

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket No. FAR 2019-0002, Sequence No. 8]

**Federal Acquisition Regulation; Federal Acquisition Circular 2020-03; Introduction**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of an interim rule.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2020-03. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the internet at <http://www.regulations.gov>.

**DATES:** For effective date see the separate document, which follows.

**FOR FURTHER INFORMATION CONTACT:** [Farpolicy@gsa.gov](mailto:Farpolicy@gsa.gov) or call 202-969-4075. Please cite FAC 2020-03, FAR case 2018-017.

**RULE LISTED IN FAC 2020-03**

Subject	FAR case	Analyst
Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment .....	2018-017	Francis.

**SUPPLEMENTARY INFORMATION:** A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR Case, refer to the specific subject set forth in the document following this item summary. FAC 2020-03 amends the FAR as follows:

**Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2018-017)**

This second interim rule amends the Federal Acquisition Regulation to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232). The first interim rule was published August 13, 2019.

This rule reduces the information collection burden imposed on the public by making updates to the System for Award Management (SAM) to allow offerors to represent annually whether they offer to the Government equipment, systems, or services that include covered telecommunications equipment or services. The burden to the public is reduced by allowing an offeror that responds “does not” in the new annual representation at 52.204-26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) of 52.212-3, Offeror Representations and Certifications—Commercial Items, to skip the offer-by-offer representation within the provision at 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

The provision at 52.204-26 requires that offerors review SAM prior to completing their required representations. The Government will add to SAM the entities that provide equipment or services listed in the definition of “covered telecommunications equipment or services”, with an appropriate notation to identify that the prohibition is limited to certain products and services—the entity itself is not excluded.

Offerors shall consult SAM to validate whether the products they are offering are from an entity covered under the definition of “covered telecommunications equipment or services”, including any known subsidiaries or affiliates.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

**William F. Clark,**  
*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Federal Acquisition Circular (FAC) 2020-03 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained

in FAC 2020-03 is effective December 13, 2019.

Linda W. Neilson,  
*Director, Defense Acquisition Regulations System, Defense Pricing and Contracting, Department of Defense.*  
Jeffrey A. Koses,  
*Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.*  
William G. Roets, II,  
*Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 4 and 52**

[FAC 2020-03; FAR Case 2018-017; Docket No. FAR-2018-0017, Sequence No. 2]

**RIN 9000-AN83**

**Federal Acquisition Regulation; Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a second interim rule amending the Federal Acquisition Regulation (FAR) to require offerors to represent annually whether they offer to the Government equipment, systems, or services that include covered telecommunications equipment or services. These provisions implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019.

**DATES:**

*Effective Date:* December 13, 2019.

*Applicability:* Contracting officers shall include the provision at FAR 52.204–26, Covered

Telecommunications Equipment or Services—Representation—

- In solicitations issued on or after the effective date; and

- In solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date.

*Comment date:* Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before February 11, 2020 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2018–017 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2018–017”. Select the link “Comment Now” that corresponds with “FAR Case 2018–017”. Follow the instructions provided on the screen. Please include your name, company name (if any), and “FAR Case 2018–017” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, 2nd Floor, Washington, DC 20405.

*Instructions:* Please submit comments only and cite “FAR Case 2018–017” in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:**

[Farpolicy@gsa.gov](mailto:Farpolicy@gsa.gov) or call 202–969–4075. Please cite FAR Case 2018–017.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Federal Acquisition Regulations System codifies and publishes uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists

of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR.

In order to combat the national security and intellectual property threats that face the United States, section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (the NDAA) (Pub. L. 115–232) prohibits the Federal Government from procuring or obtaining, or extending or renewing a contract to procure or obtain, “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”, on or after August 13, 2019.

“Covered telecommunications equipment or services,” as defined in the statute, means—

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- Telecommunications or video surveillance services provided by such entities or using such equipment; or
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

To implement section 889(a)(1)(A) of the NDAA, DoD, GSA, and NASA published the first interim rule at 84 FR 40216 on August 13, 2019. This rule added a provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, which required, in part, that an offeror represent on an offer-by-offer basis if the offeror will or will not provide any covered telecommunications equipment or services to the Government and, if it will, require the offeror to provide additional disclosures.

This second interim rule reduces burden on the public by allowing an

offeror that represents “does not” in the new annual representation at FAR 52.204–26, Covered

Telecommunications Equipment or Services—Representation or in paragraph (v) of FAR 52.212–3, Offeror Representations and Certifications—Commercial Items to skip the offer-by-offer representation within the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

In order to reduce the information collection burden imposed on the public, DoD, GSA, and NASA have made updates to the System for Award Management (SAM) to require offerors to represent annually whether they offer to the Government equipment, systems, or services that include covered telecommunications equipment or services. SAM is used by anyone interested in the business of the Federal Government, including—

- Entities (contractors, Federal assistance recipients, and other potential award recipients) who need to register to do business with the Government, look for opportunities or assistance programs, or report subcontract information;
- Government contracting and grants officials responsible for activities with contracts, grants, past performance reporting and suspension and debarment activities;
- Public users searching for Government business information.

Representations and Certifications are FAR requirements that anyone wishing to apply for Federal contracts must complete. Representations and Certifications require entities to represent or certify to a variety of statements ranging from environmental rules compliance to entity size representation.

Agencies use the SAM entity registration information to verify recipient compliance with requirements. This reduces the duplicative practice of contractors filling out in full all the representations and certifications with the submission of each offer. Instead the representations and certifications may be filled out annually and electronically.

Offerors shall consult SAM to validate whether the equipment or services they are offering are from an entity providing equipment or services listed in the definition of “covered telecommunications equipment or services” (see FAR 4.2101), including any known subsidiaries or affiliates.

This rule is a further implementation of section 889(a)(1)(A). The prohibition in section 889(a)(1)(B) regarding entities

that use covered telecommunications equipment or services is not effective until August 13, 2020, and will be implemented through separate rulemaking under FAR Case 2019–009.

## II. Discussion and Analysis

This second interim rule proposes to add the new annual representation, 52.204–26, Covered Telecommunications Equipment or Services—Representation, which requires an offeror to represent annually if it does or does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government. If an offeror represented “does not,” it shall not complete the offer-by-offer representation at FAR 52.204–24; if the offeror represented “does,” or has not made any representation in FAR 52.204–26 or 52.212–3(v), it shall complete the representation at FAR 52.204–24. This annual representation is prescribed at FAR 4.2105(c) for use in all solicitations.

The provision at FAR 52.204–26 requires that offerors shall review the list of excluded parties in SAM for entities excluded from receiving Federal awards for “covered telecommunications equipment or services” prior to completing their required representations. The Government will add to SAM entities that provide equipment or services listed in the definition of “covered telecommunications equipment or services” (see FAR 4.2101), with an appropriate notation to identify that the prohibition is limited to certain products and services—the entity itself is not excluded.

In addition, the rule amends the FAR to make the existing provision at FAR 52.204–24 not apply if an offeror represents “does not” to the new annual representation, FAR 52.204–26, Covered Telecommunications Equipment or Services—Representation, or if an offeror represents “does not” in a new paragraph (v), under the existing FAR clause FAR 52.212–3, Offeror Representations and Certifications—Commercial Items. The purpose of this change is to require only offerors that provide covered telecommunications equipment or services to the Government to complete the representation at FAR 52.204–24.

This interim rule provides procedures at FAR 4.2103 for contracting officer handling of offeror representations in the provisions at FAR 52.204–24 and 52.204–26. A contracting officer may generally rely on an offeror’s representation in the provisions at FAR 52.204–24 and 52.204–26 that the

offeror does not or will not provide covered telecommunications equipment or services to the Government, unless the contracting officer has a reason to question the representation. In such cases the contracting officer shall follow agency procedures (*e.g.*, consult the requiring activity and legal counsel).

Conforming changes are made to add the provision at FAR 52.204–26 to the provision at FAR 52.204–8, Annual Representations and Certifications, and the list at FAR 4.1202 of representations and certifications that should not be included in solicitations when the provision at 52.204–7, System for Award Management, is used. In addition, the prescription for FAR 52.204–24 at FAR 4.2105(a)(2) is amended to clarify that subpart 8.4 and 16.505 are examples of the procedures that may be used to place an order.

## III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

In the first interim rule, the FAR Council determined that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the simplified acquisition threshold (SAT), commercial item contracts, and contracts for the acquisition of commercially available off-the-shelf (COTS) items, from the provision of law. As the second interim rule makes only administrative changes to the process of collecting information, and does not affect the scope of applicability of the prohibition, those determinations remain applicable. This rule adds a new provision at 52.204–26, Covered Telecommunications Equipment or Services—Representation, in order to implement section 889(a)(1)(A) of the NDAA for FY 2019, which prohibits the purchase of 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 on or after August 13, 2019, unless an exception applies or a waiver has been granted.

### A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law

under certain circumstances, including when the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

### B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Finally, 41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from a provision of law unless certain circumstances apply, including if the Administrator for Federal Procurement Policy makes a written determination and finding that would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

### C. Determinations

In issuing the first interim rule, the FAR Council determined that it is in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial items, and the Administrator for Federal Procurement Policy determined that it is in the best interest of the Government to apply that rule to contracts for the acquisition of COTS items. The changes made in this rule are administrative changes to the process of collecting required information, and do not alter those determinations.

## IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory

action” under E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this rule. This rule is not a major rule under 5 U.S.C. 804.

#### V. Executive Order 13771

This rule is subject to the requirements of E.O. 13771. The designation, as regulatory or deregulatory under E.O. 13771, of any final rule resulting from this interim rule will be informed by comments received. Details of estimates of costs or savings can be found in sections VI and VII of this preamble.

#### VI. Regulatory Flexibility Act

For the first interim rule, the DoD, GSA, and NASA performed an Initial Regulatory Flexibility Analysis (IRFA). No public comments on the IRFA for the first interim rule were received.

Although the second interim rule would on aggregate reduce burdens, DoD, GSA, and NASA expect that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

The second interim rule would require an offeror to represent annually if it does or does not provide covered telecommunications equipment or services as part of the products or services it offers to the Government. Specifically, the solicitation provision at 52.204–26 is prescribed for use in all solicitations and requires all vendors to represent, at least annually, that it “does” or “does not” provide covered telecommunications equipment or services as a part of its offered products or services to the Government. Offerors shall consult the System for Award Management (SAM) to validate whether the equipment or services they are offering are from an entity providing equipment or services listed in the definition of “covered telecommunications equipment or services”, including any known subsidiaries or affiliates.

The objective of the rule is to provide an information collection mechanism that relies on an annual representation, thereby reducing the burden of providing information, in some cases, that is required to enable agencies to determine and ensure that they are complying with section 889(a)(1)(A). The legal basis for the rule is section 889(a)(1)(A) of the NDAA for FY 2019, which prohibits Government procurement of such equipment, systems, and services on or after that date, unless an exception applies or a waiver has been granted.

Of the total vendors, 318,695 are estimated to be small entities. A data set was generated from the Federal Procurement Data System (FPDS) for fiscal years (FY) 2016, 2017, and 2018 and data from SAM from August 2019 for use in estimating the number of small entities affected by this rule.

Data from the System for Award Management (SAM) indicates that there were 424,927 active registrants in August 2019. In order to maintain an active registration in SAM, all entities will be required to complete the 52.204–26 representation in SAM. Therefore, DoD, GSA, and NASA estimate that at least 424,927 entities will complete the representation in the provision at 52.204–26. Of the total vendors, 318,695 are estimated to be small entities based on the percentage of small business entities registered in SAM in 2017, which was 75 percent of all active registrants.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

It is not possible to establish different compliance or reporting requirements or timetables that take into account the resources available to small entities or to exempt small entities from coverage of the rule, or any part thereof. DoD, GSA, and NASA were unable to identify any alternatives that would reduce the burden on small entities and still meet the objectives of section 889.

The Regulatory Secretariat Division has submitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy may be obtained from the Regulatory Secretariat Division upon request. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018–017) in correspondence.

#### VII. Paperwork Reduction Act

As part of the first interim rule, the FAR Council was granted emergency processing of a collection currently approved under OMB control number 9000–0199, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. A 60-day notice was published for additional public comment on this collection on October 9, 2019 (84 FR 54146).

In the first interim rule, the burden consisted of a representation at FAR 52.204–24 to identify whether an offeror will or will not provide covered telecommunications equipment or services for each offer, and a report of identified covered telecommunications equipment and services during contract performance, as required by FAR 52.204–25. In this second interim rule, the burden consists of a representation at FAR 52.204–26 to identify whether an offeror does or does not provide covered

telecommunications equipment and services to the Government in the performance of any contract, and a representation at FAR 52.204–24 to identify whether an offeror will or will not provide covered telecommunications equipment or services for each offer unless the offeror selects “does not” in response to the provision at FAR 52.204–26 (or its commercial item equivalent at paragraph (v) of FAR 52.212–3).

With this second interim rule, this existing collection is being revised to reflect a reduction in burden. The FAR Council expects the total public reporting burden to decrease from \$45,420,020 to \$5,952,369 as a result of amending FAR 52.204–24 so it is only filled out if a new solicitation provision FAR 52.204–26 (or its commercial item equivalent at paragraph (v) of FAR 52.212–3) has a response of “does.”

With this change in who must complete a representation at FAR 52.204–24, the FAR Council has estimated the number of entities affected by this provision will drop from 190,446 to 9,522. With this decrease in responses needed, the burden is expected to decrease from \$43,527,522 to \$2,183,185.

The representation added by this rule at 52.204–26 is estimated to average 0.08333 hour (the average of the time for both positive and negative representations) per response to review the prohibitions, research the source of the product or service, and complete the representation. The representation at FAR 52.204–24 is estimated to average 0.105 hour (the average of the time for both positive and negative representations) per response to review the prohibitions, research the source of the product or service, and either provide a response of “will not” in the majority of cases or provide a response of “will” and complete the additional detailed disclosure.

As part of this interim rule, the FAR Council is soliciting comments from the public in order to:

- Evaluate whether the proposed revisions to this collection of information are necessary for the proper performance of the functions of the FAR Council, including whether the information will have practical utility;
- Evaluate the accuracy of the FAR Council’s estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond including through the use of appropriate collection techniques.

Organizations and individuals desiring to submit comments on the information collection requirements associated with this rulemaking should submit comments to the Regulatory Secretariat Division (MVCB) not later than February 11, 2020, by either of the following methods:

- *Federal eRulemaking Portal*: This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to <http://www.regulations.gov> and follow the instructions on the site.

- *Mail*: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, 2nd Floor, Washington, DC 20405. Reference: IC 9000–0007, Subcontracting Plans.

*Instructions*: All items submitted must cite Information Collection 9000–0199, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**VIII. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense (DoD), Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that notice and public procedure thereon is unnecessary.

In the first interim rule published on August 13, 2019, the FAR Council solicited comment regarding on-going work then contemplated to reduce the burden imposed on the public through updates to the System for Award Management (SAM). System changes to allow offerors to represent annually whether they sell equipment, systems, or services that include covered telecommunications equipment or services could not be implemented by the statutory deadline of August 13, 2019. Therefore, the first interim rule was published without this representation in order to meet the statutory deadline and in order to provide the contracting community with

as much notice as possible. With this second interim rule, and with the modifications to SAM, only offerors that provide an affirmative response to the annual representation would be required to provide the offer-by-offer representation in their offers for contracts and for task and delivery orders under indefinite delivery contracts.

The FAR Council provided a description of the plans to decrease burden in the first interim rule in August and received public comment which is supportive of this approach. All comments on the first interim rule can be found in the docket at [www.regulations.gov](http://www.regulations.gov). Moreover, commenters encouraged the FAR Council to take this burden-reducing action as quickly as possible. Other comments associated with the first interim rule as well as this second interim rule will be addressed in a subsequent FAR Council action.

**List of Subjects in 48 CFR Parts 4 and 52**

Government procurement.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 4 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

**PART 4—ADMINISTRATIVE AND INFORMATION MATTERS**

- 2. Amend section 4.1202, by redesignating paragraphs (a)(8) through (33) as paragraphs (a)(9) through (34) and adding a new paragraph (a)(8) to read as follows:

**4.1202 Solicitation provision and contract clause.**

(a) \* \* \*

(8) 52.204–26, Covered Telecommunications Equipment or Services—Representation.

\* \* \* \* \*

- 3. Amend section 4.2102 by adding paragraph (d) to read as follows:

**4.2102 Prohibition.**

\* \* \* \* \*

(d) *Recording prohibitions in the System for Award Management (SAM).*

(1) Prohibitions on purchases of products or services produced or provided by entities identified in

paragraphs (1) and (2) of the definition of “covered telecommunications equipment or services” (including known subsidiaries or affiliates) at 4.2101 will be recorded in SAM (see 9.404).

(2) Prohibitions on purchases of products or services produced or provided by entities identified pursuant to paragraph (4) of the definition of “covered telecommunications equipment or services” (including known subsidiaries or affiliates) at 4.2101 are recorded by the Department of Defense in SAM (see 9.404).

- 4. Amend section 4.2103 by revising paragraph (a) to read as follows:

**4.2103 Procedures.**

(a) *Representations.* (1)(i) If the offeror selects “does not” in response to the provision at 52.204–26 or 52.212–3(v), the contracting officer may rely on the representation, unless the contracting officer has reason to question the representation. If the contracting officer has a reason to question the representation, the contracting officer shall follow agency procedures.

(ii) If the offeror selects “does” in response to the provision at 52.204–26 or 52.212–3(v), the offeror must complete the representation at 52.204–24.

(2)(i) If the offeror selects “will not” in paragraph (d) of the provision at 52.204–24, the contracting officer may rely on the representation, unless the contracting officer has reason to question the representation. If the contracting officer has a reason to question the representation, the contracting officer shall follow agency procedures.

(ii) If an offeror selects “will” in paragraph (d) of the provision at 52.204–24, the offeror must provide the information required by paragraph 52.204–24(e), and the contracting officer shall follow agency procedures.

\* \* \* \* \*

- 5. Amend section 4.2105 by—
  - a. Revising the section heading;
  - b. Removing from paragraph (a)(2) “i.e.” and adding “e.g.” in its place; and
  - c. Adding paragraph (c).

The revision and addition reads as follows:

**4.2105 Solicitation provisions and contract clause.**

\* \* \* \* \*

(c) The contracting officer shall insert the provision at 52.204–26, Covered Telecommunications Equipment or Services—Representation, in all solicitations.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

- 6. Amend section 52.204–8 by—
- a. Revising the date of the provision;
- b. Redesignating paragraphs (c)(1)(vi) through (xxiv) as paragraphs (c)(1)(vii) through (xxv); and
- c. Adding a new paragraph (c)(1)(vi).

The revision and addition reads as follows:

**52.204–8 Annual Representations and Certifications.**

\* \* \* \* \*

**Annual Representations and Certifications (Dec 2019)**

\* \* \* \* \*

(c)(1) \* \* \*  
 (vi) 52.204–26, Covered Telecommunications Equipment or Services—Representation. This provision applies to all solicitations.

\* \* \* \* \*

- 7. Amend section 52.204–24 by—
- a. Revising the date of the provision;
- b. Adding an undesignated paragraph before paragraph (a);
- c. Removing from paragraph (a) “*Critical technology*”, and “*Substantial or*” and adding “, “*critical technology*”, and “*substantial or*” in its place;
- d. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), and adding a new paragraph (c);
- e. Revising the newly redesignated paragraph (d); and
- f. Revising the introductory text of the newly redesignated paragraph (e), and removing from paragraph (e)(1) “All” and adding “A description of all” in its place;

The revisions and additions read as follows:

**52.204–24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.**

\* \* \* \* \*

**Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Dec 2019)**

The Offeror shall not complete the representation in this provision if the Offeror has represented that it “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” in the provision at 52.204–26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) of the provision at 52.212–

3, Offeror Representations and Certifications—Commercial Items.

\* \* \* \* \*

(c) *Procedures.* 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”.

(d) *Representation.* The Offeror represents that it [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(e) *Disclosures.* If the Offeror has represented in paragraph (d) of this provision that it “will” provide covered telecommunications equipment or services”, the Offeror shall provide the following information as part of the offer—

\* \* \* \* \*

- 8. Add section 52.204–26 to read as follows:

**52.204–26 Covered Telecommunications Equipment or Services—Representation.**

As prescribed in 4.2105(c), insert the following provision:

**Covered Telecommunications Equipment or Services—Representation (Dec 2019)**

(a) *Definitions.* As used in this provision, “covered telecommunications equipment or services” has the meaning provided in the clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Procedures.* 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”.

(c) *Representation.* The Offeror represents that it [ ] does, [ ] 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.

(End of provision)

- 9. Amend section 52.212–3 by—
- a. Revising the date of the provision;
- b. Removing from the introductory paragraph “paragraphs (c) through (u))” and adding “paragraphs (c) through (v))” in its place;
- c. In paragraph (a), adding in alphabetical order the definition “*Covered telecommunications equipment or services*”;
- d. Removing from paragraph (b)(2), in the first undesignated paragraph “(c)

through (u))” and adding “(c) through (v))” in its place; and

- e. Adding paragraph (v).

The revision and additions read as follows:

**52.212–3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

**Offeror Representations and Certifications—Commercial Items (Dec 2019)**

(a) \* \* \*

*Covered telecommunications equipment or services* has the meaning provided in the clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

\* \* \* \* \*

(v) *Covered Telecommunications Equipment or Services—Representation.* Section 889(a)(1)(A) 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 it [ ] does, [ ] 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.

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket No. FAR 2019–0002, Sequence No. 8]

**Federal Acquisition Regulation; Federal Acquisition Circular 2020–03; Small Entity Compliance Guide**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of DOD, GSA,