February 21, 2020.
2. **Background.**
 - a. Section 889(a)(1)(A) of the NDAA (“Part A”) prohibits the Federal Government from procuring or obtaining, or extending or renewing a contract to procure or obtain, covered telecommunications equipment or services¹. A [first interim](#)

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.

- [rule](#) for Part A was issued under Federal Acquisition Regulation (FAR) Case 2018-17 to implement Part A effective August 13, 2019. In response to [Class Deviation CD-2019-11](#), which, among other things, confirmed that this prohibition applied to lease acquisitions, the Office of Leasing (OL) issued implementation guidance under Leasing Alert LA-19-05. On December 13, 2019, a [second interim rule](#) addressing Part A was also issued under FAR Case 2018-017, resulting in a replacement Leasing Alert, LA-20-01, issued February 21, 2020. This second interim rule added a new Part A representation provision, FAR 52.204-26, to be completed by offerors as part of the online representations and certifications within the System for Award Management (SAM). This representation reflects an annual representation for Part A at the entity level and applies to the performance of any Government contract. As a result, it removed the need for the GSAR representation clause at 552.204-70 issued under CD-2019-11.
- b. Section 889(a)(1)(B) (“Part B”) of the NDAA for FY2019 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 telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. A [first interim rule \(Part B\) Federal Acquisition Regulation \(FAR\) Case 2019-009](#) was issued to implement Part B, effective August 13, 2020. To further implement this FAR rule, GSA’s Office of Government-wide Policy (OGP) issued the following:
- i. [Class Deviation CD-2020-15](#), issued August 6, 2020, which, among other things, confirms that the Part B prohibition also applies to lease acquisitions (See Attachment 6)
 - ii. Class Deviation CD-2019-11 Addendum 1, issued August 12, 2020, revising GSA’s implementation of the FAR rule on Section 889 Part A (See Attachment 7). One primary result of the Addendum is the elimination of GSAR clause 552.204-70, which has since been replaced by the online SAM FAR provision 52.204-26 described above.
 - iii. Acquisition Letter MV-20-10, issued August 13, 2020, providing agency-wide implementation guidance for this [Part B FAR rule](#) (See Attachment 8).
- c. The provision at FAR 52.204-24, updated August 2020, includes the following two representations:

- (d)(1) - “It [] 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;” and
- (d)(2) - “It [] does, [] does not *use* covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.”

[FAR 4.2105\(a\)](#)(1) requires this updated FAR 52.204-24 provision to be included in all solicitations for contracts. Offerors/lessors are required to complete the representations as outlined in the Instructions and Procedures below.

GSA interprets the *first* representation, FAR 52.204-24(d)(1), to not apply to ancillary services provided as part of the contract. For leases, the offeror 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 equipment, systems, or services that contain telecommunications equipment or services. As an example, this (d)(1) representation would not apply to a lessor’s pre-existing general building security system, unless providing general building security equipment or services to the Government is specifically required by the Lease. Unless specifically required to be provided to the Government by the Lease, these are considered “ancillary” and are not being provided to the Government as requirements under the lease contract. However, the (d)(1) representation would apply to items such as security cameras specifically outlined as a requirement in the lease and to be installed by the Lessor. Note that this narrower interpretation for the first, (d)(1), representation does not apply to the second, (d)(2), representation with respect to “use.”

The term “Offeror” will continue to refer to only the entity that would execute the lease contract, and not any affiliates, subsidiaries, or parent companies of the entity.

- d. Additionally, [FAR 4.2105\(b\)](#) requires the updated reporting clause at FAR 52.204-25, which was amended as part of the same interim rule, to be included in all solicitations and resultant contracts. For existing leases (awarded on or before August 12, 2020), this clause is required to be added to the lease contract when the period of performance of the lease is extended (extensions or renewals).

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.

3. **Effective Date.** This Leasing Alert is effective as of August 13, 2020 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-20-01.
6. **Instructions and Procedures.** Guidance concerning implementation of Sections 889(a)(1)(A) and 889(a)(1)(B) of the NDAA are as follows:
 - a. Acquisition Planning: As outlined in Acquisition Letter MV-20-10, LCOs or their designees should take appropriate steps to include consideration of 889 prohibitions as early as possible in the lease procurement process. This includes:
 - For expiring leases, extensions and renewals, confirming with an incumbent lessor whether or not a potential Section 889 prohibition exists as part of the preliminary due diligence process (for example, once SAM is updated, checking the lessor's FAR 52.204-26 representations in SAM)
 - Communicating the section 889 prohibitions to potential offerors as part of market outreach/survey process.
 - b. For lease projects, where GSA has not issued an RLP as of the effective date of this Leasing Alert, the LCO must include the following two (2) documents in the RLP/Lease package:
 - 1) FAR representation 52.204-24 dated August 2020, entitled Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment" (Attachment 1). As stated above, this is a two-part representation to address Parts A and B of Section 889.
 - SAM currently includes an online representation (FAR 52.204-26) that, for now, only addresses the first representation (Part A) at the entity level. SAM is expected to be updated in the future to reflect

the second representation (Part B). If an offeror responds “does not” to the SAM online representation (Part A), the offeror does not need to complete the first, (d)(1), of the two representations under 52.204-24. If an offeror responds “does” to this representation or has not made any representation in FAR 52.204–26, then the offeror must complete (d)(1) of the 52.204-24 representation. Until the second (Part B) representation is added to the SAM online representations and certification, the offeror must always complete the second, (d)(2), representation under FAR 52.204-24. Once the Part B representation is added to the SAM online representation 52.204-26, the offeror will not need to complete either of the representations under FAR 52.204-24 if they respond “does not” to both of the Part A and Part B representations in SAM.

- Note that the offeror’s FAR representation 52.204-24, if completed as outlined above, must be in the lease file. The offeror’s representation under FAR 52.204-26, similar to the offeror’s other online representations and certifications in SAM, must be downloaded for inclusion in the lease file. Do not attach either the FAR 52.204-24 representation or the SAM online representations to the lease contract itself as these are incorporated by reference via FAR clause 52.204-19 (General Clauses).
- 2) Updated General Clauses (GSA Form 3517A and 3517B) dated August 2020 (Attachments 2 and 3), each of which includes the August 2020 version of FAR clause 52.204-25, entitled “Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.”

The General Clauses containing the updated FAR Clause 52.204-25 must be included in the signed lease contract.

- c. For lease projects, where GSA has issued the RLP, but has not issued a request for Final Proposal Revisions (FPR) as of the effective date of this Leasing Alert, the LCO must issue an RLP amendment transmitting both the revised representation FAR provision at 52.204-24 dated August 2020 (Attachment 1) and the revised General Clauses dated August 2020 which includes the updated FAR clause 52.204-25 (Attachments 3 or 4).

All offerors must acknowledge receipt of the RLP amendment, by signing it and returning it, along with both attachments. Offerors must complete and sign the FAR 52.204-24 “Representation Regarding Certain

Telecommunications and Video Surveillance Services or Equipment” as applicable (see sub-paragraph 6.b above). Include the updated General Clauses in the lease contract. Do not include the FAR representation 52.204-24 or the SAM online representations and certifications in the lease contract; however, these representations must be kept as part of the lease file documentation.

- d. For lease projects, where GSA has issued the RLP, but Final Proposal Revisions (FPR) were due prior to August 13, 2020, the LCO is not required to amend the RLP and reopen negotiations. However, the LCO must transmit the following to the apparent successful offeror:
- Revised FAR representation, 52.204-24, entitled “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment” dated August 2020 (Attachment 1)
 - Revised General Clauses (GSA Form 35217A or 3517B) dated August 2020 (Attachments 3 or 4).

The apparent successful offeror must acknowledge receipt of the revised General Clauses by initialing and returning it. In addition, the apparent successful offeror must complete and sign FAR representation 52.204-24 (Attachment 1). The General Clauses containing the updated FAR Clause 52.204-25 (Attachments 3 or 4) must be included in the signed lease contract. The completed FAR representation 52.204-24 and the SAM online representations and certifications must be in the lease file but do not need to be included in the signed lease.

- e. For offers received through the Automated Advanced Acquisition Program (AAAP) procurements, LCOs must implement the above procedure in 6.d. as part of the due diligence phase. Starting in FY 21, both the updated General Clauses and the FAR 52.204-24 Representation will be incorporated into the FY21 AAAP RLP package.
- f. Lease extension or renewal actions. Prior to executing an extension or exercising an option, the LCO must modify the lease to include FAR Clause 52.204-25 (AUG 2020), either added separately (Attachment 2) or by adding the updated General Clauses (Attachments 3 or 4). For renewal options, it is very important to provide a sufficient amount of time to both provide notice for exercising a renewal option and to provide lessors with adequate time to

comply with the clause. At least one year prior to the renewal notification date is recommended.

g. Steps for an affirmative response (i.e., offeror provides or uses prohibited equipment)

If the apparent successful offeror responds affirmatively under either of the two representations under FAR 52.204-24 that “it will provide covered telecommunications equipment or services”, or “it does use covered telecommunications equipment or services or use any equipment, system, or service that uses covered telecommunications equipment or services”, then LCOs should follow the steps outlined under 5.c of Acquisition Letter MV-20-10 (Attachment 8). This includes determining whether a waiver issued by either GSA or the Office of the Director of National Intelligence (ODNI) already exists. For additional guidance, please refer to the FAQs posted on GSA’s Acquisition Portal at <http://insite.gsa.gov/scrm>.

If, after following all the steps outlined under 5.c of Acquisition Letter MV-20-10, the LCO determines that awarding to the successful offeror would result in a violation, then the LCO should determine that the offeror is ineligible for award and proceed to the next offeror. Repeat until an eligible offeror is identified. If no eligible offerors remain, then consider steps to increase the competitive pool (e.g., changing requirements, expanding the delineated area, etc.).

For affirmative responses involving an existing lease contract (i.e., extension or renewal), see steps under 5.e of the Acquisition Letter. For additional guidance, please refer to the FAQs posted on the Acquisition Portal at <http://insite.gsa.gov/scrm>.

Only as a last resort should the LCO consider pursuing a waiver.

h. GSA Agency Waivers

LCOs should only seek a waiver when there are no other means to make an award or execute an extension/renewal in time to avoid mission failure.

The waiver process is outlined under 5(f) of MV-20-10. For additional guidance, please refer to the FAQs posted on the Acquisition Portal at <http://insite.gsa.gov/scrm>. For leasing, whose product service codes (PSCs)

are designated by the ODNI as “low risk” acquisitions, the process includes the following steps:

1. First, as discussed under 6.h above, confirm whether or not a GSA or ODNI waiver already exists.
2. LCO or his/her designee shall consult with the offeror/lessor contractor to determine whether they would like to proceed with the waiver process.
 - i. If the offeror/lessor decides not to proceed with the waiver process, the LCO should attempt to identify other acquisition strategies, which could include changing the requirement or cancelling the RLP.
3. If the offeror/lessor does decide to proceed with the waiver process, the offeror/lessor must provide information regarding their supply chain laydown (inventory) of prohibited telecomm or video surveillance equipment and their phase-out plan to stop using this prohibited equipment (if not previously supplied).
4. LCO shall evaluate this information to confirm the following:
 - i. Whether there is a compelling justification for a waiver. For real property leases, the signed occupancy agreement for leases below prospectus and the signed congressional committee resolution for agreements above prospectus, may serve as the compelling justification.
 - ii. Whether the offeror's/lessor's supply chain laydown and phase-out plan are sufficient (See (5)(f)(iii)(4)(b) of Acquisition Letter MV-20-10 for examples).
5. LCO shall fill out the waiver request and the congressional notification letter using templates to be posted on the Acquisition Portal at <http://insite.gsa.gov/scrm>. LCO shall obtain the necessary approvals as listed on this website.
6. The LCO shall notify ODNI and the FASC of agency-granted waivers (addresses to be available on the Acquisition portal at <http://insite.gsa.gov/scrm>). Concurrently, the LCO shall send the approved waiver, including the congressional notification letter, to

GSACongressionalAffairs@gsa.gov who will notify the appropriate congressional committees, as outlined in the Acquisition Letter.

i. GSA Agency Waivers for FEMA Disaster Leasing

For emergency lease acquisitions under the Stafford Act (i.e., FEMA disaster leases), waivers may be issued by the Administrator (or designee) on a class basis and may be communicated by the Senior Procurement Executive (SPE).

Once an agency class waiver has been granted, the LCO may proceed with award and:

1. If the LCO determines that it is not practicable to obtain the full and complete laydown prior to award, the LCO may attempt to obtain the laydown within 30 days after award.
2. If the LCO determines that it is not practicable to obtain the phase-out plan prior to award, the LCO may attempt to obtain this plan within 30 days after award.

For emergency acquisitions under the Stafford Act, the declaration of major disaster shall constitute the compelling justification.

The LCO shall notify ODNI and the FASC of the waiver issued under emergency conditions concurrently with the notification to Congress.

Attachments:

- **Attachment 1**, FAR clause 52.204-24, "Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment." (revised August 2020)
- **Attachment 2**, FAR clause 52.204-25, "Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment" (revised Aug 2020)
- **Attachment 3**, GSA Form 3517A, General Clauses (Acquisition of Leasehold Interests at or below the Simplified Lease Acquisition Threshold), Revised August 2020 to include FAR 52.204-25
- **Attachment 4**, GSA Form 3517B, General Clauses (Acquisition of Leasehold Interests in Real Property), Revised August 2020 to include 52.204-25
- **Attachment 5**, FAR Representation and Clauses Chart

- **Attachment 6**, OGP Class Deviation CD-2020-15, GSAR Class Deviation for GSA's Lease Acquisitions and CSOs - Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
- **Attachment 7**, OGP Class Deviation CD-2019-11 Addendum 1, FAR and GSAR Class Deviation – Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
- **Attachment 8**, OGP Acquisition Letter MV-20-10 Workforce Guidance on FY2019 NDAA Section 889 “Part B”

COVER PAGE FOR ATTACHMENTS 1 THROUGH 8