



NATIONAL DEFENSE AUTHORIZATION ACT

FY2019 NDAA GRANT

FEDERAL GRANT & LOAN PROHIBITION

EFFECTIVE AUGUST 13, 2020

State and local government agencies should be aware that effective August 13, 2020, they will be prohibited under federal law from using grant or loan funds to purchase certain telecommunications and video surveillance equipment or services from a number of designated Chinese vendors.

NDAA AND THE SECTION 889 PROHIBITION

The National Defense Authorization Act (NDAA) is enacted by Congress annually to authorize defense spending, but it may also be used as a vehicle for implementing other policies related to national security. In this regard, Section 889 of the [FY2019 NDAA](#), enacted by Congress in August 2018, generally prohibits use of federal funds to purchase certain telecommunications and video surveillance equipment or services from five Chinese companies and their subsidiaries or affiliates: **Huawei, ZTE, Hytera, Hikvision, and Dahua**. There are two key parts to the Section 889 prohibition. The first part, which went into effect last August, covers federal agency procurements. The second part, which goes into effect on August 13, 2020, covers use of federal grant and loan funds. As such, this part of the prohibition extends to state and local units of government which are typically the recipients of federal grant funds.

SCOPE OF GRANT PROHIBITION

Essentially, Section 889(b) of the FY2019 NDAA provides that grant funds may not be used to procure or obtain, extend or renew a contract to procure or obtain, or enter into 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 of any system.

The term “covered telecommunications equipment or services” is defined in the statute as:

- Telecommunications equipment produced by Huawei, ZTE, or their subsidiaries or affiliates; and for 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, Hikvision and Dahua, or their subsidiaries or affiliates; and
- Telecommunications or video surveillance services provided by those companies or that use their equipment.

The [FY2020 FEMA Preparedness Grants Manual](#), issued in February 2020, clarifies (on pages 17-18) that, at least insofar as the FEMA Preparedness Grant Programs (e.g., State Homeland Security Program, UASI, Port and Transit Security) are concerned, this prohibition applies both to recipients and subrecipients of grant funds and to grant funds awarded in FY2020 as well as to grant funds provided in previous years. FEMA also notes that DHS/FEMA grant funding may be used to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with program requirements.

Grantees are encouraged to consult their Legal departments for further guidance on interpretation of this statute.



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