DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2019–0002, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2019–05; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of an interim rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2019–05. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the internet at *http://www.regulations.gov.*

DATES: For effective date see the separate document, which follows.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAC 2019–05, FAR Case 2018–017.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR Case, refer to the specific subject set forth in the document following this item summary. FAC 2019–05 amends the FAR as follows:

RULE LISTED IN FAC 2019–05

Subject	FAR case	Analyst
Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	2018–017	Francis.

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2018–017)

This interim rule amends the FAR to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Paragraph (a)(1)(A) of section 889 prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunication 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 has been granted. Further prohibitions at paragraph (a)(1)(B) of section 889 go into effect August 13, 2020, and will be addressed through separate rulemaking.

To implement paragraph (a)(1)(A) of section 889, this interim rule provides a new solicitation provision and contract clause. The provision at FAR 52.204–24 requires offerors to represent whether their offer includes covered telecommunications equipment or services and if so, to identify additional details about its use. Representations are also required for orders on indefinite delivery contracts. The clause at FAR 52.204–25 prohibits contractors from providing 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, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver described in FAR 4.2104. The contractor must also report any such equipment, systems, or services discovered during contract performance; this requirement flows down to subcontractors.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

This interim rule is being implemented as a national security measure to protect Government information, and Government information and communication technology systems.

Contracting officers shall modify certain contracts to include the new FAR clause, as specified in the "Dates" section of the preamble of the interim rule. Contracting officers also shall include the new FAR provision in solicitations for an order, or notices of intent to place an order, under those contracts.

Janet M. Fry,

Director, Federal Acquisition Policy Division, Office of Government-Wide Policy.

Federal Acquisition Circular (FAC) 2019–05 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2019–05 is effective August 13, 2019 except for FAR Case 2018–017, which is effective August 13, 2019.

Kim Herrington,

Acting Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2019–17200 Filed 8–12–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 12, 13, 39, and 52

[FAC 2019–05; FAR Case 2018–017; Docket No. 2018–0017, Sequence No. 1]

RIN 9000–AN83

Federal Acquisition Regulation: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).

DATES: *Effective Date:* August 13, 2019.

Applicability:

Contracting officers shall include the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment and clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment as prescribed—

- In solicitations issued on or after August 13, 2019, and resultant contracts; and
- In solicitations issued before August 13, 2019, provided award of the resulting contract(s) occurs on or after August 13, 2019.

Contracting officers shall modify, in accordance with FAR 1.108(d), existing indefinite delivery contracts to include the FAR clause for future orders, prior to placing any future orders.

If modifying an existing contract or task or delivery order to extend the period of performance, including exercising an option, contracting officers shall include the clause in accordance with 1.108(d).

The contracting officer shall include the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations for an order, or notices of intent to place an order, including those issued before August 13, 2019, where performance will occur on or after that date, under an existing indefinite delivery contract.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before October 15, 2019 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2018–017 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2018–017". Select the link "Comment Now" that corresponds with "FAR Case 2018–017". Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2018–017" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite "FAR Case 2018–017" in all correspondence related to this case. All comments received will be posted without change to *http://;www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAR Case 2018–017.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the FAR to implement section 889(a)(1)(A) of the NDAA for FY 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.

"Covered telecommunications equipment or services," as defined in the statute, means—

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- Telecommunications or video surveillance services provided by such entities or using such equipment; or
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The rule adopts the definition of critical technologies included in the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (Section 1703 of Title XVII of the NDAA for FY 2019, Pub. L. 115–232, 50 U.S.C. 4565(a)(6)(A)).

"Covered foreign country," as defined in section 889, means the People's Republic of China.

Under certain circumstances, section 889 allows the head of an executive agency to grant a one-time waiver on a case-by-case basis for up to a two-year period; in other circumstances, waivers issued by the Director of National Intelligence are authorized.

This rule requires submission of a representation with each offer that will require offerors to identify as part of their offer any covered telecommunications equipment or services that will be provided to the Government. DoD, GSA, and NASA recognize that some agencies may need to tailor the approach to the information collected based on the unique mission and supply chain risks for their agency.

In order to reduce the information collection burden imposed on the public, DoD, GSA, and NASA are currently working on updates to the System for Award Management to allow offerors to represent annually whether they sell equipment, systems, or services that include covered telecommunications equipment or services. Only offerors that provide an affirmative response to the annual representation would be required to provide the offer-by-offer representation in their offers for contracts and for task or delivery orders under indefinite delivery contracts.

The prohibition in section 889(a)(1)(B) is not effective until August 13, 2020, and will be implemented through separate rulemaking.

II. Discussion and Analysis

This rule amends FAR part 4, adding a new subpart 4.21, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, with a corresponding new provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, and contract clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. The rule adds text in subpart 12.3, Acquisition of Commercial Items, and subpart 13.2, Actions at or Below the Micro-Purchase Threshold, to address section 889(a)(1)(A) with regard to commercial item representations and micro-purchases.

The definition of "critical technologies" provided in FIRRMA has been adopted to address the prohibition in section 889(a)(1)(A) on providing

covered telecommunications equipment or services as "critical technology as part of any system." As with section 889, FIRRMA is aimed at ensuring that the United States is protected from certain risks regarding foreign actors. In effectuating these protections, defining terms in a consistent manner, to facilitate consistent application, is crucial. While there are elements of this definition that may not raise concerns regarding covered telecommunications equipment or services (for example, the inclusions of select agents or toxins), the majority of identified categories in the FIRRMA definition of "critical technologies" include or could potentially include covered telecommunications equipment or services. Since the prohibition does not apply if no covered telecommunications equipment or services are present, a definition that includes categories that may be unlikely to include telecommunications equipment or services is overbroad in a way that incurs no additional cost, and ensures the benefits of consistency with other Government efforts.

To implement section 889(a)(1)(A), the clause at 52.204–25 prohibits contractors from providing 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, unless an exception or a waiver applies. The contractor must also report any such equipment, systems, or services discovered during contract performance; this requirement flows down to subcontractors.

The provision at 52.204–24 is required in all solicitations, and includes a representation that will require offerors to identify as part of their offer any covered telecommunications equipment or services that will be provided to the Government. The additional information provided through this representation will assist the Government in appropriately assessing the presence of any covered telecommunications equipment or services that may be present in an offer, for example, to determine if the items in question will be used as a substantial or essential component, or to determine if a waiver request may be appropriate.

This rule also adds cross-references in FAR parts 39, Acquisition of Information Technology, and 13, Simplified Acquisition Procedures, to the coverage of the section 889 prohibition at FAR subpart 4.21. In addition, the rule adds OMB Control Number 9000–0199 to the list at FAR 1.106 of OMB approval under the Paperwork Reduction Act.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule adds a new provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, and a new contract clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, in order to implement section 889(a)(1)(A) of the NDAA for FY 2019, which prohibits the purchase of 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 on or after August 13, 2019, unless an exception applies or a waiver has been granted.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the simplified acquisition threshold (SAT). Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Finally, 41 U.S.C. 1907 states that acquisitions of commercially available off-the-shelf (COTS) items will be exempt from a provision of law unless certain circumstances apply, including if the Administrator for Federal Procurement Policy makes a written determination and finding that would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

C. Determinations

The FAR Council has determined that it is in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial items. The Administrator for Federal Procurement Policy has determined that it is in the best interest of the Government to apply this rule to contracts for the acquisition of COTS items.

While the law does not specifically address acquisitions of commercial items, including COTS items, there is an unacceptable level of risk for the Government in buying equipment, systems, or services that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This level of risk is not alleviated by the fact that the equipment or service being acquired has been sold or offered for sale to the general public, either in the same form or a modified form as sold to the Government (*i.e.*, that it is a commercial item or COTS item), nor by the small size of the purchase (*i.e.*, at or below the SAT). As a result, agencies may face increased exposure for violating the law and unknowingly acquiring covered telecommunication equipment or services absent coverage of these types of acquisitions by this rule.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" under E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this rule. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771, because the rule is issued with respect to a national security function of the United States. As highlighted by sections III, VII, and VIII of this preamble, national security is a primary direct benefit of this rule. Also, though this rule is subject to the regulatory publication requirements of 41 U.S.C. 1707, application of the national security exemption under E.O. 13771 requires assessing the application of the "good cause" exception under 5 U.S.C. 553. This rule meets the "good cause" exception as the one-year deadline Congress established to implement section 889(a)(1)(A) would not provide sufficient time for notice and comment in light of the complex nature of the rule and sensitive interagency process.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA expect that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

The reason for this interim rule is to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).

The objective of the rule is to prescribe appropriate policies and procedures to enable agencies to determine and ensure that they are not procuring or obtaining 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 on or after August 13, 2019. The legal basis for the rule is section 889(a)(1)(A) of the NDAA for FY 2019, which prohibits Government procurement of such equipment, systems, and services on or after that date, unless an exception applies or a waiver has been granted.

This collection includes a burden for reporting during contract performance and a representation. A data set was generated from the Federal Procurement Data System (FPDS) for fiscal years (FY) 2016, 2017, and 2018 for use in estimating the number of small entities affected by this rule.

The representation requirement in FAR provision 52.204–24 and the reporting requirement in the clause at FAR 52.204–25 will be incorporated in all solicitations and contracts, including contracts with small entities. The FPDS data indicates that the Government awarded contracts to an average of 95,223 unique entities, of which 69,865 (73 percent) were small entities. DoD, GSA, and NASA estimate that representations will be received from twice this number of entities, or 139,730 small entities. While representations will be submitted by all offerors, detailed additional information is only estimated to be required from approximately 10 percent of offerors, or 13,973 small entities. It is estimated that reports will be submitted by 5 percent of contractors, or 3,493 small entities.

The provision at FAR 52.204–24 requires each offeror to represent whether it will provide covered telecommunications equipment or services. If the offeror responds affirmatively, the offeror is required to further disclose substantial detail regarding the basis for the affirmative representation. Representations will be submitted by all offerors, or 139,730 small entities; it is estimated that detailed representations following an affirmative response will be submitted by 10 percent of contractors, or 13,973 small entities.

The clause at FAR 52.204–25 requires contractors and subcontractors to report to the contracting officer, or for DoD through *https://dibnet.dod.mil,* any discovery of covered telecommunications equipment or services during the course of contract performance.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

Because of the nature of the prohibition enacted by section 889(a)(1)(A), it is not possible to establish different compliance or reporting requirements or timetables that take into account the resources available to small entities or to exempt small entities from coverage of the rule, or any part thereof. However, in order to reduce the information collection burden imposed on the public, DoD, GSA, and NASA are currently working on updates to the System for Award Management to allow offerors to represent annually whether they sell equipment, systems, or services that include covered telecommunications equipment or services. Only offerors that provide an affirmative response to the annual representation would be required to provide the offer-by-offer representation in their offers for contracts and for task or delivery orders under indefinite delivery contracts. DoD, GSA, and NASA were unable to identify any alternatives that would reduce the burden on small entities and still meet the objectives of section 889.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018–017) in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained OMB approval and displays a currently valid OMB Control Number.

DoD, GSA, and NASA requested, and OMB authorized, emergency processing of the collection of information involved in this rule, consistent with 5 CFR 1320.13. DoD, GSA, and NASA have determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the PRA, because the prohibition in section 889(a)(1)(A) goes into effect on August 13, 2019.

b. The collection of information is essential to the mission of the agencies to ensure the Federal Government complies with section 889(a)(1)(A) on the statute's effective date in order to protect the Government supply chain from risks posed by covered telecommunications equipment or services.

c. Moreover, DoD, GSA, and NASA cannot comply with the normal clearance procedures because public harm is reasonably likely to result if current clearance procedures are followed. Authorizing collection of this information on the effective date will ensure that agencies do not procure or obtain, or extend or renew a contract to procure or obtain, equipment, systems, or services in violation of the prohibition in section 889(a)(1)(A). It will also avoid substantial additional costs that may be incurred from having to replace such equipment, systems, or services that are purchased in violation of section 889(a)(1)(A), as well as additional administrative costs for reprocurement.

DoD, GSA, and NASA intend to provide a separate 60-day notice in the **Federal Register** requesting public comment on the information collections contained within this rule under OMB Control Number 9000–0199.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

Affected Public: Private Sector—Business.

Total Estimated Number of Respondents: 190,446.

Average Responses per Respondents: 41.25.

Total Estimated Number of Responses: 7,855,881.

Average Time (for both positive and negative representations) per Response: 0.105 hour.

Total Annual Time Burden: 821,274.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

Affected Public: Private Sector—Business.

Total Estimated Number of Respondents: 4,761.

Average Responses per Respondents: 5.

Total Estimated Number of Responses: 23,805.

Average Time per Response: 1.5 hour.

Total Annual Time Burden: 35,708.

The public reporting burden for this collection of information consists of a representation to identify whether an offeror will provide covered telecommunications equipment and services as required by 52.204–24 and reports of identified covered telecommunications equipment and services during contract performance as required by 52.204–25. Representations are estimated to average 0.105 hour (the average of the time for both positive and negative representations) per response to review the prohibitions, research the source of the product or service, and either provide a negative response in the majority of cases or to complete the additional detailed disclosure, if applicable. Reports are estimated to average 1.5 hours per response, including the time for reviewing definitions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the report.

The subsequent 60-day notice to be published by DoD, GSA, and NASA will invite public comments.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. It is critical that the FAR is immediately revised to include the requirements of the law, which prohibits the Federal Government from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunication 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.

Because section 889(a)(1)(A) takes effect on August 13, 2019, this rule must take effect immediately to ensure agencies and contractors are implementing the statutory prohibition.

Pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 4, 12, 13, 39, and 52

Government procurement.

Janet M. Fry,

Director, Federal Acquisition Policy Division, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 4, 12, 13, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 12, 13, 39, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In section 1.106 amend the table by adding the entries "4.21", "52.204–24" and "52.204–25" in numerical order to read as follows:

FAR segment	OMB control No.
* * * * *	
4.21	9000–0199
* * * * *	
52.204–24	9000–0199
52.204–25	9000–0199
* * * * *	

■ 3. Revise the heading to Part 4 and add Subpart 4.21 to read as follows:

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

* * * * *

Subpart 4.21—Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

Sec.

4.2100 Scope of subpart.
4.2101 Definitions.
4.2102 Prohibition.
4.2103 Procedures.
4.2104 Waivers.
4.2105 Solicitation provision and contract clause.

4.2100 Scope of subpart.

This subpart implements paragraph (a)(1)(A) of section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232).

4.2101 Definitions.

As used in this subpart—

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and

components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

4.2102 Prohibition.

(a) *Prohibited equipment, systems, or services.* On or after August 13, 2019, agencies are prohibited 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 critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 4.2104.

(b) *Exceptions.* This subpart does not prohibit agencies from procuring or contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications 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.

(c) *Contracting Officers.* Contracting officers shall not procure or obtain, or extend or renew a contract (*e.g.*, exercise an option) 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 critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 4.2104.

4.2103 Procedures.

(a) *Representations.* If an offeror provides an affirmative response to the representations or discloses information in accordance with paragraphs (c) and (d) of the provision at 52.204–24, follow agency procedures.

(b) *Reporting.* If a contractor provides a report pursuant to paragraph (d) of the clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, follow agency procedures.

4.2104 Waivers.

(a) *Executive agencies.* The head of an executive agency may, on a one-time basis, waive the prohibition at 4.2102(a) with respect to a Government entity (*e.g.*, requirements office, contracting office) that requests such a waiver.

(1) The waiver may be provided, for a period not to extend beyond August 13, 2021, if the Government entity seeking the waiver submits to the head of the executive agency—

(i) A compelling justification for the additional time to implement the requirements under 4.2102(a), as determined by the head of the executive agency; and

(ii) A full and complete laydown or description of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain and a phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(2) The head of the executive agency shall, not later than 30 days after approval, submit to the appropriate congressional committees the full and complete laydown or description of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain and the phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(b) *Director of National Intelligence.* The Director of National Intelligence may provide a waiver if the Director determines the waiver is in the national security interests of the United States.

4.2105 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment—

(1) In all solicitations for contracts; and

(2) Under indefinite delivery contracts, in all notices of intent to place an order, or solicitations for an order (*i.e.*, subpart 8.4 and 16.505).

(b) The contracting officer shall insert the clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations and contracts.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.301 by redesignating paragraphs (d)(6) through (d)(11) as (d)(7) through (d)(12), respectively, and adding a new paragraph (d)(6) to read as follows:

12.301 Solicitation provisions and contract clauses for acquisition of commercial items.

* * * * *

(d) * * *

(6) Insert the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, as prescribed in 4.2105(a).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 5. Amend section 13.201 by revising the section heading and adding paragraphs (a) and (j) to read as follows:

13.201 General.

(a) Agency heads are encouraged to delegate micro-purchase authority (see 1.603–3).

* * * * *

(j) On or after August 13, 2019, do not procure or obtain, or extend or renew 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 critical technology as part of any system, unless an exception applies or a waiver is granted. (See subpart 4.21.)

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 6. Amend section 39.101 by adding paragraph (f) to read as follows:

39.101 Policy.

* * * * *

(f) On or after August 13, 2019, contracting officers shall not procure or obtain, or extend or renew 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 critical technology as part of any system on or after August 13, 2019, unless an exception applies or a waiver is granted. (See subpart 4.21.)

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Add sections 52.204–24 and 52.204–25 to read as follows:

52.204–24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

As prescribed in 4.2105(a), insert the following provision:

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019)

(a) *Definitions.* As used in this provision—

Covered telecommunications equipment or services, Critical technology, and *Substantial or essential component* have the meanings provided in clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, 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 critical technology as part of any system. Contractors are not prohibited from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications 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.

(c) *Representation.* The Offeror represents that—

It [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(d) *Disclosures.* If the Offeror has responded affirmatively to the representation in paragraph (c) of this provision, the Offeror shall provide the following information as part of the offer—

(1) All covered telecommunications equipment and services offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);

(2) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;

(3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and

(4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

(End of provision)

52.204–25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

As prescribed in 4.2105(b), insert the following clause:

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019)

(a) *Definitions.* As used in this clause—

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, 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 critical technology as part of any system. The Contractor is prohibited from providing to the Government 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, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications 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.

(d) *Reporting requirement.* (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at *https://dibnet.dod.mil.* For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at *https://dibnet.dod.mil.*

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

■ 8. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (a)(3) through (a)(5) as paragraphs (a)(4) through (a)(6) and adding a new paragraph (a)(3);

■ c. Redesignating paragraphs (e)(1)(iv) through (e)(1)(xxii) as (e)(1)(v) through (e)(1)(xxiii), and adding a new paragraph (e)(1)(iv);

■ d. Revising the date of Alternate II; and

■ e. In Alternate II, redesignating paragraphs (e)(1)(ii)(D) through (e)(1)(ii)(T) as (e)(1)(ii)(E) through (e)(1)(ii)(U), and adding a new paragraph (e)(1)(ii)(D).

The revisions and additions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (AUG 2019)

(a) * * *

(3) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

(e)(1) * * *

(iv) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

Alternate II (AUG 2019).

* * * * *

(e)(1) * * *

(ii) * * *

(D) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

■ 9. Amend section 52.213–4 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (a)(1)(iii) through (a)(1)(viii) as (a)(1)(iv) through (a)(1)(ix), and adding a new paragraph (a)(1)(iii); and

■ c. In paragraph (a)(2)(viii) removing "(JAN 2019)" and adding "(AUG 2019)" in its place.

The revision and addition read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (AUG 2019)

(a) * * *

(1) * * *

(iii) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

■ 10. Amend section 52.244–6 by—

■ a. Revising the date of the clause; and

■ b. Redesignating paragraphs (c)(1)(vi) through (c)(1)(xix) as (c)(1)(vii) through (c)(1)(xx), and adding a new paragraph (c)(1)(vi).

The revision and addition reads as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (AUG 2019)

* * * * *

(c)(1) * * *

(vi) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

[FR Doc. 2019–17201 Filed 8–12–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2019–0002, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2019–05; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2019–05, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2019–05, which precedes this document. These documents are also available via the internet at *http://www.regulations.gov.*

DATES: August 13, 2019.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAC 2019–05, FAR Case 2018–017.

RULE LISTED IN FAC 2019–05

Subject	FAR case	Analyst
*Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	2018–017	Francis.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR Case, refer to the specific subject set forth in the document following this item summary. FAC 2019–05 amends the FAR as follows:

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2018–017)

This interim rule amends the FAR to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Paragraph (a)(1)(A) of section 889 prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunication 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 has been granted. Further prohibitions at paragraph (a)(1)(B) of section 889 go into effect August 13, 2020, and will be addressed through separate rulemaking.

To implement paragraph (a)(1)(A) of section 889, this interim rule provides a new solicitation provision and contract clause. The provision at FAR 52.204–24 requires offerors to represent whether their offer includes covered telecommunications equipment or services and if so, to identify additional details about its use. Representations are also required for orders on indefinite delivery contracts. The clause at FAR 52.204–25 prohibits contractors from providing 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, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver described in FAR 4.2104. The contractor must also report any such equipment, systems, or services discovered during contract performance; this requirement flows down to subcontractors.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

This interim rule is being implemented as a national security measure to protect Government information, and Government information and communication technology systems.

Contracting officers shall modify certain contracts to include the new FAR clause, as specified in the **DATES** section of the preamble of the interim rule. Contracting officers also shall include the new FAR provision in solicitations for an order, or notices of intent to place an order, under those contracts.

Janet M. Fry,

Director, Federal Acquisition Policy Division, Office of Government-wide Policy.

[FR Doc. 2019–17202 Filed 8–12–19; 8:45 am]

BILLING CODE 6820–EP–P