



UNITED STATES DEPARTMENT OF COMMERCE  
Chief Financial Officer and  
Assistant Secretary for Administration  
Washington, D.C. 20230

## PROCUREMENT MEMORANDUM 2021-02

### ACTION

**MEMORANDUM FOR:** Bureau Procurement Officials

**FROM:** Barry E. Berkowitz  
Senior Procurement Executive  
and Director for Acquisition Management

**SUBJECT:** Purchase Card Guidance for the Implementation of the Section 889(a)(1)(B) Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment

### Background

Section 889 of the National Defense Authorization Act (NDAA) for Fiscal Year 2019 contains two prohibitions related to Federal Contracting:

- The first prohibition, set forth in Section 889(a)(1)(A), took effect August 13, 2019 to prohibit the Government from **procuring and obtaining** any equipment, system or service that uses covered telecommunications equipment or services from five named Chinese companies and their subsidiaries or affiliates. This prohibition is implemented in Federal Acquisition Regulation (FAR) 4.2102.
- The second prohibition, set forth in Section 889 (a)(1)(B), which became effective August 13, 2020, prohibits the Government from **contracting with** any 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 applies, or a waiver has been granted. This prohibition was implemented through interim FAR rule 2019-009. 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.

### Purpose

The purpose of this memorandum is to provide guidance to purchase cardholders to facilitate implementation of the interim FAR rule 2019-009, published on July 14, 2020, that implements prohibitions contained in Section 889(a)(1)(B) of the NDAA for Fiscal Year 2019.

## **Interim Rule Requirements**

Effective August 13, 2020, Federal agencies are prohibited from **contracting with** any entity that uses 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, unless an exception applies, or a waiver has been granted.

The interim rule requires offerors, after conducting a reasonable inquiry, to provide a representation regarding use of covered telecommunications equipment or services when submitting an offer.

## **Applicability**

The interim rule applies to all procurements at all dollar values including micro-purchases made using purchase cards. The provisions and clauses of interim rule FAR 52.204-24 are the authority requiring vendors to make representations when submitting an offer. However, per FAR 13.201(d), micro-purchases do not require provisions or clauses. Therefore, purchase cardholders are not required to obtain from vendors the Section 889 representation clauses and reporting provision found in interim rule FAR 52.204-24 regarding the use of covered equipment/services. Regardless, cardholders are still responsible for ensuring their purchases are compliant with Section 889 by taking the required actions below.

## **Required Actions**

Purchase cardholders must comply with the following when making purchases on the purchase card:

- **Government Mandatory Sources:** To the maximum extent practicable, cardholders shall satisfy requirements for supplies and services from the Government mandatory sources listed in FAR 8.002 and 8.003.
- **Non-Mandatory Sources:** If cardholders are unable to satisfy requirements for supplies and services from the Government mandatory sources listed in FAR 8.002 and 8.003, cardholders shall satisfy requirements from or through the non-mandatory sources listed in CAM 1313.301, Sections 6.9d and 6.10, before considering open market sources.
  1. Federal supply schedules,
  2. Governmentwide acquisition contracts,
  3. Multi-agency contracts,
  4. Federal strategic sourcing initiative (FSSI) vehicles, and
  5. Department of Commerce strategically sourced vehicles.

NOTE: All purchase card purchases of telecommunication equipment and services and video surveillance equipment must still comply with the requirements of Procurement Memorandum 2019-04.

- **Open Market Sources:**
  - a. **Information Technology Purchases.** If an information technology (IT) product or service cannot be purchased from a Government mandatory source or a non-mandatory source listed above, cardholders shall refer the purchase to their cognizant servicing acquisition office for purchase by contract.
  - b. **Purchases Other than Information Technology.** If a non-IT product or service cannot be purchased from a Government mandatory source or a non-mandatory source listed above, cardholders shall document their files with the market research conducted including the non-mandatory sources considered.

Cardholders should work with their bureau's Office of Chief Information Officer if they have questions regarding whether an item is considered IT or non-IT.

### **Definition**

Information technology (IT) means computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including cloud computing, maintenance and help-desk services or other professional services that support any point of the life cycle of the equipment or service), and related services and resources. This term also refers to any equipment, or interconnected system(s) or subsystem(s) of equipment, that are used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, transmission, or reception of data or information by the agency. Examples of such technology include (1) **all smart technology** such as watches, calculators, electronic measuring devices, virtual assistants; (2) desktop and laptop computer equipment; readily portable computer peripheral devices, tablet computers; (3) portable music player; (4) televisions; DVD players; and digital cameras; (5) mobile or cellular phones.

### **Effective Date**

This Procurement Memorandum is effective immediately and remains in effect until it is otherwise rescinded or superseded.

Please direct any questions regarding this Procurement Memorandum to [OAM\\_Mailbox@doc.gov](mailto:OAM_Mailbox@doc.gov).