Subpart 204.21 - PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Parent topic: Part 204 - ADMINISTRATIVE AND INFORMATION MATTERS

204.2100 Scope of subpart.

This subpart implements section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) and section 889(a)(1)(A) of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232).

204.2101 Definitions.

As used in this subpart—

“Covered defense 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) Telecommunications services provided by such entities or using such equipment; or

(3) Telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“Covered foreign country” means—

(1) The People’s Republic of China; or

(2) The Russian Federation.

“Covered missions” means—

(1) The nuclear deterrence mission of DoD, including with respect to nuclear command, control, and communications, integrated tactical warning and attack assessment, and continuity of Government; or

(2) The homeland defense mission of DoD, including with respect to ballistic missile defense.

204.2102 Prohibition.

(a) *Prohibited equipment, systems, or services*. In addition to the prohibition at FAR 4.2102(a), unless the covered defense telecommunications equipment or services are subject to a waiver described in 204.2104, the contracting officer shall not procure or obtain, or extend or renew a contract (e.g., exercise an option) to procure or obtain, any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

204.2103 Procedures.

(a) *Representations.*

(1)(i) If the offeror selects "does not" in response to the provision at DFARS 252.204-7016, the contracting officer may rely on the representation, unless the contracting officer has an independent reason to question the representation. If the contracting officer has a reason to question the "does not" representation in FAR 52.204-26, FAR 52.212-3(v), or 252.204-7016, then the contracting officer shall consult with the requiring activity and legal counsel.

(ii) If the offeror selects "does" in paragraph (c) of the provision at DFARS 252.204-7016, the offeror must complete the representation at DFARS 252.204-7017.

(2)(i) If the offeror selects "will not" in paragraph (d) of the provision at DFARS 252.204-7017, the contracting officer may rely on the representation, unless the contracting officer has an independent reason to question the representation. If the contracting officer has a reason to question the "will not" representation in FAR 52.204-24 or DFARS 252.204-7017, then the contracting officer shall consult with the requiring activity and legal counsel.

(ii) If an offeror selects "will" in paragraph (d) of the provision at DFARS 252.204-7017, the offeror must provide the information required by paragraph (e) of the provision. When an offeror completes paragraph (e) of either of the provisions at FAR 52.204-24 or DFARS 252.204-7017, the contracting officer shall -

(A) Forward the offeror's representation and disclosure information to the requiring activity; and

(B) Not award to the offeror unless the requiring activity advises -

(*1*) For equipment, systems, or services that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, that a waiver as described at FAR 4.2104 has been granted; or

(*2*) For equipment, systems, or services to be used to carry out covered missions that use covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, that a waiver as described at DFARS 204.2104 has been granted.

(b) *Reporting.* If a contractor reports information to *https://dibnet.dod.mil* in accordance with the clause at FAR 52.204-25 or DFARS 252.204-7018, the Defense Cyber Crime Center will notify the contracting officer, who will consult with the requiring activity on how to proceed with the contract.

204.2104 Waivers.

The Secretary of Defense may waive the prohibition in 204.2102 (a) on a case-by-case basis for a single, one-year period, if the Secretary—

(a) Determines such waiver to be in the national security interests of the United States; and

(b) Certifies to the Congressional defense committees that—

(i) There are sufficient mitigations in place to guarantee the ability of the Secretary to carry out the covered missions; and

(ii) The Secretary is removing the use of covered defense telecommunications equipment or services in carrying out such missions.

204.2105 Solicitation provisions and contract clause.

(a) Use the provision at 252.204-7016 , Covered Defense Telecommunications Equipment or Services—Representation, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, and solicitations for task orders and delivery orders, basic ordering agreements (BOAs), orders against BOAs, blanket purchase agreements (BPAs), and calls against BPAs.

(b) Use the provision at 252.204-7017 , Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, and solicitations for task orders and delivery orders, BOAs, orders against BOAs, BPAs, and calls against BPAs.

(c) Use the clause at 252.204-7018 , Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, in all solicitations and resultant awards, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, and solicitations and awards for task orders and delivery orders, BOAs, orders against BOAs, BPAs, and calls against BPAs.