Memorandum

Date: August 13, 2020
To: AAQ, AAP, APM and AFN
From: Katrina Hall, Acting Deputy Assistant Administrator for Acquisition and Business Services, ACQ-1
Subject: INTERIM CHANGES TO Acquisition Management System – Additional Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

PURPOSE
This Memorandum (Memo) is issued to implement interim changes in the Federal Aviation Administration (FAA) Acquisition Management System (AMS) consistent with paragraph (a)(1)(B) of section 889 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115-232).

APPLICABILITY
This Memo affects purchase card transactions, solicitations, and contracts but does not apply to grants or loans. With respect to Other Transaction Agreements (OTAs), the FAA will use its discretion in applying Section 889(a) based upon the scope of the Agreement.

BACKGROUND
As part of the October 2019 AMS update, the FAA implemented paragraph (a)(1)(A) of NDAA Section 889, prohibiting agencies from procuring, obtaining, extending, or renewing a contract to purchase any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component, or critical technology as part of any system, unless an exception applies or a waiver is granted.

The FAA is now implementing paragraph (a)(1)(B) of the NDAA, which prohibits executive agencies from entering into, 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 or critical technology as part of any system, unless an exception applies or a waiver is granted. This prohibition applies to the use of covered telecommunications equipment or services as a substantial or essential component or critical technology as part of any system, unless an exception applies or a waiver is granted.
equipment or services, regardless of whether that use is in performance of work under a Federal contract or not.

AMS INTERIM CHANGES AND EFFECTIVE DATE
The interim additions to AMS Guidance and Contract Clauses listed below and provided in their entirety in Attachment 1 to this Memo are **effective 13 August 2020**. Final implementation in AMS will follow pending final implementation across all federal agencies.

- AMS Guidance T3.6.4.A.16 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Revised 8/2020 - INTERIM)
- AMS Clause/Provision 3.6.4-22 (INTERIM) Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020)
- AMS Clause 3.6.4-23 (INTERIM) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020)

RESPONSIBILITIES
All Contracting Officers and purchase cardholders executing procurements using FAA funds are responsible for addressing the AMS Interim Changes as required in this Memo; however, this Memo does not apply to grants or loans.

*Purchase card transactions*
The prohibition applies to all purchases, including those at or below the micro-purchase threshold. Applicable AMS Guidance is at T3.2.2.5.A.4.c, Prohibited and Restricted Items, section 23, Certain Telecommunications and Video Surveillance Services or Equipment, and at AMS Guidance T.3.2.6.A.1.p (12). Certain Telecommunications and Video Surveillance Services or Equipment.

*Solicitations*
Contracting officers will include the provision 3.6.4-22 (INTERIM) Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020) and clause 3.6.4-23 (INTERIM) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020), as prescribed, in solicitations and orders issued --
- On or after the date of this Memo’s effective issuance, and resultant contracts, purchase orders, BPA orders, task orders, or delivery orders; and
- Before date of this Memo’s effective issuance, provided the award of the resulting contracts, purchase orders, BPA orders; ask orders, or delivery orders occurs on or after the date of this Memo’s issuance.
Existing contracts and orders
Contracting officers will include provision 3.6.4-22 (INTERIM) Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020) and clause 3.6.4-23 (INTERIM) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020), prior to placing any future orders or exercising options under existing indefinite delivery contracts.

When modifying other existing contracts, task orders, or delivery orders to extend the period of performance, including exercising an option, contracting officers will include the clause. Contracting officers will 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 T3.6.4 A (16)(b)(3) applies or unless a waiver is granted under T3.6.4 A (16)(e). Contracting officers should consult the requiring activity to determine whether a particular contract or order is affected.

CONTACT FOR QUESTIONS
Purchase cardholders should address their questions to their designated regional contacts or purchase card office (https://my.faa.gov/org/staffoffices/arc/programs/purchase_card/points_of_contact.html). Contracting Officers (COs), may forward questions to their management, who will respond or consult with AAQ/AAP management, as needed.

CC: David Ingram, AAQ-1
    Chrishaun Jones, AAQ-2
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    Jeffrey Baker, AAP-2

Attachment 1: Interim Changes to AMS

Date of Issuance: August 13, 2020
T3.6.4 A

16 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Revised 8/2020 - INTERIM)

a. This section implements paragraphs (a)(1)(A) and (a)(1)(B) of section 889 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232). As used in this section –

“Backhaul” means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

“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

“Interconnection arrangements” means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.
“Reasonable inquiry” means an inquiry designed to uncover any information in the entity’s possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.
“Roaming” means cellular communications services (e.g., voice, video, data) received from a visited network when traveling outside the geographical coverage area of a home network.
“Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.

b. Prohibited equipment, systems, or services

(1) 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) (3) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in T.3.6.4.A 16 e.

(2) On or after August 13, 2020 agencies are prohibited 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, unless an exception at paragraph (b) (3) of this section applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4.A.16.e. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(3) Exceptions. This subpart does not prohibit agencies from procuring or contractors from providing-
   (a) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
(b) Telecommunications equipment that cannot route, redirect user data traffic, or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

c. Unless an exception at (b)(3) above applies or the covered telecommunications or video surveillance services or equipment is covered by a waiver as described in T3.6.4.A.16.e, Contracting officers and purchase cardholders will not

(1) 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, or

(2) Enter into a contract, or extend or renew a contract, with an entity that uses any equipment, system, or services as a substantial or essential component of any system, or as critical technology as part of any system.

d. Procedures for Offeror/Vendor Representations and Reports

(1) Offeror/Vendor Representations.

(a) If an offeror selects “does not” in response to paragraph (c) of provision 3.6.4-24 “Covered Telecommunications or Services – Representation”, the contracting officer may rely on the representation unless the contracting officer has reason to question the representation. If the contracting officer has reason to question the representation, the contracting officer will follow agency procedures.

(b) If the offeror selects “does” in response to paragraph (c) of provision 3.6.4-24, the offeror must complete the representation at provision 3.6.4-22 “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment”.

(c) If an offeror provides an affirmative response to the representations or discloses information in accordance with paragraphs (d) and (e) of the provision at 3.6.4-22 (INTERIM), the contracting officer/purchase cardholder must not make an award to the offeror unless the requiring activity provides a written determination that the covered telecommunications equipment or services included in their offer, in accordance with paragraph (e) 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 exception at T3.6.4.A.16.e 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 will be made unless a waiver is granted.

(d) If the apparently successful offeror provides a negative response to the representation in (d) of provision 3.6.4-22, the contracting officer/purchase cardholder may rely on the representation, unless the contracting officer/purchase cardholder has an independent reason to question the representation. If the contracting officer/purchase cardholder has an independent reason to question a negative representation of the otherwise successful offeror, the contracting officer/purchase cardholder must consult with the requiring
activity and legal counsel on how to proceed to ensure that the procurement would not violate the statutory prohibition.

(2) If a contractor provides a report pursuant to paragraph (d) of the clause at 3.6.4-23 (INTERIM) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, the contracting officer/purchase cardholder will consult with the requiring activity and legal counsel on how to proceed using existing contractual remedies.

e. Waivers

(1) The head of an agency may, on a one-time basis, waive the prohibition at subsection b above with respect to a Government entity (e.g., requirements office, contracting office) that requests such a waiver.

(a) The waiver may be provided, for a period not to extend beyond August 13, 2021 for the prohibition at paragraph b (1) or beyond August 13, 2022 for the prohibition at paragraph b (2), 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 T.3.6.4.A.16, 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.

(b) Before head of the agency can grant a waiver to the prohibition at paragraph b (2), the agency must-

(i) Have designated a senior agency official for supply chain risk management, responsible for ensuring the agency effectively carries out the supply chain risk management functions and responsibilities described in law, regulation, and policy;

(ii) Establish participation in an information-sharing environment when and as required by the Federal Acquisition Security Council (FASC) to facilitate interagency sharing of relevant acquisition supply chain risk information;

(iii) Notify and consult with the Office of the Director of National Intelligence (ODNI) on the waiver request using ODNI guidance, briefings, best practices, or direct inquiry, as appropriate; and

(iv) Notify the ODNI and the FASC 15 days prior to granting the waiver that it intends to grant the waiver.

(2) Waivers for emergency acquisitions.

(i) In the case of an emergency, including a declaration of major disaster, in which prior notice and consultation with the ODNI and prior notice to the FASC is impracticable and would severely jeopardize performance of mission-critical functions, the head of an agency may grant a waiver without meeting the notice and consultation requirements under subparagraphs e (1)(b) (iii) and (iv) above to enable effective mission critical functions or emergency response and recovery.
(ii) In the case of a waiver granted in response to an emergency, the head of an agency granting the waiver must—

(A) Make a determination that the notice and consultation requirements are impracticable due to an emergency; and
(B) Within 30 days of award, notify the ODNI and FASC of the waiver issued under emergency conditions in addition to the waiver notice to Congress per paragraph e (3) below.

(3) Waiver Notice

(i) For waivers to the prohibition at paragraph b (1), the head of the executive agency will, not later than 30 days after approval—

A) Submit in accordance with agency procedures to the appropriate congressional committees the full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain; and
B) The phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems

(ii) For waivers to the prohibition at paragraph b (2), the head of the executive agency will, not later than 30 days after approval submit in accordance with agency procedures to the appropriate congressional committee---

(A) An attestation by the agency that granting of the waiver would not, to the agency’s knowledge having conducted the necessary due diligence as directed by statute and regulation, present a material increase in risk to U.S. national security;
(B) The full and complete laydown of the presence of covered telecommunications or video surveillance equipment or services in the relevant supply chain, to include a description of each category of covered technology equipment or services discovered after reasonable inquiry, as well as each category of equipment, system, or service used by the entity in which covered technology is found, and after conducting a reasonable inquiry; and
(C) The phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from relevant systems.

(4) 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.

**INTERIM REVISIONS TO AMS CLAUSES**

3.6.4-22 (INTERIM) Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (August 2020)

NOTE: The offeror must not complete the representation at paragraph (d) (1) in this provision if the offeror has represented that it does not provide covered telecommunications equipment or
services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument in provision 3.6.4-24 “Covered Telecommunications Equipment or Services – Representation”.

CLAUSE:
(a) Definitions. As used in this provision--

“Backhaul, Covered telecommunications equipment or services, Critical technology, Interconnection Arrangements, Reasonable inquiry, Roaming and Substantial or essential component” have the meanings provided in AMS clause 3.6.4-23 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibitions.
(1) 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. Nothing in this prohibition will be construed to—
   (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
   (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a) (1) (B) 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, 2020 from entering into a contract 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 part of any system or as critical technology as part of any system. This prohibition applies to any entity that uses covered telecommunications equipment or services, including uses not in support of the Government. Nothing in this prohibition will be construed to—
   (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
   (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures: The offeror must review the list of excluded parties in the System for Award Management (SAM) (https://www.sam.gov) for entities excluded from Federal awards for covered telecommunications equipment or services.

(d) Representation.

(1) 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. The Offeror must provide the additional disclosure information required at (e) if the Offeror responds “will” and
(2) After conducting a reasonable inquiry for purposes of this representation, the Offeror represents that it does [ ] does not [ ] use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror must provide the additional disclosure information required at paragraph (e) if the Offeror indicates “does”.

(e) Disclosures. Disclosure for the representation in paragraph (d)(1) of this provision—

If the Offeror has responded “will” in the representation in paragraph (d)(1) of this provision, the Offeror must provide the following information as part of the offer—

(1) For covered equipment

(i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known;
(ii) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and
(iii) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision;

(2) For covered services -

(i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or
(ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

Disclosure for representation in paragraph (d)(2) of this provision. If the Offeror has responded “does” to paragraph (d)(2) of this provision, the offeror must provide the following information as part of the offer—

(3) For covered equipment

(i) 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;
(ii) A description of all covered telecommunications equipment offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable); and
(iii) 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)(2) of this provision.

(4) For covered services -

(i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or
(ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of Provision)

PRESCRIPTION:
Must be used: (1) In all SIRs, including purchases under the micro-purchase threshold; and (2) Under indefinite delivery contracts, in all notices of intent to place an order, or SIRs for an order. Must be used in conjunction with AMS Clause 3.6.4-23 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

3.6.4-23 (INTERIM) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020)

(a) Definitions. As used in this clause--

“Backhaul” means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

“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.

“Interconnection arrangements” means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

“Reasonable inquiry” means an inquiry designed to uncover any information in the entity’s possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

“Roaming” means cellular communications services (e.g., voice, video, data) received from a visited network when traveling outside the geographical coverage area of a home network

(b) Prohibition.

(1) 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 AMS T3.6.4 A 16.e.

(2) Section 889(a)(1)(B) 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, 2020 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.
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 AMS T3.6.4A.16.e. This prohibition applies to an entity that uses covered telecommunications equipment or services, including use not in support of the Government.

(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 must 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. For indefinite delivery contracts, the Contractor must report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.

(2) The Contractor must 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 must 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 must 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)

Prescription: Insert in all solicitations and contracts.