



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

PROCUREMENT MEMORANDUM 2021-02-Revised

ACTION

MEMORANDUM FOR: Bureau Procurement Officials

FROM: *for:* 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 must 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 must 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: Beta.SAM.gov Vendor Search. If products or services cannot be purchased from a Government mandatory source or a non-mandatory source listed above, cardholders should search Beta.SAM.gov (note: Beta.SAM.gov will change to SAM.gov in May 2021) to determine if the proposed open market source has a Section 889 representation. Note: If using a third-party processor such as PayPal, Groupon, or Amazon Marketplace, cardholders must search for the name of the seller, not the third-party processor.
 1. If the proposed vendor has a section 889 representation in Beta.SAM.gov which states that: (i) the vendor **“does not”** provide covered telecommunications equipment/services as part of its offered products/services **and** (ii) the vendor **“does not”** use covered telecommunications equipment services or any equipment system or service that uses covered telecommunications equipment or service; then the cardholder can make the purchase from the proposed vendor and document his/her file with a copy of the Beta.SAM.gov representation.
 2. If the proposed vendor is not registered in Beta.SAM.gov, does not have a Section 889 representation in Beta.SAM.gov **or** has a representation which states that: (i) the vendor **“does”** provide covered telecommunications equipment/services as part of its offered products/services **or** (ii) the vendor **“does”** use covered telecommunications equipment services or any equipment system or service that uses covered telecommunications equipment or service; then **cardholders must comply with the following:**
 - a. Information Technology (IT) Purchases. **Cardholders must refer all information technology purchases to their cognizant servicing acquisition office for purchase by contract.**
 - b. Purchases Other than Information Technology. Cardholders must document their files with the market research conducted including the non-mandatory sources considered before completing the purchase.

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, devices with Bluetooth connectivity, such as headphones; (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.

Attachment A – SOP beta.SAM.gov

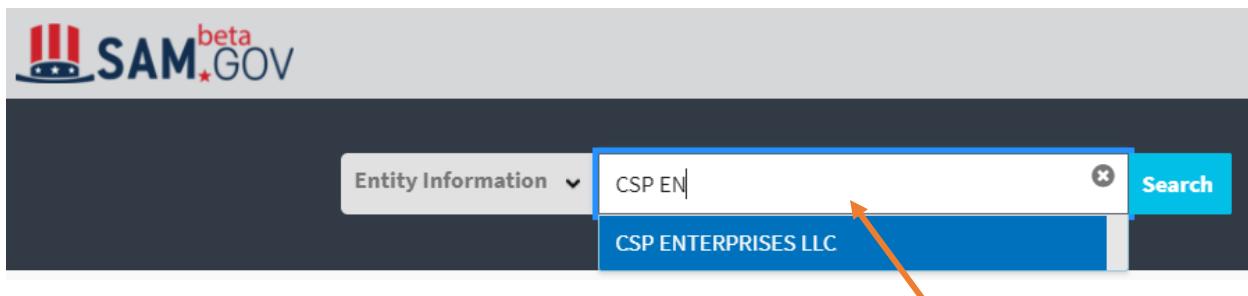
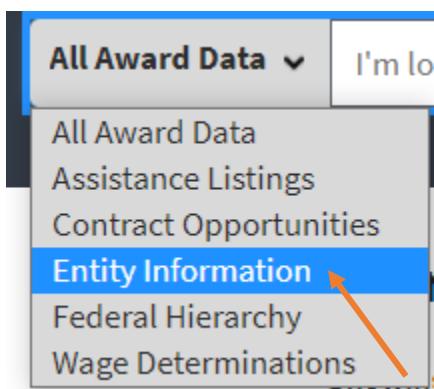
Department of Commerce
Standard Operating Procedure
beta.SAM.gov Representations and Certifications
Section 889 Search

Purpose:

The purpose of this Standard Operating Procedure (SOP) is to provide instructions to assist cardholders with searching for vendor Section 889 Representations before making purchases from open market sources.

Steps to Search beta.SAM.gov:

1. Go to beta.SAM.gov: <https://beta.sam.gov/>
2. In the Search field select “Entity Information”
 - a. from the drop down menu type in the DUNS or name of the company, and click “Search.”



3. Verify under the “**Search Results**” that the DUNS and/or name of company is correct and select the company.

a. If the proposed vendor is not registered in beta.SAM.gov, refer to Procurement Memorandum 2021-02 to determine how to proceed with the purchase.

Search Results

Showing 1 - 10 of 167,070 results

Sort By Relevance 

CSP ENTERPRISES LLC

Unique Entity ID (DUNS)
041108742

CAGE Code
72QH7

Address
, FREDERICK, 217046697

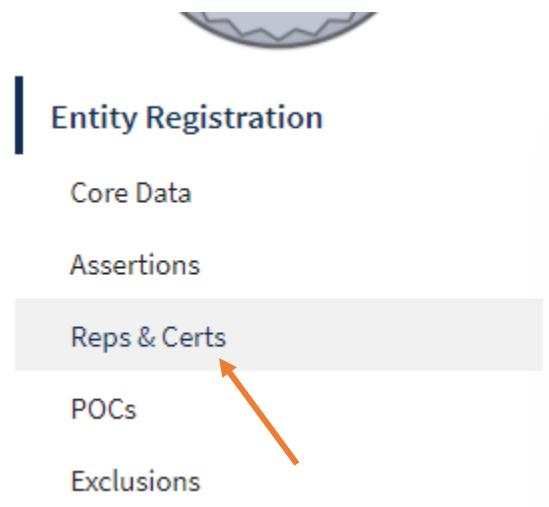
Registration

Expiration Date
Dec 1, 2021

Purpose of Registration
All Awards

Debt Subject to Offset
No

4. On the left side of the screen there is a list including “**Entity Registration**,” “Core Data,” etc. Select “**Reps & Certs.**”



5. Click “Download FAR Report”.

Representations and Certifications

FAR Report

Select Download FAR Report to review the Representations and Certifications for CSP ENTERPRISES LLC



6. Report will open automatically in PDF format to review the company searched.

FAR Report

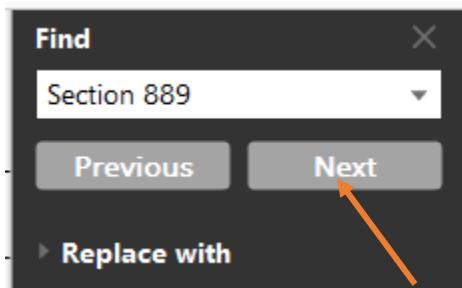
Certification for: CSP ENTERPRISES LLC

DUNS: 041108742

**Certification Validity From:Wed Dec 02 15:40:10 EST 2020
To :Thu Dec 02 15:40:10 EST 2021**

7. Locate “Section 889” Representation

- Click Control F and type in 889 to more easily locate it and click next.



8. Under (2) (i) and (ii) identify if “does” or “does not” is selected

(v) Covered Telecommunications Equipment or Services - Representation. [Section 889\(a\)\(1\)](#) and [Section 889\(a\)\(1\)\(B\)](#) of Public Law 115-232.

(1) The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(2) The Offeror represents that-

(i) It [] does [X] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(ii) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it [] does, [X] does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

9. Final Step: Refer to Procurement Memorandum 2021-02 to determine how to proceed with the purchase.

Section 889 Representations for eMarketplace Vendors:

The Department of Commerce is participating in the GSA eMarketplace Pilot. Section 889 Representations for eMarketplace vendors: Amazon, Overstock, and Fisher Scientific are available on the SmartPay3 website at: <https://www.commerce.gov/oam/policy/smartpay-3>.

Note: The representations are for items sold and shipped by the actual eMarketplace vendor (e.g. Amazon, Fisher Scientific, Overstock) not items from third party vendors. Cardholders must use the steps outlined in this document to search for Representations for items sold by third party vendors on the marketplace.