

**August 18, 2020**

**To:** Contract & Grant Officers  
Research Compliance Officers

**Subject:** Implementation of Section 889 of the National Defense Authorization Act (NDAA) for Fiscal Year 2019

### **Purpose**

This memo provides guidance regarding the federal government's implementation of Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019 (FY2019).

### **Background**

The US federal government has issued rules and guidance that implement Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019 (FY2019). This memo provides guidance for both contracts containing the Federal Acquisition Regulation (FAR) implementing clauses and for federal assistance awards (grants and cooperative agreements).

### **Federal Contracts**

On July 14, 2020, the Federal Acquisition Regulatory Council issued an interim final rule implementing Section 889(a)(1)(B) of the NDAA for FY2019. The new interim final rule, Part B, is part of a two-stage implementation of NDAA 2019's Section 889 restrictions on covered telecommunications equipment and services in government contracting (See the attached ECAS Compliance Alert.)

Whereas prior prohibitions focused on covered defense telecommunications equipment or services products or services offered or provided to the federal government in the performance of any contract, subcontract, or other contractual instrument<sup>1</sup>, the Part B implementation of the Section 889 codified in FAR clauses [52.204-24](#) and [52.204-25](#) has a much broader reach. It prohibits the federal government from contracting with an entity that simply *uses* "covered telecommunications equipment or services" as a substantial or essential component of *any* system, or "covered telecommunications equipment or services" as "critical technology" as part of *any* system. This prohibition applies whether or not such equipment or services are used in the performance of a government contract or part of contractual deliverables provided to the

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<sup>1</sup> See [FAR 52.204-26](#) and [DFAR 252.204-7016](#)

government.

The government stated its rationale for the restriction in the publication of the Interim Rule. The government seeks to avoid disruption of federal contractor systems, which could in turn, disrupt the operations of the federal government, as it relies on contractors to provide a range of support and services. The government seeks to avoid exfiltration of sensitive data from contractor systems arising from contractors' use of covered telecommunications equipment or services as a substantial or essential component or critical technology of any system. Such covered telecommunications equipment or services are thought to present privacy and security risks.

FAR 52.204-25 has an effective day of August 13, 2020. Campuses may start seeing the clause in Department of Defense contracts, though recently there are unofficial indications of a delay. Campuses receiving federal contracts incorporating FAR 52.204-25 must develop and implement training and education, administrative controls covering purchases and technology, and mechanisms for removal for prohibited technology and for reporting of any identified prohibited telecommunications equipment or services as required by the clause.

Campuses with extramural federal contracts incorporating the clause must not use any equipment made by (1) Huawei Technologies Company Ltd., (2) ZTE Corporation, (3) Hytera Communications Corporation, (4) Dahua Technology Company Ltd., and (5) Hangzhou Hikvision Digital Technology Company Ltd., and their subsidiaries or affiliates in University systems or research. This includes the use of personal phones/devices that connect with UC systems, including for multi-factor authentication purposes (e.g., DUO). Researchers should work with the campus ISOs or IT offices to find alternate technologies or devices (e.g., UC provided dongles).

Campus Sponsored Projects Offices, Research Compliance Offices, Procurement Offices and Information Security Offices (ISO) should coordinate to ensure compliance and broad awareness of the prohibition. Compliance plans should include at least the following action plans:

- All persons with procurement authorization (including low-level purchases) should be notified of the prohibition in order to minimize or eliminate the purchase of prohibited equipment or services;
- Researchers with federal awards should be notified of the prohibition so that they do not procure, use or attach prohibited equipment/technologies to University systems; and
- ISOs, Central IT and/or all Unit IT should conduct regular reasonable inquiries to identify suspect devices and remove network access as necessary.

See the attached Section 889 flyer issued by the federal government.

### **Federal Assistance Awards**

In addition, on August 13, 2020, the Office of Management Budget (OMB) issued its [Final Guidance](#) on the implementation of Section 889. The amendment to Uniform Guidance 2 CFR 200.216 prohibits using federal funds to enter into, or renew, contracts for equipment, services,

or systems that use covered telecommunications as a substantial or essential component of any system, or as critical technology as part of any system.

The covered telecommunications equipment or services includes equipment produced by Huawei Technologies Company or ZTE Corporation and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company. It also includes equipment or services produced by any subsidiary or affiliate of such entities. The Secretary of Defense may also add entities it reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Campuses must inform researchers and those with purchasing authority (regardless of the dollar level) about this restriction on the use of grant/loan funds to purchase equipment or services produced by the entities listed above.

### **Subcontractor/Vendor Contracts or Subawards**

Under both contracts and assistance awards, UC purchasing authorities and campus contracts/grants officers must flow down the requirements of FAR clauses 52.204-24 and 52.204-25, and 2 CFR 200.216, as applicable, in procurement contracts, subcontracts and subawards under federal contracts or grants.

### **Contact**

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**Attachments:** ECAS Compliance Alert  
Section 889 flyer

**cc:** Information Security Officers  
Material/Procurement Managers