

ALERT

GSA Announces Planned Bilateral Modification to Prohibit Certain Tech Equipment or Services

September 17, 2019

WHAT: As we previously covered here, in August 2019, the FAR Council released an interim FAR rule that implemented the government-wide prohibition in Section 889(a)(1)(1) of the FY19 National Defense Authorization Act (NDAA). The interim rule generally prohibits executive agencies from procuring telecommunications equipment and services from Huawei and other Chinese technology companies and imposes strict reporting and disclosure requirements on government contractors related to use of the prohibited equipment and services in performing government contracts. GSA also adopted a Class Deviation that established GSA-specific timelines for implementation of the FAR rule. In addition, the Class Deviation adopted a risk-based approach to implementation of the FAR rule by providing that contractors for low- and medium-risk contracts need only make representations regarding their use of prohibited products and services at the ID/IQ contract level, and not at the order level, while high-risk contracts would always require order-level representation.

GSA has now announced a planned bilateral modification of all GSA Multiple Award Schedule (MAS) contracts to add the following two clauses that were the subject of the interim FAR rule and the GSA Class Deviation: FAR 52.204-25, which prohibits procurement of the prohibited equipment and services; and a GSA-specific clause, GSAR 552.204-70, which requires contractors to submit a representation and disclosure of any prohibited equipment and services provided to the Government.

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WHEN: Comments on the draft modification and GSAR clause are due on September 23, 2019. Within 60 days of release of the Bilateral Modification, contractors must accept the modification and provide the representation (and disclosures, if necessary) required by GSAR 552.204-70(c) regarding the provision of prohibited equipment or services in performance of a GSA contract.

WHAT DOES IT MEAN FOR INDUSTRY: GSA has made clear that contractors must be compliant with their obligations under the FAR and GSAR clauses, stating that “GSA will monitor contractor acceptance and may cancel contracts that have not accepted the modification. Acceptance of the modification is mandatory prior to exercising the next contract option period.” GSA has stated that it will make changes to the draft document as appropriate and in response to comments, but that it does not expect to issue a formal response to industry comments. Wiley Rein will continue to monitor these and other technology issues affecting government contractors. We previously addressed these issues in the most recent webinar of the Wiley Rein National Security Webinar + Podcast Series and in other recent alerts.