



OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-3000

ACQUISITION  
AND SUSTAINMENT

AUC 13 2019 Rev I

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
INSPECTOR GENERAL OF THE DEPARTMENT OF  
DEFENSE  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION & PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS, DEFENSE AGENCIES  
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: DoD Procedures Implementing FAR 4.21, Prohibition on Contracting for Certain  
Telecommunications and Video Surveillance Services or Equipment (FAR Case  
2018-017)

This memorandum provides DoD-specific procedures associated with the interim FAR rule that implements section 889(a)(1)(A) of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232).

Section 889(a)(1)(A) prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system, on or after August 13, 2019, unless an exception applies or a waiver is granted. This statutory prohibition has been implemented in FAR subpart 4.21, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

These implementation procedures apply to contracts, task orders, and delivery orders, including basic ordering agreements (BOAs), orders against BOAs, blanket purchase agreements (BPAs), and calls against BPAs.

Existing solicitations.

Contracting officers shall include the provision at FAR 52.204-24 and the clause at FAR 52.204-25, as prescribed at FAR 4.2105 in solicitations issued—

- On or after August 13, 2019, and resultant contracts, task orders, or delivery orders;  
and

- Before August 13, 2019, provided award of the resulting contracts, task orders, or delivery orders occurs on or after August 13, 2019.

#### Existing contracts and orders.

Contracting officers shall modify indefinite delivery contracts to include the FAR clause for future orders, prior to placing any future orders. When modifying other existing contracts, task orders, or delivery orders to extend the period of performance, including exercising an option, contracting officers shall include the clause. Contracting officers shall not exercise an option period or otherwise extend a contract, task order, or delivery order for equipment, systems, or services that use covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system, unless an exception at FAR 4.2102(b) applies or a waiver is granted. Contracting officers should consult the requiring activity to determine whether a particular contract or order is affected.

#### Representations.

The contracting officer shall not award contracts or issue task or delivery orders to an offeror that has provided an affirmative representation in response to paragraph (c) of the provision at FAR 52.204-24, unless the requiring activity provides a written determination that—

- The covered telecommunications equipment or services included in their offer, in accordance with paragraph (d) of the provision, are not being used as a substantial or essential component of any system, or as critical technology as part of any system; or
- An exception at FAR 4.2102(b) applies.

If the requiring activity is unable to provide a written determination as described above and no other offerors provide a negative representation, then no award shall be made unless a waiver is granted.

If the apparently successful offeror provides a negative response to the representation in paragraph (c) of the provision, the contracting officer may rely on the representation, unless the contracting officer has an independent reason to question the representation. If the contracting officer has an independent reason to question a negative representation of the otherwise successful offeror, the contracting officer shall consult with the requiring activity and legal counsel on how to proceed to ensure that the procurement would not violate the statutory prohibition.

#### Reporting.

If a contractor reports information to <https://dibnet.dod.mil>, in accordance with the clause at FAR 52.204-25, the DoD Cyber Crime Center will notify the contracting officer of the report. Upon receipt, the contracting officer shall consult with the requiring activity and legal counsel on how to proceed using existing contractual remedies.

#### Class Deviations.

Departments and agencies may request issuance of a class deviation to obtain relief from the requirement for offerors to provide a representation with every offer for contracts that are solely for specific commodities or services that would never include covered

telecommunications equipment (e.g. produce, paper) or services, if the requirement for offerors to provide the representation is likely to have a significant impact on the Department's ability to meet its mission. Requests for such class deviations must be submitted to the Director, Defense Acquisition Regulation Council, in accordance with DFARS 201.402(2), and will be coordinated with the Office of Management and Budget, Office of Federal Procurement Policy.

My point of contact for this subject is Ms. Mary Thomas, who may be reached at [mary.s.thomas.civ@mail.mil](mailto:mary.s.thomas.civ@mail.mil).



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