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DoD Contractors Receive Reprieve on Implementation of Chinese Telecommunications Ban

In our previous [alert](#), we discussed the expansion on the Section 889(a)(1)(B) ban on certain Chinese telecommunications equipment and services to contractors and subcontractors who use the equipment and services in their internal operations. Effective August 13, 2020, federal agencies were prohibited from procuring, obtaining, extending, or renewing a contract with a contractor that uses equipment, systems, or services that use covered telecommunications equipment or services as a substantial or essential component or as critical technology, unless an exception applies or a waiver is granted. Since then, we have received feedback from contractors, complaining about the difficulties in determining whether their internal operations use covered telecommunications equipment and services and the need for additional time to become compliant or even obtain enough information to submit a waiver request.

Now it seems that Department of Defense (DoD) contractors and subcontractors may be getting a temporary reprieve. The DoD Under Secretary for Acquisition and Sustainment requested a waiver that would allow DoD to continue to execute procurement actions providing supplies, equipment, services, food, clothing, transportation, care, and support necessary to execute the DoD mission. The Director of National Intelligence granted the temporary waiver until September 30, 2020 pending a further review of waiver request. Depending upon the outcome of this additional review, the temporary waiver may be continued beyond September 30, 2020 if it is in the national security interests of the United States.

The waiver request was granted under Section 889(d)(2), which gives the Director of National Intelligence the authority to grant a waiver to the head of an agency if the waiver is in the national security interests of the United States. This waiver authority is separate from the waiver authority under Section 889(d)(1). Section 889(d)(1) permits the head of an executive agency to grant a one-time waiver from 889(a)(1)(B) on a case-by-case basis.

It remains to be seen how DoD will implement the waiver across the board. We are also watching closely to see whether other federal agencies will follow suit and requests waivers under Section 889(d)(2).

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