U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

MEMORANDUM FOR: Heads of the Contracting Activities

FROM: Soraya Correa
Chief Procurement Officer

SORAYA CORREA
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Date: 2020.08.06 12:16:42 -04'00'

SUBJECT: Federal Acquisition Regulation Class Deviation (Number 20-05, Rev 1), 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, Interim Rule Effective August 13, 2020

Purpose: This Revision 1 to Federal Acquisition Regulation (FAR) Class Deviation 20-05 is issued to include additional text in the 52.204-25 clause from the FAR interim rule (Federal Acquisition Circular 2020-08), effective August 13, 2020. The interim rule incorporates additional definitions and prohibition related to Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115–232) into the clause, but does not change the text of subparagraph (d) reporting requirements in FAR Class Deviation 20-05. This Revision 1 provides the August 2020 version of the clause with additional text from the interim rule incorporated into our previously-issued deviation. The 20-05 deviation revised the reporting requirements in subparagraph (d), requiring contractor reports to be sent to the contracting officer, contracting officer's representative (COR), and the Enterprise Security Operations Center (SOC) concurrently. This approach ensures timely reporting to the Enterprise SOC and better enables the Department to quickly assess and mitigate the situation, treated as a security incident.

Effective Date: This Revision 1 is effective on the date of signature.

Background: FAR Subpart 4.21, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, addresses supply chain risks associated with certain telecommunications and video surveillance equipment and services from China (i.e., Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, and their subsidiaries and affiliates). In accordance with FAR 4.2102 as amended by the interim rule, agencies are prohibited from procuring (existing FAR), or entering into a contract with an entity that uses (interim rule effective August 13), certain covered telecommunications equipment or services, or extending or renewing such a contract.

FAR clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment requires contractors to submit a report to the contracting officer in the event the contractor identifies use of covered equipment or services as described in FAR 52.204-25(d)(1) during contract performance. FAR Class Deviation 20-05 revised subparagraph (d) of the clause to require the contractor to report the incident concurrently to the

contracting officer, COR and the Enterprise SOC. This approach ensures timely reporting to the Enterprise SOC and better enables the Department to quickly assess and mitigate the security incident. The Enterprise SOC will review the information provided by the contractor, coordinate this review with other stakeholders as needed, and then provide the results of this review to the contracting officer and COR for resolution. This Revision 1 adds text from the interim rule to the deviated FAR clause 52.204-25, but does not change the text of the existing deviation for subparagraph (d) reporting requirements.

Requirement: Contracting officers shall include the deviated 52.204-25 clause, attached, in solicitations issued on or after August 13, 2020 and resultant contracts; and in solicitations issued before August 13, 2020 when award of the resulting contract will occur on or after August 13, 2020. Contracting officers shall modify existing indefinite delivery contracts, blanket purchase agreements, and basic ordering agreements on which orders will be placed on or after August 13, 2020, to include the clause 52.204-25 deviation for future orders, prior to placing any future orders. If exercising an option or modifying an existing contract or task or delivery order to extend the period of performance, contracting officers shall include the clause 52.204-25 deviation.

For purposes of efficiency when maintaining clauses within the respective Component Contract Writing Systems (CWS) in DHS, this class deviation does not include the clauses at FAR 52.212-5, 52.213-4, and 52.244-6. Instead, when the clauses at 52.212-5, 52.213-4, and 52.244-6 are used, contracting officers shall include the full text of the 52.204-25 deviated clause in addition to other required clauses.

Applicability: This class deviation is applicable to all solicitations and contracts, as defined in FAR 2.101 and consistent with FAR 4.2105(b), awarded on or after August 13, 2020.

Expiration Date: This class deviation will remain in effect until it is incorporated into the Homeland Security Acquisition Regulation or is otherwise rescinded.

Additional Information: In order to provide access to the Revision 1 clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (DEVIATION 20-05) (AUG 2020) in Component Contract Writing Systems (CWS), Component Acquisition Policy Chiefs should coordinate with the appropriate Component CWS personnel to determine if the addition of the clause to their CWS is possible.

Attachment:: 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (DEVIATION 20-05) (AUG 2020)

Questions or comments about this class deviation may be directed to Ann Shujath at (202) 447-0230 or Ann.Shujath@hq.dhs.gov; and to Joanne Battaglia at (202) 447-5020 or Joanne.Battaglia@hq.dhs.gov.

Attachment
FAR Deviation 20-05, Rev. 1

52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (DEVIATION 20-05) (AUG 2020)

(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 in writing via email to the Contracting Officer, Contracting Officer's Representative, and the Enterprise Security Operations Center (SOC) at NDAA_Incidents@hq.dhs.gov, with required information in the body of the email. 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 Enterprise SOC, Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) and Contracting Officer's Representative(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), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)