MEMORANDUM FOR: ALL HUD INDUSTRY PARTNERS
FROM: Ronald C. Flom, Chief Procurement Officer, N
SUBJECT: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

On August 13, 2020, Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) was effected to prohibit Executive Branch agencies from “entering into a contract, or 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” unless covered by a waiver as described in FAR Subpart 4.2104 with two exceptions. As a result, all current, active HUD contractors are required to report in beta.SAM.gov that no such equipment, system or services are being used by the company or its subcontractors. Prior to exercising options, HUD contracting officers must confirm that the associated contractor is compliant relative to the prohibitions. This memorandum is being sent to clarify these prohibitions, and to have all contractors assess your company infrastructure environment and notify your contracting officer immediately if you have any covered technologies within your environment.

There are two prohibitions which are similar, but have different applications:

A. Prohibition 1 (see FAR 4.2102(a)(1)):

1. Agencies are prohibited from procuring or obtaining, 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, unless an exception applies, or the equipment or services are covered by a waiver.

2. This prohibition applies to the use of covered telecommunications equipment or services in the performance of work under any Federal contract resulting from this solicitation.

3. This prohibition flows down to all subcontracts and other contractual instruments resulting from this solicitation at all levels.

B. Prohibition 2 (see FAR 4.2102(a)(2)):
1. Agencies are prohibited from entering into a contract, 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 critical technology as part of any system, unless an exception applies, or the covered telecommunications equipment or services are covered by a waiver.

2. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether the use is in performance of work under a Federal contract.

3. This prohibition does not flow down to subcontracts and other contractual instruments resulting from this solicitation.

The general difference between the two prohibitions is as follows. No covered telecommunications equipment may be used in the performance of a federal government contract at any level (absent an exception). Federal prime contractors may not use covered telecommunications equipment at all, in any line of business (absent an exception). Subcontractors on a federal contract may not use covered telecommunications equipment to perform a subcontract to a federal contract (absent an exception) but may use covered telecommunications equipment for efforts and lines of business unrelated to the subcontract to a federal contract.

The point of contact for this memorandum is Ms. Patricia Broome, Director, Procurement Policy and Systems Division, at 202-402-5290 or patricia.a.broome@hud.gov.