

**GSA Implementation of Section 889**  
**Frequently Asked Questions 3.0**  
**September 21, 2020**

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### **A. General.**

#### **1. Where can I find the full text of the interim FAR rules?**

The FAR text and Federal Register Notice for the first interim rule for Section 889 Part A are posted on [Acquisition.gov](#). The FAR text and Federal Register Notice for the second interim rule for Section 889 Part A are also posted on [Acquisition.gov](#).

The FAR text and Federal Register Notice for the first interim rule for Section 889 Part B are posted on [Acquisition.gov](#). The FAR text and Federal Register Notice for the second interim rule for Section 889 Part B are posted on [Acquisition.gov](#).

#### **2. What is “covered telecommunications equipment or services”?**

**Covered telecommunications equipment or services** is defined at [FAR 4.2101](#) (the same definition also appears at [FAR 52.204-25\(a\)](#)). Additional entities, and their telecommunications or video surveillance equipment or services, may be included in the definition following additional determinations made by the Secretary of Defense in accordance with FAR 4.2101.

#### **3. What is the scope of the FAR prohibitions?**

The FAR contains two prohibitions:

- The Government may not **buy or obtain** (i.e., procure, obtain, or extend or renew a contract to procure or obtain) any equipment, system, or services 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 Government may not enter into a contract (or extend or renew 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

**Substantial or essential component** is defined by [FAR 4.2101](#) (the same definition also appears at [FAR 52.204-25\(a\)](#)) as “any component necessary for the proper function or performance of a piece of equipment, system, or service”. **Critical technology** is also defined at FAR 4.2101 (and the same definition also appears at FAR 52.204-25(a)).

The prohibitions **do not** apply to “[t]elecommunications **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.” Note that covered telecommunication equipment installed on a

closed network may not meet this exception (a closed network is a network that does not connect to the internet either directly or indirectly (e.g., via another network)). If the equipment has the ability to “route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles” but otherwise cannot do so solely because of its installation on a closed network, the telecommunications equipment does not meet this exception.

The prohibitions also **do not** apply to the Government procuring with an entity to provide “a service that connects to the facilities of a third-party, such as **backhaul, roaming, or interconnection arrangements.**” Note that this exception only allows the Government to procure a service that connects to the facilities of a third-party; there is no exception for an offeror’s or contractor’s use of a service that connects to the facilities of a third-party and uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. These terms are defined as follows:

- **Backhaul** means “intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet)”
- **Roaming** means “cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high”
- **Interconnection arrangements** mean “arrangements governing the physical connection of two or more networks to allow the use of another network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer to telephone company B) or sharing data and other information resources”

Questions from the GSA acquisition workforce regarding the scope of the FAR prohibitions to a specific procurement should be directed to the Supply Chain Risk Management (SCRM) Review Board as noted on the Acquisition Portal ([insite.gsa.gov/scrm](https://insite.gsa.gov/scrm)).

Questions from offerors and contractors regarding the scope of the FAR prohibitions to a specific GSA procurement should be directed to the relevant GSA contracting officer. Note that no GSA personnel may make a determination on behalf of an offeror or contractor.

#### **4. Do the FAR representation and reporting requirements apply to micro-purchases?**

The prohibitions apply to micro-purchases. Agencies, including GSA, may put precautions in place to ensure that micro-purchases do not violate the prohibition, and information for GSA employees is forthcoming from GSA’s Office of Acquisition Services (OAS).

Per [FAR 13.201](#), micro-purchases generally do not require provisions or clauses. Therefore, currently, a GSA employee making a micro-purchase is not required to include the representation provision at [FAR 52.204-24](#) or the reporting clause at [FAR 52.204-25](#), pending additional forthcoming information for GSA employees from OAS, but is still required to comply with the prohibitions.

## **5. What happened to the GSA class deviation and its risk-based approach?**

GSA's previously-issued [class deviation](#) CD-2019-11 is no longer in effect. Per [Addendum 1](#) to class deviation CD-2019-11, the clause at GSAR 552.204-70 is cancelled and the rest of the guidance in the original class deviation is temporarily suspended.

The cancellation of the clause at GSAR 552.204-70 means that the clause no longer needs to be added to any solicitations or contracts, no longer requires offerors or contractors to submit any representations or disclosures, and may be removed from solicitations and contracts at contracting officers' convenience.

The temporary suspension of the rest of the guidance in the original class deviation means that the rest of the guidance in the original class deviation is no longer in effect but could, except for the clause at GSAR 552.204-70, be reinstated later. Specifically, contrary to the original class deviation, GSA contracting officers must now include the representation provision at [FAR 52.204-24](#) in all solicitations for, and notices of intent to place, GSA-funded orders placed under GSA's indefinite delivery vehicles (IDVs), including indefinite-delivery indefinite-quantity contracts (IDIQs), Federal Supply Schedules (FSS), Government-wide Acquisition Contracts (GWACs), and Multiple-Award Contracts (MACs), regardless of the original class deviation's risk classification of the GSA IDV.

## **B. The Representation Provisions (FAR 52.204-24 and 52.204-26) and the Reporting Clause (FAR 52.204-25).**

### **6. In what solicitations must the representation provisions (FAR 52.204-24 and 52.204-26) be included?**

All solicitations (including solicitations for contracts, indefinite delivery contracts, indefinite-delivery indefinite-quantity contracts (IDIQs), Federal Supply Schedules (FSS), Government-wide Acquisition Contracts (GWACs), Multiple-Award Contracts (MACs), real property lease acquisitions, Commercial Solution Opening procurements (CSOs), and orders (including orders or calls under Blanket Purchase Agreements (BPAs)) and notices of intent to place orders or calls, regardless of dollar value, must include the updated representation provision at [FAR 52.204-24](#), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020). For solicitations issued before August 13, 2020, but not yet awarded, the GSA contracting officer must either amend the solicitation to include the updated representation provision at FAR 52.204-24 (AUG 2020) or receive the representations required by the updated representation provision at FAR 52.204-24 (AUG 2020) from the apparent successful offeror(s).

All solicitations for contracts (including indefinite delivery contracts, IDIQs, FSS, GWACs, MACs, real property lease acquisitions, and CSOs) must also include the System for Award Management (SAM) representation provision at [FAR 52.204-26](#), Covered Telecommunications Equipment or Services-Representation (DEC 2019). The SAM representation provision at FAR 52.204-26 has been updated via a FAR rule, effective October 26, 2020, that also requires all solicitations for contracts to be updated. Note, however, that if a solicitation includes any of the

following, the solicitation does not need to be updated because the provision at FAR 52.204-26 is already included by reference: [FAR 52.204-7](#), System for Award Management, [FAR 52.204-19](#), Incorporation by Reference of Representations and Certifications, [FAR 52.212-3](#), Offeror Representations and Certifications - Commercial Items.

Note that if a lease offeror uses the flexibility of [Acquisition Letter MV-20-04](#), which allows lease offerors to submit offers prior to SAM registration (provided that the lease offeror is registered prior to award), any lease offers must include the representations required by the updated representation provision at FAR 52.204-24 (AUG 2020).

For orders and calls under: (1) indefinite delivery contracts (including IDIQs, FSS, GWACs and MACs); (2) BPAs; and (3) other requisition-based contracting vehicles, **where the order or call does not require a solicitation, quotation, request for quote (RFQ), or notice of intent to place an order or call**, the representation provision at FAR 52.204-24 is not required.

Provisions and clause implementation tables are available on [Acquisition.gov](#).

#### **7. How do offerors and contractors complete the representations required by the provisions (FAR 52.204-24 and 52.204-26)? Are there separate documents offerors and contractors must fill out?**

Offerors will complete the representations required by the representation provision at [FAR 52.204-24](#) as part of their offers.

The System for Award Management (SAM) representation provision at [FAR 52.204-26](#) will be completed by offerors and contractors via [sam.gov](#) as part of each offeror's representations and certifications.

The SAM representation provision at FAR 52.204-26 has been updated via a FAR rule, effective October 26, 2020, to include an additional representation as to whether entities, based on a reasonable inquiry, "**do**" or "**do not**" "use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services." Starting October 26, 2020, per [FAR 4.2103](#) (which was also updated by the same FAR rule), a response to FAR 52.204-24 will not be required if the offeror has responded to the SAM representation provision at FAR 52.204-26 that it **both** "**does not**" provide covered telecommunications equipment or services to the Government and, based on a reasonable inquiry, "**does not**" use covered telecommunications equipment or services.

See the answers to Questions 31-34 for additional information for Federal Supply Schedule (FSS) contracts.

#### **8. How much due diligence do offerors and contractors need to conduct to determine the presence of covered equipment or services?**

The updated representation provision at [FAR 52.204-24](#) (AUG 2020) requires offerors to represent if they "**will**" or "**will not**" provide "covered telecommunications equipment or services" to the Government and, after conducting a reasonable inquiry, whether they "**do**" or "**do not**" use "covered telecommunications equipment or services, or use any equipment, system, or

service that uses covered telecommunications equipment or services”--regardless of whether the offeror believes that an exception under paragraph (b) of the representation provision at FAR 52.204-24. Reviewing the additional information required by paragraph (e) of the representation provision at FAR 52.204-24 may be helpful in determining the appropriate level of investigation.

**Covered telecommunications equipment or services** is defined at [FAR 4.2101](#) (the same definition also appears at [FAR 52.204-25\(a\)](#)). **Reasonable inquiry** is also defined at FAR 4.2101 (and the same definition also appears at FAR 52.204-25(a)) as “an inquiry designed to uncover any information in the entity’s possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.”

The representation regarding whether an offeror “**does**” or “**does not**” use “covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services” concerns use “regardless of whether that use is in performance of work under a Federal contract.” Therefore, the offeror should conduct a reasonable inquiry, and represent its findings to the Government, regarding all equipment, systems, and services, regardless of geographic location, used by the offeror, including equipment, systems, and services owned or provided by other companies (e.g., affiliates, parents, subsidiaries, subcontractors, suppliers). The representation is limited, however, to use by the offeror itself; the representation does not concern use by other legal entities (e.g., affiliates, parents, subsidiaries, subcontractors, suppliers).

The offeror is required to ensure that representations regarding equipment and services provided to the Government and representations regarding equipment, systems, and services used by the offeror are accurate and may want to consult with its own legal counsel.

#### **9. How should a GSA contracting officer respond if an offeror asks for advice on filling out the representation(s) required by FAR 52.204-24 and/or 52.204-26?**

GSA will not give specific advice on how to respond to representations required by the provisions at [FAR 52.204-24](#) or [52.204-26](#) (or specific advice on how to respond to the reporting requirements in the clause at [FAR 52.204-25](#)), besides the information listed in the answer to Question 8. Compliance with the FAR’s requirements is the responsibility of offerors and contractors. No GSA personnel may make a determination on behalf of an offeror (or contractor).

Notwithstanding the above, GSA contracting officers may continue to respond to routine inquiries from offerors (and contractors) as they normally would.

#### **10. Can a GSA contracting officer rely on an offeror’s representation under FAR 52.204-24 or 52.204-26 that it will not provide and does not use covered telecommunications equipment or services?**

If an offeror responds that it “**will not**” provide covered telecommunications equipment or services to the Government or, based on a reasonable inquiry, that it “**does not**” use covered telecommunications equipment or services, the GSA contracting officer may rely on the

representation unless the GSA contracting officer has an independent reason to question the representation. In that case, the GSA contracting officer should consult with management, the Supply Chain Risk Management (SCRM) Review Board as noted on the Acquisition Portal ([insite.gsa.gov/scrm](https://insite.gsa.gov/scrm)) and the contracting activity's assigned legal counsel on how to proceed to ensure that the procurement does not violate the prohibitions.

See [GSAM 504.7005](#) for more details.

#### **11. What should a GSA contracting officer do if an offeror does not respond to the representation provision at FAR 52.204-24 in the solicitation?**

The provision at [FAR 52.204-24](#) contains two independent representations, FAR 52.204-24(d)(1) and 52.204-24(d)(2).

If an offeror does not provide the representation required by **FAR 52.204-24(d)(1)**, the GSA contracting officer should check the offeror's response to the System for Award Management (SAM) representation provision at [FAR 52.204-26](#) via [sam.gov](https://sam.gov). If an offeror has responded to the SAM representation provision at FAR 52.204-26 that it "**does not**" provide covered telecommunications equipment or services to the Government, a response to FAR 52.204-24(d)(1) is not required. If an offeror has not responded to the SAM representation provision at FAR 52.204-26, or has responded that it "**does**" provide covered telecommunications equipment or services to the Government, the offeror is required to provide a response to FAR 52.204-24(d)(1) as part of its offer. If an offeror does not provide the representation required by FAR 52.204-24(d)(1) as part of its offer and has not responded to the SAM representation provision at FAR 52.204-26 that it "**does not**" provide covered telecommunications equipment or services to the Government, the GSA contracting officer should consider the offer nonresponsive and follow normal procedures for dealing with nonresponsive offers.

Until October 26, 2020, when the SAM representation provision at FAR 52.204-26 is updated, offerors must provide the representation required by **FAR 52.204-24(d)(2)** as part of their offers. If an offeror does not provide the representation required by FAR 52.204-24(d)(2) as part of its offer, the GSA contracting officer should consider the offer nonresponsive and follow normal procedures for dealing with nonresponsive offers.

Starting on October 26, 2020, the SAM representation provision at FAR 52.204-26 will be updated and, per [FAR 4.2103](#) (which will also be updated on October 26, 2020), if an offeror has responded to the SAM representation provision at FAR 52.204-26 that it "**does not**" use covered telecommunications equipment or services, a response to FAR 52.204-24(d)(2) is not required. On or after October 26, 2020, if an offeror has not responded to the SAM representation provision at FAR 52.204-26, or has responded that it "**does**" use covered telecommunications equipment or services, the offeror is required to provide a response to FAR 52.204-24(d)(2) as part of its offer. On or after October 26, 2020, if an offeror does not provide the representation required by FAR 52.204-24(d)(2) as part of its offer and has not responded to the SAM representation provision at FAR 52.204-26 that it "**does not**" use covered telecommunications equipment or services, the GSA contracting officer should consider the offer nonresponsive and follow normal procedures for dealing with nonresponsive offers.

## 12. In what contracts must the updated reporting clause (FAR 52.204-25) be included?

All new contracts (including indefinite delivery contracts, indefinite-delivery indefinite-quantity contracts (IDIQs), Federal Supply Schedules (FSS), Government-wide Acquisition Contracts (GWACs), Multiple-Award Contracts (MACs), real property lease acquisitions, and Commercial Solution Opening procurements (CSOs)), **awarded on or after August 13, 2020**, must, at the time of award, include the updated reporting clause at [FAR 52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020). Once awarded, these contracts will include the updated reporting clause at FAR 52.204-25 (AUG 2020) and do not need to be further modified (including when extending the period of performance or exercising any options) as contemplated in the penultimate paragraph of this answer.

Existing indefinite delivery contracts (including IDIQs, FSS, GWACs, and MACs), **awarded on or before August 12, 2020**, must be modified (by bilateral modification) to include the updated reporting clause at FAR 52.204-25 (AUG 2020) immediately (per the FAR: prior to placing any future orders). As mentioned in the answer to Question 26, however, per [Acquisition Letter MV-20-10, Section 5\(b\)\(ii\)](#), an order may be placed before the master indefinite delivery contract is updated if the updated reporting clause at FAR 52.204-25 (AUG 2020) is incorporated into the order. For Government-wide indefinite delivery contracts (including IDIQs, FSS, GWACs, and MACs), the IDIQ Program Manager must clearly identify to ordering activities (e.g., by updating [Contracts Online](#) for FSS, or updating Program Websites) which contracts have been modified to include the updated reporting clause at FAR 52.204-25 (AUG 2020). Once modified to include the updated reporting clause at FAR 52.204-25 (AUG 2020), contracts do not need to be further modified (including when extending the period of performance or exercising any options) as contemplated in the penultimate paragraph of this answer.

Existing definite-delivery contracts (otherwise known as stand-alone or non-indefinite delivery vehicle/IDIQ contracts), including real property lease acquisitions, and orders (including orders or calls under Blanket Purchase Agreements (BPAs)), **awarded on or before August 12, 2020**, must be modified (by bilateral modification) to include the updated reporting clause at FAR 52.204-25 (AUG 2020) prior to, or when, exercising an option or modifying to extend the period of performance. The modification should be made with a sufficient amount of time to both provide notice for exercising the option (or otherwise extending the period of performance) and to provide the contractor with adequate time to prepare to comply with the updated reporting clause at FAR 52.204-25 (AUG 2020). If the modification to add the updated reporting clause at FAR 52.204-25 (AUG 2020) is combined with a modification to extend the period of performance (including the exercising of an option), the modification (including the exercising of any option) must be bilateral. Once modified to include the updated reporting clause at FAR 52.204-25 (AUG 2020), contracts and orders do not need to be further modified (including when further extending the period of performance or exercising additional options) as contemplated previously in this paragraph.

Note that all modifications to existing contracts, orders, and calls to include the updated reporting clause at FAR 52.204-25 (AUG 2020) must be bilateral to mitigate cost and performance risks and, for commercial item contracts, to ensure compliance with the commercial changes clause.

### **13. What happens if a contractor refuses to accept the modification to include the updated reporting clause (FAR 52.204-25)?**

If an indefinite delivery contractor (including an indefinite-delivery indefinite-quantity (IDIQ) contractor, a Federal Supply Schedule (FSS) contractor, a Government-wide Acquisition Contract (GWAC) contractor, or a Multiple-Award Contract (MAC) contractor) is unwilling to accept a modification to add the updated reporting clause at [FAR 52.204-25](#) (AUG 2020), the GSA contracting officer should try to resolve the issue at the lowest level possible and may consult with management, the Supply Chain Risk Management (SCRM) Review Board as noted on the Acquisition Portal ([insite.gsa.gov/scrm](https://insite.gsa.gov/scrm)), and the contracting activity's assigned legal counsel to determine the best way to proceed. In this case, the GSA contracting officer may also choose to follow the Letter of Concern (LOC) process (below).

If a definite-delivery contractor (otherwise known as a stand-alone or non-indefinite delivery vehicle/IDIQ contractor) is unwilling to add the updated reporting clause at FAR 52.204-25 (AUG 2020) when extension of the period of performance (including exercising of an option to extend the period of performance) is contemplated, the GSA contracting officer may not extend the period of performance (or exercise an option to extend the period of performance). (A waiver is likely not appropriate as a contractor that is unwilling to add the updated reporting clause at FAR 52.204-25 (AUG 2020) is likely also unwilling to provide a full and complete laydown and phase-out plan as required to start the waiver process.) In this case, the GSA contracting officer should identify alternatives (e.g., immediate recompete) and execute the best alternative that meets the Government's current needs. The GSA contracting officer should try to resolve issues at the lowest level possible and may consult with management, the SCRM Review Board as noted on the Acquisition Portal ([insite.gsa.gov/scrm](https://insite.gsa.gov/scrm)), and the contracting activity's assigned legal counsel to determine the best way to proceed. In this case, the GSA contracting officer may also choose to follow the LOC process (below).

In either case, the GSA contracting officer may choose to follow the LOC process by taking the following steps:

1. Send a LOC to the contractor establishing both:
  - a. A date when an interim action will begin if the modification is not accepted
  - b. A date when contract-ending action may be initiated if the modification is not accepted
2. As established in the LOC, take interim action if the modification is not accepted by the date specified. GSA contracting officers should coordinate with their program office, management, and the contracting activity's assigned legal counsel to determine what interim action(s) should be taken to mitigate potential security risks, considering the Government's best interest and factors unique to the contract. Examples of such interim actions include but are not limited to:
  - a. Temporarily hiding contractor information on GSA websites and/or e-tools
  - b. Flagging non-compliant contractors in customer-facing communication
  - c. Entering an interim Contractor Performance Assessment Report (for definite-delivery contractors (otherwise known as stand-alone or non-indefinite delivery vehicle/IDIQ contractors))

3. As established in the LOC, take contract-ending action if the modification is not accepted by the date specified. These contracts should be off-ramped, allowed to expire, or terminated, as applicable.
  - a. Termination of a contract should be a last resort, and GSA contracting officers considering termination must discuss with their management and the contracting activity's assigned legal counsel whether termination for default or cause is appropriate; if termination for default or cause is not appropriate, GSA contracting officers may seek to terminate for convenience, preferably at no cost to the Government
    - i. The required Cure Notice may include the following factors:
      1. By not accepting the modification, the contract is not in compliance with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and the FAR requirements implementing the same
      2. By not accepting the modification, the contractor has failed to provide the Government with adequate assurance that future performance will mitigate the security risk associated with providing covered telecommunications equipment and/or services to the Government and/or using covered telecommunication equipment and/or services
      3. Customer agencies are not allowed to place orders under indefinite delivery contracts that have not been modified per the [interim FAR Rule](#), 85 FR 42665, effective August 13, 2020
      4. Any additional performance issues, if applicable
    - b. If it appears that a contract that is complex, critical to agency strategic objectives and mission, highly visible, or politically sensitive, or a contract for which there is no viable replacement, is headed toward contract-ending action, consult with management and the contracting activity's assigned legal counsel to determine appropriate next steps

If an FSS contractor has not yet accepted a modification to add the original version of the reporting clause at FAR 52.204-25 (AUG 2019), follow the Letter of Concern process outlined in the answer to Question 33.

**14. What should a GSA contracting officer do if an offeror or contractor represents that it will provide or does use covered telecommunications equipment or services per FAR 52.204-24 or identifies covered telecommunications equipment or services used during contract performance per FAR 52.204-25?**

An offeror's representations under the provision at [FAR 52.204-24](#) impact eligibility for award, they are not an evaluation factor. If the apparent successful offeror responds that it "**will**" provide covered telecommunications equipment or services to the Government or, based on a reasonable inquiry, that it "**does**" use covered telecommunications equipment or services in response to the representation provision at FAR 52.204-24 (note that in either case, the apparent successful offeror's response to the System for Award Management (SAM) representation provision at [FAR 52.204-26](#) is not applicable), or if a contractor identifies covered telecommunications equipment or services used during contractor performance via a report under the reporting clause at [FAR 52.204-25](#), the GSA contracting officer must take the

following actions. If, at any point, the apparent successful offeror or contractor refuses to provide requested information, the GSA contracting officer may consider moving to the next offeror in line for award or not extending the period of performance of the contract (or order).

Visual depictions of this process (Decision Trees) are available on [Acquisition.gov](https://www.acquisition.gov).

- First, in response to representation(s) from an apparent successful offeror, clarify with the apparent successful offeror to make sure that it accurately completed the representation(s) (this step is skipped for responses to a report from a contractor)
  - If the apparent successful offeror did not accurately complete the representation(s), advise the apparent successful offeror to correct and resubmit its representation(s)
  - If the apparent successful offeror's corrected representation(s) no longer represents that the apparent successful offeror "**will**" provide or "**does**" use covered telecommunications equipment or services, the GSA contracting officer may make award to the apparent successful offeror
- Second, determine whether an existing Office of the Director of National Intelligence (ODNI) waiver or GSA agency-level waiver for the apparent successful offeror or contractor exists
  - To determine whether an existing waiver applies, the contracting officer may consult with their acquisition team, technical experts, and their management and may request assistance from the Supply Chain Risk Management (SCRM) Review Board as noted on the Acquisition Portal ([insite.gsa.gov/scrm](https://insite.gsa.gov/scrm))
  - Waivers granted by the Office of the Director of National Intelligence (ODNI) will be shared on the Acquisition Portal ([insite.gsa.gov/scrm](https://insite.gsa.gov/scrm)) as GSA becomes aware of them; see the answer to Question 19 on how to apply waivers granted by ODNI
  - GSA will list approved GSA agency-level waivers on the Acquisition Portal ([insite.gsa.gov/scrm](https://insite.gsa.gov/scrm))
- Third, ensure that the offeror also provides the information required by paragraph (e) of the representation provision at FAR 52.204-24, or that the contractor also provides the information required by paragraph (d) of the reporting clause at FAR 52.204-25, and review the submitted information to ensure that it appears complete and complies with the requirements of paragraph (e) of the representation provision at FAR 52.204-24 or paragraph (d) of the reporting clause at FAR 52.204-25
- Fourth, submit a Supply Chain Event Report (available on the Acquisition Portal ([insite.gsa.gov/scrm](https://insite.gsa.gov/scrm))), including a "critical date," no less than three business days after the date of submission of the Supply Chain Event Report, for when a response from the SCRM Review Board is requested
- Fifth, determine whether awarding to the apparent successful offeror, or continued performance or extension of the contract (or order), will result in a violation of the prohibition(s) (e.g., whether an exception applies, whether the prohibited telecom is a substantial or essential component of a system, whether the prohibited telecom is critical technology as part of any system)
  - The SCRM Review Board will provide to the GSA contracting officer, via response to the Supply Chain Event Report, information as to whether it thinks that award to the apparent successful offeror, or continued performance or extension of the contract (or order), will result in a violation of either prohibition

- If the SCRM Review Board has not responded by the “critical date,” the GSA contracting officer may make a determination without the SCRM Review Board’s input
- Resources for assisting the GSA contracting officer in making this determination, including previous decisions of the GSA SCRM Review Board and its decision rubrics, will be available on the Acquisition Portal ([insite.gsa.gov/scrm](https://in.site.gsa.gov/scrm))
  - If, after using such resources, the GSA contracting officer cannot make this determination, the GSA contracting officer should consult with their acquisition team, technical experts, and their management and may request additional assistance from the SCRM Review Board as noted on the Acquisition Portal ([insite.gsa.gov/scrm](https://in.site.gsa.gov/scrm))
- If the GSA contracting officer determines (with or without the SCRM Review Board’s assistance) that awarding to the apparent successful offeror, or continued performance or extension of the contract (or order), **will not** result in a violation of either prohibition, the GSA contracting officer should document the file accordingly and may make an award to the apparent successful offeror or continue performance of and/or extend the contract (or order)
- If the GSA contracting officer determines (with or without the SCRM Review Board’s assistance) that awarding to the apparent successful offeror, or continued performance or extension of the contract (or order), **will** result in a violation, the GSA contracting officer should:
  - In response to representation(s) from an apparent successful offeror: in most cases, the GSA contracting officer should determine that the offeror is not eligible for award and should move to the next offeror in line for award
      - GSA contracting officers may use language in [Acquisition Letter MV-20-10, Appendix C](#) when documenting the contract file with a determination that awarding to the apparent successful offeror **will** result in a violation
      - Repeat the above process until an eligible offeror is found
        - If, after repeating the above process, the GSA contracting officer does not identify an eligible offeror, the acquisition team should attempt to identify other acquisition strategies, make partial award, cancel the solicitation, change the requirement description, change the requirement, insource, etc., in accordance with procurement rules
        - As a last resort, the GSA contracting officer may consider pursuing a waiver for an offeror (see the answers to Questions 17 and 18 for more information about requesting waivers)
    - In response to a report from a contractor: normally, the only additional action required of the GSA contracting officer is to not extend period of performance of the contract (or order)
      - If stronger action is contemplated (such as contract (or order) termination), consult with management, the SCRM Review Board as noted on the Acquisition Portal ([insite.gsa.gov/scrm](https://in.site.gsa.gov/scrm)), and the contracting activity’s legal counsel

- GSA contracting officers may use language in [Acquisition Letter MV-20-10, Appendix C](#) when documenting the contract file with a determination that continued performance or extension of the contract (or order) **will** result in a violation
- As a last resort, the GSA contracting officer may consider pursuing a waiver for a contractor (see the answers to Questions 17 and 18 for more information about requesting waivers)

**15. Who determines whether the equipment, system, or service offered or used by an offeror or contractor violates the prohibitions?**

Under the updated representation provision at [FAR 52.204-24](#) (AUG 2020), offerors are responsible for representing if they “**will**” or “**will not**” provide covered telecommunications equipment or services to the Government and, based on a reasonable inquiry, whether they “**do**” or “**do not**” use “covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services”--regardless of whether the offeror believes that an exception under paragraph (b) of the representation provision at FAR 52.204-24 applies.

GSA contracting officers should follow the procedures in the answer to Question 14 to make a determination as to whether the offering and/or use would violate the prohibition(s).

Under the reporting clause at [FAR 52.204-25](#), contractors have a continuing duty to report if they identify, or are otherwise made aware of (by a subcontractor or any other source), covered telecommunications equipment or services used as a substantial or critical component of any system, or as critical technology as part of any system, during contract performance.

Again, GSA contracting officers should follow the procedures in the answer to Question 14 to make a determination as to whether the use would violate the prohibition(s).

**16. What do GSA contracting officers do if they think the equipment, system, or services that they need may be prohibited?**

GSA's acquisition workforce (e.g., contracting officers, contracting officer representatives, program managers, and project managers), including all members of the program office and the acquisition office, should strive to identify potential suppliers that “**do not**” use covered telecommunications equipment or services by making potential suppliers’ use of covered telecommunications equipment or services a core part of market research for all acquisitions. Business lines should update existing market research guidance, tools, and templates to reflect best practices to identify eligible suppliers.

If a compliant supplier cannot be identified, the acquisition office and the program office should look for other ways to satisfy the requirement, including identifying other acquisition strategies, changing the requirement description, changing the requirement, insourcing, etc. If a compliant supplier cannot be identified, and there are no appropriate alternative procurement methods or ways to satisfy the requirement, the GSA contracting officer may need to be prepared to request a waiver (see the answers to Questions 17 and 18 for more information about the complexity involved in requesting a waiver).

If the requirement specifically calls for Government acquisition of covered telecommunications equipment or services, and the requirement cannot be changed, GSA contracting officers should consult with the Supply Chain Risk Management (SCRM) Review Board as noted on the Acquisition Portal ([insite.gsa.gov/scrm](https://insite.gsa.gov/scrm)).

## 17. How do GSA contracting officers request a GSA waiver?

GSA may approve a one-time, agency-level waiver for an entity (i.e., an offeror or contractor) that contracts, or wishes to contract, with GSA. The waiver process is generally the same for a new award or an existing contract. Waivers should be sought only as a last resort, and, therefore, there are only two circumstances in which a GSA contracting officer can pursue a waiver:

- For a new procurement, when there is no other means to make an award in time to avoid Government mission failure
- For on-going contracts, where there is no other means to replace the contractor in time to avoid Government mission failure

A GSA contracting officer that wishes to pursue a waiver must take the following actions (a visual depiction of this process (a Decision Tree) will be available on the [Acquisition.gov](https://www.acquisition.gov)); note that the order of these steps is slightly different than the order in [Acquisition Letter MV-20-10, Section 5\(f\)](#)--either order may be followed:

- First, review the [Office of the Director of National Intelligence \(ODNI\) Strategic Supply Chain Security Guidance - Appendix C](#) (available on the Office of Management and Budget (OMB) MAX Section 889 Guidance - Implementation Page) to determine whether any PSC(s) for the acquisition are “high risk”
  - Prior to downloading any document hosted on the OMB MAX Section 889 Guidance - Implementation Page, first request access to the OMB MAX Section 889 Guidance - Implementation Page by visiting the [OMB MAX Section 889 Guidance - Landing Page](#) and then clicking on the registration link on the left
- Second, consult with the offeror or contractor to determine whether the offeror or contractor would like to proceed with the waiver process
  - If the offeror or contractor decides not to proceed with the waiver process, the GSA contracting officer should attempt to identify other acquisition strategies, make partial award, cancel the solicitation, change the requirement description, change the requirement, insource, etc., in accordance with procurement rules
  - If the offeror or contractor decides to proceed with the waiver process, request all of the following from the offeror or contractor (if they have not been provided already):
    - A full and complete laydown (e.g., a description, an inventory) of the presence of all covered telecommunications or video surveillance equipment or services in the offeror’s or contractor’s supply chain
    - A phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the offeror’s or contractor’s systems
    - If any PSC for the acquisition is “high risk” (as identified in the first bullet), the GSA contracting officer must also request the following information from the offeror or contractor

- Information regarding the extent of the offeror's or contractor's involvement in the development of sensitive or critical technologies and/or access to sensitive data
  - Information regarding the offeror's or contractor's involvement in critical infrastructure areas or related functions
- Third, if, as identified in the first bullet, any of the PSCs for the acquisition is "high risk" (this step is skipped if **none** of the PSCs for the acquisition are "high risk"):
  - Review the [ODNI Strategic Supply Chain Security Guidance - Appendix A](#) (available on the OMB MAX Section 889 Guidance - Implementation Page) to determine whether the offeror or contractor is involved in the development of sensitive or critical technology or sensitive data
    - If the offeror or contractor is involved in the development of sensitive or critical technology or sensitive data, GSA does not anticipate that the waiver will be granted; the GSA contracting officer should consider terminating the waiver process
  - Review the [ODNI Strategic Supply Chain Security Guidance - Appendix D](#) (available on the OMB MAX Section 889 Guidance - Implementation Page) to determine whether the offeror or contractor is involved in critical infrastructure or related functions
    - If the offeror or contractor is involved in critical infrastructure or related functions, ODNI has advised the GSA contracting officer to use caution in continuing the waiver process
- Fourth, evaluate the information provided by the offeror or contractor to determine if:
  - The offeror's or contractor's laydown is full and complete and sufficient to justify proceeding with the waiver process
  - The offeror's or contractor's phase-out plan is sufficient to justify proceeding with the waiver process; examples of sufficient phase-out plans include:
    - A plan that protects the Government from, or mitigates the effects of, security threats, to the maximum extent practicable for the period of the waiver
    - A plan that completely eliminates the offeror's or contractor's use of covered telecommunications or video surveillance equipment or services
- Fifth, draft a compelling justification (with input from the offeror or contractor, as necessary) to support granting the waiver and providing additional time for the offeror or contractor to come into compliance; examples of a compelling justification may include any of the following:
  - There is no other eligible awardee and the high possibility of Government mission failure dictates that there is insufficient time to cancel the current procurement and start over
  - There is insufficient time to initiate a new procurement and there is a high possibility of Government mission failure occurring before the current period of performance ends
  - Not issuing a waiver may cause grave harm to GSA or its customer agencies
  - For real property lease acquisitions, the signed occupancy agreement for leases below prospectus and the signed congressional committee resolution for agreements above prospectus may serve as the compelling justification

- Sixth, finalize the waiver request and submit it for GSA approval (the approval process is still being finalized; more information will be provided (and this answer will be updated) as more information becomes available); the waiver request should include:
  - The offeror's or contractor's full and complete laydown
  - The offeror's or contractor's phase-out plan
  - If any PSC for the acquisition is "high risk" (as identified in the first bullet):
    - Information, including the GSA contracting officer's analysis, regarding the extent of the offeror's or contractor's involvement in the development of sensitive or critical technologies and/or access to sensitive data
    - Information, including the GSA contracting officer's analysis, regarding the offeror's or contractor's involvement in critical infrastructure areas or related functions
  - The contracting officer's compelling justification to support granting the waiver and providing additional time for the offeror or contractor to come into compliance
  - A completed waiver request template (available on the Acquisition Portal ([institute.gsa.gov/scrm](https://institute.gsa.gov/scrm)))
  - A draft congressional notification letter (on the Acquisition Portal ([institute.gsa.gov/scrm](https://institute.gsa.gov/scrm)))
    - For real property lease acquisitions, notification to Congress should, if applicable, include mention that a tenant relocation will be required
- Seventh, unless pursuing a waiver for an emergency acquisition under the Stafford Act or for a real property lease acquisition (see below), once approved by GSA, the GSA contracting officer must submit the waiver to ODNI and the Federal Acquisition Security Council (FASC) via the email addresses on the Acquisition Portal ([institute.gsa.gov/scrm](https://institute.gsa.gov/scrm))
  - If neither ODNI nor the FASC raise additional concerns within 15 days of the GSA contracting officer's submission, the waiver is deemed approved by ODNI and the FASC
    - For pre-award waiver requests, once the waiver has been approved by ODNI and the FASC, award may be made
    - For waiver requests related to existing contracts, once the waiver has been approved by ODNI and the FASC, notify the contractor of the terms of the granted waiver and document the contract file accordingly to allow for continued performance or extension of the contract, as applicable
  - If either ODNI or the FASC raise additional concerns, these concerns will need to be addressed before the waiver process can continue
- Eighth, once the waiver is approved, the GSA contracting officer must send the approved waiver, including the draft congressional notification letter, to [GSACongressionalAffairs@gsa.gov](mailto:GSACongressionalAffairs@gsa.gov)

For emergency acquisitions under the Stafford Act, GSA contracting officers should still generally follow the procedure, noting the following flexibilities:

- Waivers for emergency acquisitions may be issued by the Administrator (or designee) on a class basis and may be communicated by the Senior Procurement Executive
  - Once a class waiver has been granted, the GSA contracting officer may proceed with award
- If the GSA contracting officer determines that it is not practicable to obtain the full and complete laydown and/or the phase-out plan prior to making award, the contracting

officer must attempt to obtain the laydown and/or the phase-out plan within 30 days of determining that a violation of Section 889 exists, or by the date specified by the waiver

- The declaration of major disaster will constitute the compelling justification
- For an individual waiver for an emergency acquisition, once GSA grants the waiver, the waiver is approved; the GSA contracting officer may notify ODNI and the FASC of granted waivers in accordance with the seventh bullet (above) concurrently with the notification to Congress under the eighth bullet (above)

For real property lease acquisitions, once approved by GSA, the waiver is approved. The GSA lease contracting officer may notify ODNI and the FASC of granted waivers in accordance with the seventh bullet (above) concurrently with the notification to Congress under the eighth bullet (above).

GSA contracting officers relying on a GSA-granted waiver to make an award or to extend the period of performance of an existing contract should document the file accordingly.

#### **18. How do GSA contracting officers request an Office of Director of National Intelligence (ODNI) waiver?**

The Director of National Intelligence may provide a waiver to the prohibitions if the Director of the Office of the Director of National Intelligence (ODNI) determines the waiver is in the national security interests of the United States. Information about requesting a waiver from ODNI will be provided as it becomes available.

#### **19. How do GSA contracting officers apply waivers granted by the Office of Director of National Intelligence (ODNI)?**

New contracts and orders may be awarded to offerors with existing waivers granted by the Office of the Director of National Intelligence (ODNI), pursuant to the terms of the applicable waiver and any relevant implementing instructions.

The periods of performance of existing contracts and orders with contractors with existing waivers granted by ODNI may be extended, pursuant to the terms of the applicable waiver and any relevant implementing instructions.

GSA contracting officers relying on an ODNI-granted waiver to make an award or to extend the period of performance of an existing contract should document the file accordingly.

### **C. Administration.**

#### **20. Once the SAM representation provision (FAR 52.204-26) is updated on October 26, 2020, will GSA contracting officers have to add the updated SAM representation provision (FAR 52.204-26) to new and existing solicitations?**

Yes. The System for Award Management (SAM) representation provision at [FAR 52.204-26](#) has been updated via a FAR rule, effective October 26, 2020, to include an additional representation

as to whether entities, based on a reasonable inquiry, “**do**” or “**do not**” “use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.” Note, however, that if a solicitation includes any of the following, the solicitation does not need to be updated because the provision at FAR 52.204-26 is already included by reference: [FAR 52.204-7](#), System for Award Management, [FAR 52.204-19](#), Incorporation by Reference of Representations and Certifications, [FAR 52.212-3](#), Offeror Representations and Certifications - Commercial Items.

Provisions and clause implementation tables are available on [Acquisition.gov](#).

**21. The representation language in the provisions (FAR 52.204-24 and 52.204-26) is very similar. Is it necessary to include both of these in solicitations for new contracts?**

Yes, the representation provision at [FAR 52.204-24](#) and the System for Award Management (SAM) representation provision at [FAR 52.204-26](#) are required by the FAR to be included in all solicitations. See the answer to Question 6 for more information on inclusion of the SAM representation provision at FAR 52.204-26 in solicitations.

The SAM representation provision at FAR 52.204-26 is intended to streamline the representation requirements. As mentioned in the answer to Question 7, starting October 26, 2020, per [FAR 4.2103](#) (which was also updated by the same FAR rule), a response to FAR 52.204-24 will not be required if the offeror has responded to the SAM representation provision at FAR 52.204-26 that it **both “does not”** provide covered telecommunications equipment or services to the Government and, based on a reasonable inquiry, “**does not**” use covered telecommunications equipment or services.

**22. Do the representation provisions (FAR 52.204-24 and 52.204-26) have to be incorporated into solicitations in full text, or can they be incorporated by reference?**

Incorporate the updated representation provision at [FAR 52.204-24](#) (AUG 2020) in full text. The System for Award Management (SAM) representation provision at [FAR 52.204-26](#) may be incorporated by reference (see the answers to Questions 6 and 20).

**23. Does the reporting clause (FAR 52.204-25) have to be incorporated into solicitations and resultant contracts in full text, or can it be incorporated by reference?**

The reporting clause at [FAR 52.204-25](#) should be incorporated in full text but, if desired, may be incorporated by reference.

**24. Do the representation provisions (FAR 52.204-24 and 52.204-26) and the reporting clause (FAR 52.204-25) flow down to subcontractors?**

Per paragraph (e) of the reporting clause at [FAR 52.204-25](#), the clause, except for the Part B prohibition on use at paragraph (b)(2), flows down to subcontractors (“[t]he Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items”).

The representation provisions ([FAR 52.204-24](#) and [52.204-26](#)) do not flow down to subcontractors.

## **D. Agreements and Indefinite Delivery Contracts.**

### **25. How do the interim FAR rules apply to Blanket Purchase Agreements (BPAs) and to orders or calls under BPAs?**

GSA contracting officers must include the representation provision at [FAR 52.204-24](#) (AUG 2020) in all solicitations for BPA orders, calls, and notices of intent to place a BPA order or call, including Requests for Quotes (RFQs). GSA contracting officers must include the SAM representation provision at [FAR 52.204-26](#) in orders and calls, unless the SAM representation provision at FAR 52.204-26 was included in the solicitation for the contract under which the BPA was established (GSA contracting officers may choose to include the SAM representation provision at FAR 52.204-26 in all orders and calls instead of investigating the solicitation for the contract under which the BPA was established). GSA contracting officers must also include the updated reporting clause at [FAR 52.204-25](#) (AUG 2020) in orders and calls, unless the updated reporting clause at FAR 52.204-25 (AUG 2020) is already part of the contract under which the BPA was established or the terms and conditions of the BPA.

When placing a BPA order or call under the micro-purchase threshold, the representation provision at FAR 52.204-24 and the reporting clause at FAR 52.204-25 are not required, pending additional forthcoming information for GSA employees from GSA's Office of Acquisition Services (OAS) (see the answer to Question 4), but the prohibitions still apply.

GSA contracting officers may, at their discretion, include the updated reporting clause at FAR 52.204-25 (AUG 2020) in new BPAs. The representation provisions (FAR 52.204-24 and 52.204-26) are not required in solicitations for BPAs.

GSA contracting officers may, at their discretion, modify (by bilateral modification) existing BPAs to include the updated reporting clause at FAR 52.204-25 (AUG 2020).

Provisions and clause implementation tables are available on [Acquisition.gov](#).

### **26. Do GSA contracting officers need to wait to place orders under indefinite delivery vehicles until the master contracts are updated?**

No. Per [Acquisition Letter MV-20-10, Section 5\(b\)\(ii\)](#), prior to placing orders under GSA's or other agencies' indefinite delivery vehicles (including indefinite-delivery indefinite-quantity contracts (IDIQs), Federal Supply Schedules (FSS), Government-wide Acquisition Contracts (GWACs), and Multiple-Award Contracts (MACs), GSA contracting officers must review the master contract to ensure that the updated reporting clause at [FAR 52.204-25](#) (AUG 2020) has been incorporated in the contract, and, if the updated reporting clause at FAR 52.204-25 (AUG 2020) has not been incorporated in the contract, the GSA contracting officer must also include the reporting clause in the solicitation and resultant order.

To determine whether an FSS contract includes the updated reporting clause at FAR 52.204-25, review the contract's current terms and conditions in [Contracts Online](#). To determine whether a non-FSS indefinite delivery contract includes the updated reporting clause at FAR 52.204-25, review contract current terms and conditions at the applicable program website.

Remember, all solicitations for, and notifications of intent to place, orders must include the updated representation provision at [FAR 52.204-24](#) (AUG 2020).

## **27. How do other agencies' regulations and deviations affect GSA contracting officers?**

Generally, other agencies' regulations and deviations do not affect GSA contracting officers. Other agencies' regulations and deviations only affect GSA contracting officers if they are providing assisted acquisition services, including PBS RWA-funded acquisitions, for that agency (see the answer to Question 28) or placing orders under that agency's indefinite delivery contracts.

## **28. What guidance do GSA contracting officers follow if providing assisted acquisition services, including PBS RWA-funded acquisitions, for another agency?**

Generally, for questions related to the acquisition process, follow GSA's acquisition procedures (e.g., set-aside determinations route through the GSA Office of Small Business Utilization). For questions about requirement specifications and performance of the contract, follow the requesting agency's procedures (e.g., waivers to the Section 889 prohibitions will be considered by the requesting agency). Also consider any specific or unique agreements noted in the Memorandum of Understanding (MOU) between GSA and the requesting agency (e.g., the annual GSA-DoD MOU).

Specifically, for FAS's assisted acquisitions, where the funding agency is not GSA:

- Update Inter-Agency Agreements (IAAs) to address Section 889 and other Supply Chain Risk Management (SCRM) issues
- Follow the policies of the funding agency, including any policies regarding waiver requests
  - Waiver processing, approval, and notification to the Office of the Director of National Intelligence (ODNI), the Federal Acquisition Security Council (FASC), and Congress are the responsibility of the funding agency unless otherwise identified in the IAA
    - If the funding agency does not have a waiver approval process, or does not satisfy the requirements to process waivers:
      - Follow GSA's guidance (in the answer to Question 14) regarding whether the offeror's or contractor's providing or use is permissible
      - No waiver may be granted (in this situation, GSA may not request waivers from the funding agency and may not grant any waivers on behalf of the funding agency)
- Be aware that the Department of Defense issued guidance on Section 889, which, among other things:

- Specifies that all Basic Ordering Agreements (BOAs) and Blanket Purchase Agreements (BPAs) must be updated to include the updated reporting clause at [FAR 52.204-25](#) (AUG 2020) before any order or call may be placed
- Requires completion of the representations required by the provision at [FAR 52.204-24](#) (AUG 2020) by existing contractors before exercising options to extend the period of performance
- Further guidance from the Department of Defense is anticipated

Specifically, for PBS's Reimbursable Work Authorizations:

- For applicable work funded by a single customer agency, follow the policies of the funding agency, including any policies regarding waiver requests
  - Waiver processing, approval, and notification to the Office of the Director of National Intelligence (ODNI), the Federal Acquisition Security Council (FASC), and Congress are the responsibility of the funding agency unless otherwise identified in the IAA
    - If the funding agency does not have a waiver approval process, or does not satisfy the requirements to process waivers:
      - Follow GSA's guidance (in the answer to Question 14) regarding whether the offeror's or contractor's providing or use is permissible
      - No waiver may be granted (in this situation, GSA may not request waivers from the funding agency and may not grant any waivers for the funding agency)
- For applicable work funded by multiple customer agencies, or jointly funded by a customer agency and GSA, follow GSA's policies.

**29. If providing assisted acquisition services, including PBS RWA-funded acquisitions, for another agency and the contractor provides a response to the reporting clause (FAR 52.204-25) to GSA, does the GSA contracting officer provide that response to GSA's Supply Chain Risk Management (SCRM) Review Board or to the other agency?**

In this case, reports required by the reporting clause at [FAR 52.204-25\(d\)](#) should be submitted to the other agency. A report is only submitted to GSA's Supply Chain Risk Management (SCRM) Review Board if the report is related to a GSA-funded contract or order.

**30. What guidance do other agencies' contracting officers follow if placing orders under a GSA indefinite delivery contract?**

Contracting officers at other agencies must follow their own agencies' policies.

## **E. FAS Programs.**

**31. How will FAS implement the interim FAR rules for existing Federal Supply Schedule (FSS) contracts?**

For existing Federal Supply Schedule (FSS) contracts, FAS has issued a mass modification to incorporate the updated reporting clause at [FAR 52.204-25](#) (AUG 2020). Ordering activities should visit [Contracts Online](#) to view which contracts have been modified to include the updated reporting clause at FAR 52.204-25 (AUG 2020).

**32. How will FAS implement the interim FAR rules for Federal Supply Schedule (FSS) offers that are in-house prior to August 13, 2020?**

For Federal Supply Schedule (FSS) offers that are in-house prior to August 13, 2020, offerors will be required to accept an amendment (i.e., accept the current refresh in the Online Registration System (ORS)) incorporating the updated representation provision at [FAR 52.204-24](#) (AUG 2020) and the updated reporting clause at [FAR 52.204-25](#) (AUG 2020) before the FSS contract is awarded. Offerors will be required to respond to the representation provision at FAR 52.204-24 by representing to the GSA contracting officer both if they “**will**” or “**will not**” provide covered telecommunications equipment or services to the Government and, based on a reasonable inquiry, if they “**do**” or “**do not**” “use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.” A template for FAR 52.204-24 is available on [gsa.gov/mascategoryrequirements](#).

For in-house offers, and any new offers received before the System for Award Management (SAM) representation provision at [FAR 52.204-26](#) is updated on October 26, 2020, offerors must complete and upload the representation(s) required by the provision at FAR 52.204-24 (AUG 2020) to eOffer.

**33. What happens if a Federal Supply Schedule (FSS) contractor has not accepted modification A808 (or, if applicable, associated cloned mods A809 or A813) to implement Section 889 Part A by incorporating the required clauses and providing the required representation?**

The FAS Office of Policy and Compliance, on behalf of Federal Supply Schedule (FSS) contracting officers, sent nonresponsive FSS contractors a Letter of Concern (LOC) stating both that:

- The Schedule contractor’s contract information will be hidden in GSAAAdvantage, eLibrary and eBuy if the Schedule contractor does not accept mass modification A808 (or, if applicable, associated cloned mods A809 or A813) within 14 days after receiving the LOC
- FAS will issue a modification to cancel the contract, per GSAR 552.238-79 *Cancellation*, if the FSS contractor has not accepted the modification and provided representation by the date specified in the LOC; FSS contractors will receive multiple notifications about the cancellation before the LOC deadline

If they have not already, FSS contracting officers should initiate modifications to cancel FSS contracts that have not incorporated the modification or provided the representation. Before initiating contract cancellation, FSS contracting officers should:

- Check to see if the FSS contractor has accepted consolidation mass modification A812 **and** provided a “**does not**” provide response to representation provision at [FAR 52.212-3\(v\)](#) in the System for Award Management (SAM)
  - If the FSS contractor has accepted A812 and provided a “**does not**” provide response in SAM, the contract is technically compliant with the first prohibition, and the FSS contracting officer should contact the FSS contractor to let them know that they should be able to accept modification A808 and complete the representation
- Check the Federal Procurement Data System (FPDS) to determine if there are active Blanket Purchase Agreements (BPAs), high-dollar value orders set to expire soon, or any other orders awarded under the FSS contract that may warrant outreach to FAS customers

In accordance with GSAR 552.238-79, cancellation will take effect 30 calendar days after the FSS contractor receives the notice of cancellation. FSS contracting Officers should verify receipt of the notice of cancellation by the FSS contractor.

Existing BPAs are also cancelled as of the effective date of contract cancellation, and no new orders or calls are permitted after this date. In accordance with the clause at [FAR 52.216-22](#) INDEFINITE QUANTITY (OCT 1995), any BPA order or call issued during the effective period of the contract and not completed within that period must be completed by the FSS contractor within the time specified in the BPA order or call. The contract governs the FSS contractor's and Government's rights and obligations with respect to any BPA orders or calls to the same extent as if the BPA order(s) or call(s) was completed during the contract's effective period, provided that the FSS contractor must not be required to make any deliveries under the contract after the completion of a customer agency order, including options, 60 months following the expiration of the base contract ordering period.

#### **34. What is FAS doing to find and remove covered telecommunications equipment and services under Federal Supply Schedule (FSS) contracts?**

In Fiscal Year 2019, the FAS Office of Policy and Compliance (OPC) piloted the Prohibited Products Robo-mod Process to automate the identification and removal of prohibited products from Federal Supply Schedule (FSS) contracts. OPC has continued running the robo-mod process on an ongoing basis to identify and remove covered telecommunications equipment and services. Additional details on the Prohibited Products Robo-mod Process are available [here](#).

#### **35. How do the interim FAR rules apply to the FedRooms Program?**

The FedRooms® program operates under a task order awarded against Multiple Award Schedule (MAS) Category 561599L, Lodging Negotiations and Management Services. Agencies may use FedRooms® rates when booking lodging for official duty travel through all booking channels, such as E-gov Travel Service (ConcurGov and CWTSato Travel), Defense Travel Service, FedRooms.com, and an Agency's Travel Management Center. There is no order-level solicitation process under FedRooms®. For the purposes of [FAR 4.2105\(a\)](#), the representation provision at [FAR 52.204-24](#) is required only in solicitations at the Schedule contract level.

**36. How will the interim FAR rules be implemented for the Order-Level Material (OLM) Special Item Number (SIN) on the Multiple Award Schedule (MAS) Consolidated Schedule?**

There are no special procedures for GSA contracting officers to follow when including Order-Level Materials (OLMs) in a task order. The Multiple Award Schedule (MAS) Consolidated solicitation has been refreshed to include the updated representation provision at [FAR 52.204-24](#) (AUG 2020) and the updated reporting clause at [FAR 52.204-25](#) (AUG 2020). Requests for Quotes and Requests for Proposals issued under the Schedule program must include the updated representation provision at FAR 52.204-24 (AUG 2020) and, until the master indefinite delivery contract is modified to add the updated reporting clause as FAR 52.204-25 (AUG 2020), must also include the updated reporting clause (which must also be incorporated into the resultant order) at FAR 52.204-25 (AUG 2020).

**F. PBS Programs.**

**37. How will PBS implement the interim FAR rules and the GSA class deviation (CD-2020-15) for real property lease acquisitions?**

Guidance for PBS real property lease acquisitions is provided in [Leasing Alert LA-20-11](#).

GSA class deviation [CD-2020-15](#) requires GSA real property lease acquisitions to follow the representation and reporting requirements as stated at [FAR 4.2105](#). Information about the FAR's representation requirements is available in the answers to Questions 6-10 and information about the FAR's reporting requirement is available in the answers to Questions 12 and 13.