

Acquisition Flash



Latest changes and updates from Procurement Operations Division

September 3, 2020

Implement the Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment

Flash No.: 2020-4

Any questions/clarifications concerning the Acquisition Flash should be sent to POD's Procurement Analysts at Procurement.Operations@usda.gov, and the Flashes are saved at <https://www.dm.usda.gov/oppm/pod/index.htm>.

OVERVIEW:

- **USDA issued guidance:**

The attached memorandum subject, "Immediate Contracting Officer Actions to Implement the Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment," from the USDA Senior Procurement Executive (SPE), dated August 11, 2020, provides guidance to the USDA contracting officers for implementing Federal Acquisition Regulation (FAR) interim rule 2019-009, published on July 14, 2020, and effective on August 13, 2020. The interim rule implements prohibitions contained in section 889(a)(1)(B) of the National Defense Authorization Act (NDAA) for Fiscal Year 2019.

- **MASCO issued guidance of Clause Flow-Down Language for the broadest application for use by Contracting Officers issuing a Modification:**

"The purpose of this modification is to: 1) Incorporate FAR clause 52.204-25 (Aug 2020), Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment reference into this Indefinite Delivery Contract (IDC), Blanket Purchase Agreement

(BPA), contract, task/delivery order award or BPA call. For the IDC or BPA, the clause will flow-down and be made applicable to any resultant task, delivery, or call orders under the IDC or BPA award that are extended, modified to exercise options or issued on or after the effective date of the clause (August 13, 2020); and 2) Obtain the Contractor's representation in FAR Provision 52.204-24, included in (insert "full text below" or "Attachment X"), which must be completed with the signed modification."

See the Ask-An-Analyst presentation on "Section 889, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment" at <https://usdagcc.sharepoint.com/sites/oppm-pod/SitePages/Home.aspx>, which provides additional information with IAS screen prints and the "description of modification" language that the CO will use when modifying an existing contract or award.



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Date: August 11, 2020

From: Tiffany Taylor, Senior Procurement Executive, USDA

To: USDA Contracting Officers

Subject: Immediate Contracting Officer Actions to Implement the Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment

This memorandum provides guidance to contracting officers for implementing interim Federal Acquisition Regulation (FAR) rule 2019-009, published on July 14, 2020, and effective on August 13, 2020. The interim rule implements prohibitions contained in section 889(a)(1)(B) of the National Defense Authorization Act (NDAA) for Fiscal Year 2019.

The rule prohibits contracting officers from issuing awards or modifications to contractors who certify they use 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 FAR 4.2102(b) applies or a waiver is granted.

The attached table lists actions that the Contracting Officer must take before:

- Closing a solicitation
- Awarding a contract, task order, or delivery order;
- Executing a modification to extend the period of performance, including exercising an option;
- Issuing a call against a BPA; or
- Issuing an order against a BOA.

Additional resources are listed in the attachment, however if you have questions regarding this memorandum, please send an email to procurement.policy@usda.gov.

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| ACTION | DOCUMENT | DATE |
|--|--|--|
| Include FAR 52.204– 24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, and the clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment | New solicitation | On or after August 13, 2020 |
| Amend to add FAR 52.204– 24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, and the clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment | Existing solicitation with performance On or after August 13, 2020 | Now |
| Provide enough time to both provide notice for exercising an option and to provide contractors with adequate time to comply with the clause and provide the representation | Any modification | Now |
| Modify in accordance with FAR 1.108(d) to include FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment | Contract, Task Order, Delivery Order, IDIQ, BPA, BOA | Now |
| Obtain the required representation and, if applicable, additional disclosures as set forth in the FAR provision | Any award or modification | Before execution (On or after August 13, 2020) |
| Do not award/execute action if the entity certifies use of technology unless an exception at FAR 4.2102(b) applies or a waiver is granted | Any award or modification | On or after August 13, 2020 |

Additional Information: The following resources provide additional information:

- More detailed background information is available on the Federal Register at: <https://www.federalregister.gov/documents/2020/07/14/2020-15293/federal-acquisition-regulation-prohibition-on-contracting-with-entities-using-certain>
- The waiver process includes senior departmental officials’ approvals. For more information regarding waivers see [USDA Contracting Desk Book](#) 404.21
- On Aug.13th at 2pm EDT there will be a webinar demonstrating how contracting officers can use Contractor Responsibility Assessment (CRA) reports to quickly document vendor compliance with Section 889. Registration instructions were sent to you in an email from FedDataCheck.
- There is a Section 889 online course that you may complete and receive 1 CLP. Register for **FAC 889, Section 889: Prohibition on Telecommunication and Video Equipment** through FAITAS at: https://faitas.army.mil/Faitas/External/Courses/Search/Results/Details/FAC_889