

AUG 22 2019



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

PROCUREMENT MEMORANDUM 2019-04

ACTION

MEMORANDUM FOR: Bureau Procurement Officials
Purchase Card Holders

FROM: Barry E. Berkowitz
Senior Procurement Executive
and Director for Acquisition Management

Handwritten signature of Barry E. Berkowitz in black ink.

André Mendes
Acting Chief Information Officer

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SUBJECT: Prohibition on Contracting for Certain Telecommunications
and Video Surveillance Services or Equipment

1. Purpose

The purpose of this PM/Interim Instruction is to provide interim policy and guidance to ensure telecommunications equipment and video surveillance equipment obtained through DOC purchase card transactions comply with Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).

2. Background

FAR Case 2018-17, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment was published in the Federal Register August 12, 2019. This interim rule amended 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. The interim rule applies to purchases below the micro purchase threshold including those made using a purchase card.

3. Definitions

“Covered telecommunications equipment or services,” 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” means the People’s Republic of China.

“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. Policy.

Video surveillance equipment may not be purchased using a purchase card and must be referred to the cognizant acquisition servicing office for purchase by a warranted contracting officer. Telecommunications equipment and items, which include telecommunications equipment, may

only be purchased using a purchase card through DOC's strategically sourced network equipment contracts.

5. Implementation.

- a. Purchase card holders must consult the cognizant OCIO to determine if a given requirement includes telecommunications or video surveillance equipment.
- b. Requirements for telecommunications equipment and services shall include an IT Compliance in Acquisition Checklist located at: <https://connection.commerce.gov/checklists/it-compliance-acquisition-checklist> prior to purchase.
- c. Telecommunication purchases shall be made utilizing the Department's strategically sourced network equipment contracts located at: <https://enterpriseservices.service-now.com/es/> (navigate to: Acquisition/Strategic Sourcing Portfolio/Network Equipment contracts YA1323-14-BU-0004/5/6/7/8) Questions regarding ordering procedures under the strategically sourced network equipment contracts should be addressed to EnterpriseServicesACQ@doc.gov.
- d. Requirements for telecommunications equipment not available through the strategically sourced network equipment vehicle shall be referred to the cognizant acquisition servicing office for purchase by a warranted contracting officer.
- e. Requirements for video surveillance equipment shall be referred to the cognizant acquisition servicing office for purchase by a warranted contracting officer.

6. Additional Information.

Below are common but not all-inclusive examples of telecommunications and video surveillance equipment. Any questions regarding a particular requirement should be referred to the requirement owner and cognizant OCIO.

Telecommunications equipment:

- hardware used mainly for telecommunications such as transmission lines
- multiplexers
- base transceiver stations.
- telephones
- radios
- computers
- Telecom towers
- Switches
- routers
- Private Branch Exchange (PBX) equipment
- Voice Over internet Protocol (VoIP) equipment
- any item or device that has a Bluetooth or internet connectivity

Video surveillance equipment:

- hardware enabling the remote visual monitoring of one or more locations;
- cameras
- monitors

- multiplexers
- video recording equipment
- routers
- switches

7. Effective Date

This Procurement Memorandum is effective immediately and remains in effect until it is otherwise rescinded or superseded.

8. Point of contact.

The Point of Contact for this is Virna Winters, OAM_Mailbox@doc.gov.