

Public Meeting

Section 889

March 2, 2020

Presented by:

Mark Zuckerman, CEO, Clear Connection

301-289-3200

markz@clearconnection.com



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About Clear Connection

- We are a security company based in Beltsville, Maryland.
- We employ 30 local residents.
- Our primary business is electronic security, telecommunications and IT. Clear Connection designs, installs and services systems throughout Metro DC and Baltimore, including commercial entities, schools and non-profit organizations.
- We have been in business since 1986.



Clear Connection and Hikvision

- We have been a Hikvision partner for 10 years.
- Clear Connection purchases about \$120,000 annually as a Hikvision partner.
- For a small-medium sized U.S. business, this is a significant amount of income



Confusion on compliance with (a)(1)(B) of section 889 of 2019 NDAA

- Clear Connection has always played by the rules.
- We need guidance on how to comply with the language of this law as written.
- Specifically, clear guidance that Section 889 of the NDAA does not apply to non-federal sales or use of covered equipment.
- This is critical to my company as I provide integrated security solutions to commercial markets including many non-profits. The nonprofit community is eligible for NSGP. We need clarification on what this rule means for these non-governmental customers who may receive federal grants.

(a)(1)(B)

“prohibits agencies 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.”



TOP QUESTIONS

- If it is all just about mere “use” of any kind, we need more clarification of what “use” will mean under (a)(1)(B). Will the vague and confusing definitions of “substantial or essential component” and “critical technology” that we saw in the interim rule for (a)(1)(A) be just replicated in (a)(1)(B)? Can you give us an example of how a small business could “use” covered equipment but not “as a substantial or essential component of any system” that would trigger (a)(1)(B)? Despite all the narrowing language in the statute, the rule seems to sweep broadly and impose effectively a flat ban on any and all use of such equipment. Is that not so? We could benefit from concrete examples of how we could possibly keep using this equipment but not in a way that Section 889 prohibits?
- Will there be any clarification of Section 889(b) which deals with loan and grant funds? I see that the OMB recently proposed a sweeping new interpretation of that provision. Will DOD formally promulgate any rules clarifying who is bound by it and what its scope will be? Or is that now in the hands of OMB?



TOP QUESTIONS

- Does the mere “sale” or “installation” of Hikvision equipment count as “use” for purposes of (a)(1)(B). If an integrator sells Hikvision equipment, but does not actually use the equipment itself, does that mean that it is prohibited from doing business with the federal government? And if an integrator helps to “install” Hikvision equipment – or other covered equipment – in integrated security solutions for businesses – but does not use the equipment itself, would that also prevent it from doing business with the government?
- Second, how will the “public safety, security of government facilities, critical infrastructure language” in Section 889(f)(3)(B) be interpreted for applying (a)(1)(B)? If my use of covered video camera in a parking lot of my small store has nothing at all to do with national security or critical infrastructure, would I still be banned from doing business with the government because I “use” this equipment at all? If so, what purpose does all that “public safety, critical infrastructure” language have in Section 889?



Consequences to my business of a broad 889 implementation

- It is not clear what Section 889 means, who it applies to, or how far its prohibitions extend.
- A broad reading of Section 889 would appear to mean that I can no longer service my government contracts using products not covered by the prohibition if I simultaneously use covered products for any other commercial job or some other unrelated purpose (i.e. store security).
 - If Section 889 is interpreted in this unprecedented and broad way, it would greatly damage my small business.
 - In addition, if interpreted like this, some of my customers would be barred from entering into a federal contract because they have covered products installed in their facility to protect their property and staff.
 - As read it, these customers would have to remove the covered products from their facilities, even if such products had no connection to the government contract, causing significant disruption to their business and substantially increasing their operating cost.



***Please keep the interests of
U.S. small businesses like
Clear Connection in mind as
you write the rules of the road
for this provision.***



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