

Legal Corner: GSA Implements Restrictions on Certain Chinese-Made Telecommunications Services and Equipment

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On September 9, 2019, the U.S. General Services Administration (“GSA”) [announced](#) it would be issuing a mass modification (expected sometime this month)[\[1\]](#) requiring all new and existing GSA Multiple Award Schedule (“MAS”) contracts include two new clauses. The new clauses come in response to Section 889 of the FY2019 National Defense Authorization Act (“NDAA”), and recently implemented FAR provisions, which impose prohibitions relating to the procurement of certain Chinese telecommunications equipment and services (which we have previously discussed [here](#) and [here](#)). The two clauses to be added to all MAS contracts are:

- FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2019)
- GSAR 552.204-70, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2019)

FAR 52.204-25 – A new government-wide FAR clause (discussed in a [previous post](#)), prohibits contractors from providing 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 or waiver applies. Companies Huawei and ZTE are specifically called out in the new clause, as are three additional Chinese-owned entities. The clause applies to covered equipment and services from these entities as well as their subsidiaries and affiliates, and leaves open the possibility for other Chinese companies to be included based on a specific determination by, among others, the Secretary of Defense. This clause also requires contractors to report the discovery of covered equipment or services during performance within one business day from the date of discovery, with a follow-up report containing information on the contractor’s mitigation actions required within 10 business days after the initial report. GSAR 552.204-70 – A new, GSA-specific clause, requires contractors to submit a formal representation to the GSA indicating whether the contractor will “provide covered telecommunications equipment or services to the Government” in performing “any contract, subcontract, order, or other contractual instrument” resulting from its Schedule contract. If so, the contractor must identify all such equipment or services and describe its proposed use under the contract. Notably, this representation is materially the same representation required by FAR 52.204-24, albeit altered slightly to emphasize inclusion of the clause will be required for both new *and existing* Schedule contracts. MAS contractors will have 60 days from the date the modification is issued to accept the modification by incorporating the

above clauses into their Schedule contracts and providing the representation required by GSAR 552.204-70. Additionally, MAS contractors must accept this modification prior to exercising their contract's next option period, and GSA may cancel contracts if the contractor has not accepted after the 60-day period. GSA anticipates the mass modification will be released sometime this month, but has yet to provide a definitive date on which the 60-day period will commence. This is also a good reminder for companies to review the flowdown requirements in their standard form terms and conditions. Contractors should be updating these forms to include the new FAR 52.204-25 (and, quite possibly, FAR 52.204-24 and/or GSAR 552.204-70 as well).[\[1\]](#) As of the publication of this article, GSA has yet to release the mass mod.