

DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC

ES 2020-00823

MEMORANDUM FOR Ms. Ellen M. Lord
Under Secretary for Acquisition and Sustainment
Department of Defense

SUBJECT: (U//FOUO) Department of Defense Request for Waiver of Section
889 of Fiscal Year 2019 National Defense Authorization Act

REFERENCES: A. (U//FOUO) ODNI Memorandum 2020-00733, DoD Request
for Waiver of Section 889 of Fiscal Year 2019 NDAA, 12
August 2020
B. (U) DoD Memorandum, DoD Request for Waiver of Section
889(a)(1)(B) Prohibition, with attachments, 12 August 2020
C. (U) DoD Memorandum, Information Requests Regarding DoD
Implementation of Section 889(a)(1)(B), with attachments, 02
September 2020

(U//FOUO) Thank you for your memorandum requesting a waiver to certain prohibitions under Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232).

(U//FOUO) Section 889(a)(1)(B) prohibits federal agencies from entering into, extending, or renewing contracts with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services produced or provided by entities connected to the People's Republic of China, including certain equipment produced by Huawei Technologies Company, ZTE Corporation, Hangzhou Hikvision Digital Technology Company, Hytera Communications Corporation, and Dahua Technology Company (or any subsidiary or affiliate of such entities), unless an exception applies or a waiver is granted. Section 889(b) prohibits federal agencies from obligating or expending loan or grant funds to procure or obtain, or extend or renew a contract to procure or obtain, the equipment, services, or systems described above.

(U//FOUO) Section 889(d)(2) provides the Director of National Intelligence (DNI) with the authority to grant to the head of an agency a waiver of the prohibitions contained in Section 889 if the waiver is in the national security interest of the United States. This waiver authority is distinct from the authority of an agency head to provide a waiver pursuant to Section 889(d)(1), and can be exercised in my sole discretion.

(U//FOUO) In response to your initial waiver request of 12 August 2020, I granted a temporary waiver under Section 889(d)(2) based on a preliminary assessment that your request appeared on its face to have sufficient nexus to the national security interests of the United


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States. This temporary waiver pertained to the DoD's statutory requirement to provide for the military forces needed to deter war and protect the security of our country, which is critically important to national security. Therefore, the procurement of goods and services in support of the DoD's statutory mission is also in the national security interests of the United States. The Section 889(d)(2) waiver would allow the DoD to continue to execute procurement actions for specified Product Service Codes (PSC) deemed to be of low risk potential but are necessary to execute the DoD mission. In granting this temporary waiver, I requested that you provide additional information regarding potential increased risks and mitigation measures in place to address such risks, as well as a plan to seek alternatives to contracting with entities that use prohibited goods and services, to the Director of the National Counterintelligence and Security Center (NCSC). The NCSC received this additional information, dated 02 September 2020, for review.

(U//FOUO) Based on the information included in your 12 August request, and the additional information dated 02 September, I have determined that an extension of the waiver is in the national security interests of the United States.

(U//FOUO) Therefore, I am granting a waiver under Section 889(d)(2) until 30 September 2022 to allow the DoD to continue its contracting activities for goods and services as outlined in the 12 August waiver request. During this waiver period, please provide periodic updates on a fiscal year quarterly basis to my staff to ensure that supply chain risk management efforts to mitigate any potential risks are fully implemented and to ensure that progress toward alternate sources of supply continue.

(U//FOUO) My point of contact for this matter is The Honorable William R. Evanina, and he may be reached at 932-0705 (secure).



John Ratcliffe

SEP 29, 2020

Date