

New Rule Prohibits U.S. Government Agencies From Acquiring Telecommunications Equipment or Services From Huawei, ZTE, Certain Other Chinese Companies

In an [interim rule](#) published on August 13, 2019, the U.S. government revised the Federal Acquisition Regulation (FAR) to prohibit federal agencies from acquiring telecommunications equipment or services produced or provided by Huawei Technologies Company, ZTE Corporation and certain other Chinese companies. The new rule applies to "covered telecommunications equipment or services," which include the following:

- any telecommunications equipment or services produced or provided by Huawei, ZTE, or their subsidiaries or affiliates;
- video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or their subsidiaries or affiliates if such equipment is used for public safety or national security purposes;
- video surveillance or telecommunications services provided by such entities for any purpose; and
- telecommunications or video surveillance equipment or services produced or provided by an entity owned or controlled by, or otherwise connected to, the government of the People's Republic of China.

The same rule prohibits federal agencies from acquiring any equipment, system or service that uses covered telecommunications equipment or services as a substantial or essential component of any system. The rule, which implements Section 889(a)(1)(A) of the FY2019 National Defense Authorization Act (NDAA), became effective August 13, 2019. Interested parties may submit comments on the interim rule until October 15, 2019.

New Rule Details

Contracting officers now must insert a new provision, FAR 52.204-24 (Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment), in all solicitations for contracts and all notices of intent to place an order under indefinite delivery contracts (including GSA Schedule contracts). That provision requires each offeror to represent that it will, or will not, provide to the government equipment or services covered by this rule in the performance of any contract, subcontract or other contractual instrument resulting from the solicitation. If the offeror responds affirmatively in the representation, it must disclose significant detail about the identity, operation, proposed use and manufacturer or producer of the equipment, and any factors relevant to determining whether the proposed use of the equipment would be permissible because, for example, the equipment cannot route or redirect user data traffic or permit visibility into any user data or packets that the equipment handles.

Contracting officers also must insert a new clause, FAR 52.204-25 (Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment), in all contracts and orders under existing contracts—including contracts for commercial items and commercial off-the-shelf (COTS) items—that

implements the prohibition against delivering to government customers equipment or services covered by the new rule, and imposes strict reporting requirements on contractors that discover such equipment or services during contract performance. Basic information about the discovered equipment or services, and any readily available information about mitigation actions undertaken or recommended, must be reported to the contracting officer (or, for Department of Defense contracts, to <https://dibnet.dod.mil>) within one business day of identification. Within 10 business days, the contractor must report additional information about mitigation efforts, the efforts it took to prevent the use of the discovered equipment in the first instance and any additional efforts that will be implemented to prevent future occurrences. Contractors must include the new clause in all subcontracts, including subcontracts for commercial items.

Implications for Contractors

Sellers of telecommunications equipment and services to government customers must account for and implement this prohibition, and the related reporting requirements, in both their sourcing operations (including through amendments to subcontracts and other supply agreements) and in their related strategic decision-making. Failure to do so can lead to various adverse consequences, including, for example, allegations of civil or criminal violations of the false claims and false statements statutes.

Although not implemented by the current rulemaking, a related aspect of the FY2019 NDAA (at Section 889(a)(1)(B)) has implications for government contractors generally. As of August 13, 2020, U.S. government agencies may not enter into, extend or renew a contract with an entity that **uses** telecommunications equipment or services of the sort described above. This related prohibition will be implemented in future rulemaking, but contractors in all industries should review their existing telecommunications equipment and services and consider changes that may be necessary to comply with the prohibition that takes effect next year.

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Authors



[Julia M. Fox](#)

Counsel

JuliaFox@perkinscoie.com

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