

ALERT

OMB Releases Guidance on Implementation of Section 889 for Grant Recipients

August 13, 2020

WHAT: The Office of Management and Budget (OMB) is issuing Final Guidance and adding a new section to its grant regulations at 2 C.F.R. § 200.216, *Prohibition on certain telecommunication and video surveillance services or equipment*, which will implement Section 889 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232) and prohibit Federal award recipients from using government funds to enter into contracts (or extend or renew contracts) with entities using covered telecommunications equipment or services.

WHEN: OMB's Final Guidance is effective August 13, 2020.

WHAT DOES IT MEAN FOR INDUSTRY: As we previously reported, the U.S. Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) released a draft Interim Final Rule, text available [here](#), to implement important restrictions under Section 889(a)(1)(B) on contractor supply chains related to telecommunications equipment and services. Other agencies have provided further implementing guidance, including DoD, as we reported.

OMB's guidance published today coincides with the implementation date established under Section 889 and the Interim Final Rule, which requires that new solicitations include FAR 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment and FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

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OMB's guidance aligns with the statutory prohibition in Section 889(b) restricting the use of loan or grant funds to obtain covered telecommunications equipment.

OMB also stated that costs associated with covered telecommunications equipment are unallowable. At the same time, OMB recognized that Section 889 compliance will introduce a "burden" on small entities, which is difficult to calculate in magnitude, but will be felt by the thousands of small entities that have been awarded Federal financial assistance. To that end, and consistent with Section 889(b), OMB directed agencies administering loan, grant, or subsidy programs to "prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained."

We will continue to monitor Section 889 developments impacting industry.