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sectionnumber: 888

Input: In reference to the DOD Federal Register notice posted on January 12, 2017, please consider this letter as early input on the implementation of the National Defense Authorization Act for Fiscal Year 2017. This submission pertains to section 888, which is entitled 'Requirement and review relating to use of brand names or brand-name or equivalent descriptions in solicitations.'

By way of background, Juniper Networks delivers high-performance network infrastructure products and services spanning routing, switching, security applications, and firewalls. We are proud of our rich history of providing our products and services to Federal government departments and agencies that recognize the network as being critical to their success in serving the American public. In fact, we have significant experience in providing trusted and secure equipment to DOD and its components to meet their mission requirements.

#### Background on Full and Open Competition

Federal law, acquisition regulations, and OMB guidance require Federal departments and agencies to acquire products and services through full and open competition, meaning that the government should issue solicitations that identify its performance and functional requirements instead of preferring specific brand names or proprietary technologies. Compliance with competition requirements is critical to promoting innovation, facilitating interoperability, reducing costs, and providing greater return on investment for government networks. In those limited situations in which an agency believes that only one brand or a proprietary technology is capable of meeting its needs, the agency must issue a written justification and approval that identifies the need and the basis for the preference.

Unfortunately, Federal contractors are witnessing the improper use by DOD of the exceptions to full and open competition, including the improper use of brand name reference, sole or limited source acquisition, proprietary standards, and prescriptive requirements. In some cases, the justification does not contain all of the required content with sufficient specificity, making it difficult for providers to determine what the agency's technical requirements are whether an alternative provider could meet the government's needs.

In other cases, the written justifications contain inaccurate content. For instance, there have been justifications that assert that an agency must continue with an incumbent provider because no other provider's products are interoperable (even though the products actually do interoperate). Moreover, DOD components have stated that migrating from one specific provider to a multi-vendor environment would be cost prohibitive due to the expense of training their personnel on the new products.

Components make this claim without offering any empirical evidence, and this claim is not in the FAR or DFARS as a basis for excluding alternate vendors.

#### Section 888

In furtherance of ensuring DOD compliance with full and open competition requirements, Congress enacted section 888 of the FY 2017 NDAA. Section 888 consists of two parts; subsection (a) requires a justification and approval for solicitations that are not open to competition, while subsection (b) calls for the elimination of the unjustified use of potentially anti-competitive specifications.

Subsection 888(a) directs the Secretary to ensure that DOD issues written justifications for any solicitations that specify brand names, brand name or equal descriptions, or proprietary specifications or standards. This is an important departure from the current FAR, which states in 6.302-1(c)(2) that brand name or equal solicitations do not require justification and approvals even though they imply a brand preference. This change to DOD acquisition practice will help ensure that DOD end users are not restricted to inappropriate or legacy brands and proprietary technologies, and Juniper urges DOD to implement it rapidly across all components.

Subsection 888(b), when implemented, will be equally useful in helping DOD diminish its reliance on inappropriate and inaccurate justifications and approvals. It calls for DOD to review and revise all policy, guidance, and regulations related to IT acquisition specifications to eliminate the unjustified use of potentially anti-competitive specifications. For example, this revised guidance will ensure that DOD does not issue or rely upon justifications that incorrectly state that competitor products cannot interoperate with the incumbent product or that migrating from a single vendor network to a multi-vendor environment is misguided or cost-prohibited.

In short, Juniper Networks believes that section 888 will enable DOD to realize true competition. Thank you for your consideration of our views. Robert B. Dix, Jr.

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