

USTRANSCOM Personal Property Advisory #20-0105

Date: 28 July 2020

From: USTRANSCOM Personal Property Program Directorate (TCJ9), Scott AFB, IL 62225

To: Department of Defense (DoD) Customers, Military Service Headquarters Representatives, Shipping Offices, Worldwide Joint Personal Property Shipping Offices (JPPSO), Personal Property Processing Offices (PPPO), and DoD-Approved Personal Property Transportation Service Providers (TSP)

Subject: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment Applicability to Defense Personal Property Program (DP3)

1. This advisory outlines TSP actions required to implement section 889(a)(1)(A) and 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232) in the Defense Personal Property Program (DP3).
2. On 13 August 2020, USTRANSCOM will enforce sections 889 (a)(1)(A) and (a)(1)(B) of the NDAA for FY 2019. The DP3 program implementation of these sections will follow the Federal Acquisition Regulation (FAR), with minor variations as spelled out in this advisory and subsequent updates, to account for different systems and processes used in the DP3 tender programs. Applicable definitions and standards can be found in FAR provision 52.204-24 and clause 52.204-25 at: <https://www.acquisition.gov/content/52204-reserved>. For purposes of the provision and clause, substitute word “transportation service provider” for “contractor” or “offeror” and TCJ9 for “contracting officer” as related to implementation of section 889 in the DP3. The attached NDAA Section 889 Certification Form, which includes a description of the law, must be completed and returned IAW Par 6.
3. The Interim Rule to implement FY2019 NDAA section (a)(1)(A) has been in place since August 2019. However, the FAR Council recently issued the Interim Rule to implement FY 2019 NDAA section (a)(1)(B). There is still opportunity to submit comments prior to the implementation of the final rule. Comments and questions can be sent to the FAR Council NLT 14 September 2020 using the embedded instructions at: https://www.federalregister.gov/documents/2020/07/14/2020-15293/federal-acquisition-regulation-prohibition-on-contracting-with-entities-using-certain?utm_medium=email&utm_campaign=subscription+mailing+list&utm_source=federalregister.gov. USTRANSCOM will adopt the FAR Council’s final rule with variations to account for tender based transportation in the future.
4. Section 889(a)(1)(A) (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or 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. Nothing in the prohibition shall be construed to—

4.1. Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

4.2. Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

5. Section 889(a)(1)(B) (Pub. L. 115-232) prohibits executive agencies on or after August 13, 2020 from entering into, 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, regardless of whether that usage is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

5.1. Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

5.2. Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

6. Transportation Service Provider Requirements:

6.1. No later than 9 August 2020 all DP3 Household Goods/Unaccompanied baggage (HHG/UB) and Non-temporary storage (NTS) TSPs must submit a certification, signed by the President or CEO to TCJ9 as provided in the attached and to the POC below.

6.1.1. HHG/UB approved TSPs shall submit certification to transcom.scott.tcj9.mbx.pp-quality@mail.mil.

6.1.2. NTS approved TSPs shall submit certifications to transcom.scott.tcj9.mbx.pp-smo@mail.mil.

6.1.3. All TSPs (hereinafter the term TSPs applies to both NTS and HHG/UB TSPs) that fail to respond may be placed into Non-use effective 13 August 2020.

6.1.4. This requirement will not apply retroactively to shipments already awarded to TSPs prior to 13 August 2020.

6.1.5. This requirement does not apply to subcontractors unless those subcontractors provide covered telecommunications equipment or services as a substantial or essential component of any system to the TSP as defined in paragraph 5.

6.2. DP3 TSPs shall annually resubmit these certifications to TCJ9. Such representations will be effective for all TSP tenders and tariffs under the DP3 program.

6.3. These procedures do not apply to contracts such as Direct Procurement Method (DPM) Schedules 1, 2, or 3, which are governed by FAR procedures. Personal Property Offices should reach out to their supporting contracting officers to ensure the DPM contractor is in compliance as non-compliance will negate the award of new business to the DPM contract.

7. Reporting Requirements:

7.1. In the event a TSP identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance or any period as an approved TSP operating under the DP3, or if the TSP is notified of such by a subcontractor at any tier or by any other source, the TSP shall report the information in paragraph 7.2 to the TCJ9 (transcom.scott.tcj9.mbx.pp-quality@mail.mil or transcom.scott.tcj9.mbx.pp-smo@mail.mil), and shall also report it to the website at <https://dibnet.dod.mil>.

7.2. TSPs shall report the following information:

7.2.1. Within one (1) 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); supplier Commercial and Government Entity (CAGE) code (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.

7.2.2. Within ten (10) business days of submitting the information as required by subsection 7.2.1.: any further available information about mitigation actions undertaken or recommended. In addition, the TSP shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

8. Questions/concerns reference this advisory: TCJ9 Operations & Quality Team at transcom.scott.tcj9.mbx.pp-quality@mail.mil or Commercial: (618) 220-6789/5775 or DSN 770-6789/5775 and TCJ9 Storage Management Office at transcom.scott.tcj9.mbx.pp-smo@mail.mil or Commercial: (618) 220-6292 or DSN 770-6292.

9. This message was approved for release by the Deputy Director for Operations, Defense Personal Property Program, (TCJ9-O).

1 Attachment: DP3 NDAA Section 889 Certification Form - 28 Jul 2020