OFFICE OF THE UNDER SECRETARY OF DEFENSE
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ACQUISITION
AND SUSTAINMENT

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Implementation Guidance for Section 889(a)(1)(B) Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment on Other Transactions for Prototype Projects

This memorandum provides implementation guidance for section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115–232), which prohibits executive agencies from entering into, 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. The section 889(a)(1)(B) prohibition goes into effect August 13, 2020, and applies to Other Transactions (OTs) for Prototype Projects under section 2371b of title 10, United States Code (U.S.C.).

The Federal Acquisition Regulation (FAR) Council published interim FAR rule 2019-009 on July 14, 2020, to amend the FAR to implement the prohibitions in section 889(a)(1)(B). 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. Defense Pricing and Contracting (DPC) subsequently issued a memorandum on July 23, 2020, to facilitate implementation of the section 889(a)(1)(B) requirements as implemented in the interim FAR rule.

While the interim rule and DPC implementation memorandum are directed to FAR-based contracts, the principles and requirements provided therein shall apply to OTs for Prototype Projects agreements authorized under 10 U.S.C. § 2371b.

Any solicitation issued for an OT for Prototype Project agreement on or after August 13, 2020 must contain the provision, FAR 52.204-24, Representation Regarding Certain

Telecommunications and Video Surveillance Services or Equipment, that requires the offeror to represent if it uses any equipment, system, or service that uses covered telecommunications equipment or services. The provision can be found at https://www.acq.osd.mil/dpap/dars/far/doc/52_204_24.docx. Refer to the DPC memorandum from July 23, 2020, for requirements on how to proceed after a representation is received, which can be found at https://www.acq.osd.mil/dpap/policy/policyvault/USA001557-20-DPC.pdf

Further, any OT for Prototype Project agreement awarded on or after August 13, 2020, must contain the clause, FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, which requires reporting of use of covered telecommunications equipment or services when discovered during performance of the agreement. The clause can be found at https://www.acq.osd.mil/dpap/dars/far/doc/52_204_25.docx

In addition, if any OT for Prototype Project agreement is modified to extend or renew the agreement, or move to a new phase on or after August 13, 2020, prior to any such extension or renewal, the FAR 52.204-25 clause must be added to the agreement and the contractor must complete the FAR 52.204-24 representation. If OT for Prototype Project authority under 10 U.S.C. § 2371b(f) was used to enter a FAR-based contract for production, then the interim rule and DPC implementation memorandum apply to the FAR-based prototype production contract.

This memorandum does not apply to grants and other agreements (e.g., cooperative agreements, basic research agreements) that fall under the authority of the Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)). The point of contact for grants and other agreements in OUSD(R&E) is Ms. Barbara Orlando, who may be reached at 571-372-6413 or by email at barbara.j.orlando.civ@mail.mil.

My point of contact is Mr. Larry McLaury, at 571-309-0940 or larry.j.mclaury2.civ@mail.mil.

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