

Section 889(a)(1)(A) IMPLEMENTATION

Implemented under FAR Case 2018-017

- 1st interim FAR rule effective August 13, 2019 (84 FR 40216)
 - Created offer-by-offer representation requirement for all offerors on all solicitations
 - Created a contract clause implementing the prohibition during contract performance
 - Defense Pricing and Contracting published agency procedures on August 13, 2019
 - Public comment period ended October 15, 2019

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■ 2nd interim FAR rule effective December 13, 2019 (84 FR 68314)

- Created annual representation to relieve offer-by-offer burden for some vendors
- Public comment period ended February 11, 2020

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■ Currently analyzing comments and drafting final rule

Section 889(a)(1)(B) IMPLEMENTATION

To be implemented under FAR Case 2019-009

- Draft proposed rule in process
 - Defense Acquisition Regulations Council agreed to draft rule on January 15, 2020
 - DoD, GSA, and NASA have submitted the draft rule to the Office of Management and Budget

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- Multiple public meetings
 - DoD, GSA, and NASA have held a public meeting on July 19, 2019
 - DoD-specific public meeting was held on March 2, 2020
 - <https://www.acq.osd.mil/dpap/dars/Section889.html>

Questions may be directed to:
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Office of the Under Secretary of Defense
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As of 03/18/2020



SECTION 889 FY 2019 NDAA



March, 2020

There are two specific prohibitions under section 889:

Section 889(a)(1)(A) prohibits the Government from procuring 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.

- This prohibition was implemented in the Federal Acquisition Regulation (FAR) via an interim rule published in the Federal Register at 84 FR 40216 on August 13, 2019. The rule was effective upon publication. The public comment period on this interim rule closed on October 15, 2019.
- A second interim rule was published in the Federal Register at 84 FR 68314 on December 13, 2019, that was also effective upon publication. The second interim rule provided some relief from the offer-by-offer representation requirement contained in the first interim rule by creating an annual representation for offerors in the System for Award Management. The public comment period on the second interim rule closed on February 11, 2020.
- DoD is working with the General Services Administration (GSA), the National Aeronautics and Space Administration (NASA), and the Office of Federal Procurement Policy (OFPP) to analyze the public comments received on both interim rules and finalize implementation of section 889(a)(1)(A) in the FAR.

Section 889(a)(1)(B) prohibits contracting 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.

- This prohibition takes effect August 13, 2020.
- A draft proposed rule to implement this prohibition in the Federal Acquisition Regulation by the statutory deadline is in process.
- DoD, GSA, NASA, and OFPP hosted a public meeting regarding implementation of section 889(a)(1)(B) on July 19, 2019.
- DoD hosted a public meeting on March 2, 2020 to support planning for implementation of 889(a)(1)(B). DoD asked for information from the private sector regarding how industry plans to implement the requirements of the law and what, if any impacts there will be to DoD contracting.



Section 889 of the FY19 NDAA Prohibitions

“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 Chinese government.**