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## Chinese Telecommunications Ban to Expand to Federally Funded Contracts Effective November 12, 2020

In our previous [alert](#), we discussed the Federal Government’s Ban (the “Ban”) on certain Chinese covered telecommunications and video surveillance equipment and services in federal government contracts. The ban prohibits government contractors and subcontractors from supplying to the Federal Government or using in their own internal operations certain telecommunications or video surveillance equipment or services produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company, as well as their subsidiaries and affiliates. The Ban currently applies to companies contracting directly with the Federal Government. Soon, however, the Ban – at least in part – will expand to contractors and subcontractors who are awarded certain federally assisted contracts and subcontracts.

On August 13, 2020, the Office of Management and Budget (“OMB”) published Final Guidance revising its grants and agreements regulations (2 CFR Part 200) to prohibit recipients and subrecipients from using loan or grant funds to purchase or obtain covered telecommunications and video surveillance equipment or services. Effective November 12, 2020, recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

2 CFR § 200.216. OMB advised, “[t]his prohibition applies even if the contract is not intended to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services.”

Unlike the FAR regulations applicable to federal government contracts, the Ban is limited to procuring or obtaining covered telecommunications and video surveillance equipment and services. The OMB regulations do not prohibit recipients and subrecipients (or their contractors) from using covered telecommunications and video surveillance equipment or services in their existing operations. However, the OMB guidance states that federal agencies should prioritize funding awards for recipients to transition away from covered equipment and services.

OMB also issued a new regulation regarding the costs associated with telecommunications and video surveillance equipment and services. Under 2 CFR § 200.471, costs incurred for telecommunications and video surveillance services or equipment are allowable except for costs associated with covered telecommunications and video surveillance services or equipment (i.e., those equipment or services provided by the banned Chinese companies). Those costs are expressly unallowable.



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To ensure compliance, recipients and subrecipients of federal grants and loans have to include language imposing the Ban on covered telecommunications and video surveillance equipment or services in their contracts funded with federal grants and loans. See, Appendix II to Part 200. Currently, the OMB regulations do not require a certification of compliance unlike the FAR regulations.

Contractors bidding or entering into extensions or renewals of these federally assisted contracts will need to ensure that they do not supply any covered telecommunications or video surveillance equipment or services. Contractors should work with their IT Departments, procurement and purchasing personnel, and legal and compliance personnel, to ensure that they know the source of covered telecommunications and video surveillance equipment and services before they are provided.

\*Mrs. Petrov is admitted in the State of Maryland only and is practicing under the supervision of DC bar members.

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