52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

As prescribed in 4.2105(b), insert the following clause:

Prohibition on *Contracting* for Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021)

(a) *Definitions.* As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (*e.g.*, connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (*e.g.*, fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means–

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) 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);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) 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*.

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).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g.*, connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of *covered telecommunications equipment or services* used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (*e.g.*, voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any *component* necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition*.

(1) Section 889(a)(1)(A) of the John S. McCain *National Defense* Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an *executive agency* on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, 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. The Contractor is prohibited from providing to the Government 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 paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain *National Defense* Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an *executive agency* on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, 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, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of *covered telecommunications equipment or services*, regardless of whether that use is in

performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies *covered telecommunications equipment or services* used as a *substantial or essential component* of any system, or as *critical technology* as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor *shall* report the information in paragraph (d)(2) of this clause to the *Contracting Officer*, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor *shall* report to the website at https://dibnet.dod.mil. For indefinite delivery contracts, the Contractor *shall* report to the *Contracting Officer* for the indefinite delivery contract and the *Contracting Officer*(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at https://dibnet.dod.mil.

(2) The Contractor *shall* report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business *day* from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier *unique entity identifier* (if known); supplier *Commercial and Government Entity (CAGE) code* (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor *shall* describe the efforts it undertook to prevent use or submission of *covered telecommunications equipment or services*, and any additional efforts that will be incorporated to prevent future use or submission of *covered telecommunications equipment or services*.

(e) *Subcontracts.* The Contractor *shall* insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the *acquisition* of *commercial products* or *commercial services*.

(End of clause)

Parent topic: 52.204 [Reserved]