

NDAA 2019 Required Representations Regarding Sale or Use of Certain Telecommunications and Video Surveillance Services or Equipment

The John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232), Sec 889 reference can be found at <https://www.congress.gov/115/bills/hr5515/BILLS-115hr5515enr.pdf>.

REPRESENTATION OF VENDOR

(Definitions for terms are in section e) below.)

I, _____, (Name of person making representation) have reviewed the NDAA for FY 2019, Section 889. I have the authority to make the required representations on behalf of the Vendor.

a) 2019 NDAA, Section 889(a)(1)(A) - Representation Part A – The Vendor represents that it:

- will
- will not

provide or sell covered telecommunications and video surveillance equipment or services to the Government in the performance of any Trading Partner Agreement, contract, subcontract or other contractual instrument. The Vendor must provide the additional disclosure information required at paragraph c) of this section to the Contracting Officer/Buyer if the Vendor responds “will” above; and

b) 2019 NDAA, Section 889(a)(1)(B) - Representation Part B – After conducting a reasonable inquiry, for purposes of this representation, the Vendor represents that it:

- does
- does not

use covered telecommunications and video surveillance equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Vendor must provide the additional disclosure information required at paragraph c) of this section to the Contracting Officer/Buyer if the Vendor responds “does” above.

c) Disclosures. If the Vendor responds “will provide or sell” in the representation in paragraph a) of this provision, the Vendor must provide a description of all covered telecommunications and video surveillance services or equipment offered to the Contracting Officer/Buyer and explanation of the proposed use of covered telecommunications services or equipment and any factors relevant to determining if such use would be permissible under the prohibition. If the Vendor has responded “does” in the representation in paragraph b) of this provision, the Vendor must provide a description of all covered telecommunications and video surveillance equipment or services used to the Contracting Officer/Buyer and explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition.

d) Reporting Requirement. In the event the Vendor identifies covered telecommunications and video surveillance equipment or services used or to be sold or provided to the Government as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Vendor is notified of such by a subcontractor at any tier or by any other source, the Vendor must report the following information to the Contracting Officer/Buyer:

1. Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

2. Within 10 business days of submitting the information in paragraph d)1 of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Vendor must describe the efforts it undertook to prevent use or submission of covered telecommunications and video surveillance equipment or services, and any additional efforts that will be undertaken to prevent future use or submission of covered telecommunications and video surveillance equipment or services.

e) Definitions

1. "Covered foreign country" means The People's Republic of China.
2. "Covered telecommunications equipment or services" means –
 - (a) Telecommunications equipment produced by Huawei Technologies Company or Zhongxing Telecommunications Equipment (ZTE) Corporation (or any subsidiary or affiliate of such entities);
 - (b) 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);
 - (c) Telecommunications or video surveillance services provided by such entities or using such equipment; or
 - (d) 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.
3. "Critical technology" means defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations pursuant to Subchapter M of Chapter I of Title 22, Code of Federal Regulations; or

Items included on the Commerce Control List set forth in Supplement No. 1 to Part 774 of the Export Administration Regulations pursuant to Subchapter C of Chapter VII of Title 15, Code of Federal Regulations, and controlled:

- (1) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology;
- (2) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by Part 810 of Title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by Part 110 of Title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by Part 331 of Title 7, Code of Federal Regulations; Part 121 of Title 9, Code of Federal Regulations; or Part 73 of Title 42, Code of Federal Regulations; or
- (6) Emerging and foundational technologies controlled pursuant to Section 4817 of Title 50, U.S.C., also known as Section 1758 of the Export Control Reform Act of 2018.

4. "Reasonable inquiry" means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.
5. "Substantial or essential component" means any covered telecommunications equipment necessary for the proper function or performance of a piece of equipment, system, or service.

Signature

Date

Printed Name

Job Title

Vendor Name

UEI and/or DUNS Number

Email Address

Phone Number