



ACQUISITION  
AND SUSTAINMENT

## THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

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MEMORANDUM FOR CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF  
DEFENSE

SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
CHIEF OF THE NATIONAL GUARD BUREAU  
COMMANDERS OF THE COMBATANT COMMANDS  
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INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
DIRECTOR OF OPERATIONAL TEST AND EVALUATION  
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF  
DEFENSE  
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE  
AFFAIRS  
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC  
AFFAIRS  
DIRECTOR OF NET ASSESSMENT  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Implementation of Statutory Prohibitions on the Use or Procurement of Certain  
Telecommunications and Video Surveillance Services or Equipment

Section 889 of the John S. McCain National Defense Authorization Act (NDAA) for FY 2019 and section 1656 of the NDAA for FY 2018 establishes prohibitions on the use or procurement of certain telecommunications and video surveillance services or equipment. This memorandum rescinds and supersedes guidance published in the memorandum of October 24, 2018, same subject.

The section 889 procurement prohibition has been implemented in Federal Acquisition Regulation (FAR) subpart 4.21, "Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment," effective August 13, 2019. Section 889 authorizes the head of an executive agency to waive the procurement prohibition on a one-time basis for a period not to exceed two years, subject to certain requirements.

The section 1656 procurement prohibition is being developed for inclusion in acquisition regulations through Defense FAR Supplement case number 2018-D022, "Covered Telecommunications Equipment or Services." This prohibition is limited to certain telecommunications equipment or services for use in carrying out the Department's nuclear

deterrence or homeland defense missions, and provides the Secretary of Defense limited waiver authority for a period not to exceed one year.

Both statutory prohibitions apply to all procurements of covered equipment or services, and to new contract awards, orders issued under indefinite-delivery or indefinite-quantity contracts, or awards that exercise options or otherwise extend the duration of current contracts or orders. However, the prohibitions differ in several key areas, including the scope of the covered equipment and services, the criteria, duration, and approval authority for waivers, and the associated congressional reporting requirements.

Implementing guidance for exercising the limited statutory authority to waive these procurement prohibitions temporarily is provided in the attachment to this memorandum.



Ellen M. Lord

Attachment:  
Waiver and Reporting Procedures

## ATTACHMENT 1

### WAIVER AUTHORITIES AND REPORTING REQUIREMENTS FOR CERTAIN STATUTORY PROCUREMENT PROHIBITIONS

Both section 889 of the John S. McCain National Defense Authorization Act (NDAA) for the Fiscal Year (FY) 2019 and section 1656 of the NDAA for FY 2018 prohibit the procurement of certain telecommunications and video surveillance services or equipment; however, the statutes differ in scope, waiver authority and conditions, and reporting requirements. For a particular procurement, either section 889 or section 1656 or both may apply. To determine the applicable waiver authority, first identify the equipment or service to be procured and the mission supported. If both statutes apply, then a separate waiver will be required for each using both the Part A and Part B procedures set forth below.

- Section 889 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 prohibits the use or procurement of certain telecommunications and video surveillance services or equipment. Follow the procedures at section A for waiver of these prohibitions.
- Section 1656 of the NDAA for FY 2018 prohibits the procurement of certain telecommunications services or equipment for use in carrying out DoD's nuclear deterrence or homeland defense missions. Follow the procedures at section B for waiver of these prohibitions.

#### **Part A: Section 889 Waiver Procedures:**

##### 1. DoD Waiver Authority and Scope:

- a) In accordance with section 889(d)(1), these prohibitions may be waived by the head of an executive agency on a one-time basis, with respect to an entity requesting a waiver. The objective outcome for implementing the section 889 prohibitions is a complete phase-out of covered telecommunications or video surveillance equipment from use within the Department's full supply chain.
- b) The Secretaries of the Military Departments may approve section 889 waivers for their subordinate entities in accordance with section 889(f)(4) and 41 U.S.C. 133. The Secretary of Defense may approve waivers for the 4th estate.
- c) There are no restrictions on the delegation of this waiver authority.

##### 2. Waiver Period:

- a) The maximum waiver period allowed by section 889 is up to two years or until August 13, 2021, whichever comes first. In no instance may the DoD waiver authority approve a waiver extending beyond August 13, 2021.

- b) The Director of National Intelligence (DNI) may provide a section 889 waiver on a later date, based on a determination that the waiver is in the national security interests of the United States. All DoD component requests for DNI waiver approval must be coordinated with USD(Acquisition & Sustainment (A&S)), USD(Research & Engineering (R&E)), DoD Chief Information Officer (CIO), and USD(Intelligence (I)).

### 3. Waiver Processing and Reporting Requirements:

- a) A DoD waiver may be approved only on the basis of a compelling justification for additional time to implement the procurement prohibitions.
- b) Waiver requests must include a full and complete laydown, or description, of the extent or presence of covered telecommunications or video surveillance equipment in the entity's supply chain and a phase-out plan to eliminate the equipment from the entity's systems.
- c) To facilitate recognition and appropriate routing, waiver requests must also identify the program name and mission area supported by the waiver from the following list:
  - i. nuclear deterrence (including nuclear command, control, and communications, integrated tactical warning and attack assessment, and continuity of government)
  - ii. homeland defense (including ballistic missile defense)
  - iii. DoD telecommunications network infrastructure
  - iv. physical security of DoD installations and facilities
  - v. defense business systems
  - vi. other, including loan, grant, or subsidy programs

If the mission area falls under 3(c)(i) or (ii) above, then section 1656 may also apply in addition to section 889, thus requiring an additional waiver using the procedures at Part B below.

- d) For Military Department waivers, the Service Secretary will submit the approved waiver, laydown, and phase-out plan to the DoD CIO, USD(A&S), USD(R&E), and USD(I) within two days of approval, and will report directly to the appropriate Congressional committees within 30 days of approval.
- e) For Secretary of Defense approved waivers, a component head-approved request will be staffed for approval by the USD(I) for waivers pertaining to video surveillance equipment or services, and by the DoD CIO for waivers pertaining to telecommunications equipment.

- f) Section 889 requires that each waiver be submitted to the appropriate congressional committees within 30 days of approval. The term “appropriate congressional committees” means:
  - i. the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate; and
  - ii. the Committee on Financial Services, the Committee on Foreign Affairs, and the Committee on Oversight and Government Reform of the House of Representatives.

**Part B: Section 1656 Waiver Procedures:**

- 1. DoD Waiver Authority and Scope:
  - a) In accordance with section 1656(b)(2), these prohibitions may be waived by the Secretary of Defense on a case-by-case basis.
  - b) Only the Secretary of Defense may waive these prohibitions, unless the Secretary delegates the waiver authority in accordance with the restrictions at section 1656(b)(3).
- 2. Waiver Period: The maximum waiver allowed by section 1656 is a single one-year period.
- 3. Waiver Processing and Reporting Requirements:
  - a) A DoD waiver may be approved only on the basis of national security interests of the United States.
  - b) Follow the procedures at Part A paragraph (3) up to and including Service Secretary or Component Head approval. Include the additional information below specific to section 1656 waiver requests:
    - i. Provide Service Secretary or Component Head confirmation that there are sufficient mitigations in place to guarantee ability to carry out the mission.
    - ii. Provide a full phase-out plan to remove the use of covered telecommunications equipment or services in carrying out the missions identified at Section A, paragraph 3(c)(i) and (ii).
  - c) Section 1656 requires the Secretary of Defense to certify to congressional defense committees for each waiver, as described at paragraph 3(b) above. If a procurement requires waivers under both sections 889 and 1656, then the Service Secretary or Component Head will complete the congressional notification requirements identified in Part A paragraph 3(f) after completion of the Secretary of Defense certification under section 1656.