

CLIENT ALERT

GSA Requiring “Bilateral” Modification to All Multiple Award Schedule Contracts to Prohibit Use of Huawei/ZTE Equipment

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The General Services Administration (“GSA”) has announced its intention to initiate in September 2019 a mass “bilateral” modification of all GSA Multiple Award Schedule (“MAS”) contracts to add the new FAR and GSAR clauses prohibiting the provision of goods or services using Huawei or ZTE (or their subsidiaries or affiliates’) telecommunications equipment. The FAR clauses – both a “Representation” clause, FAR 52.204-24 and a “Prohibition” clause, FAR 52.204-25 – became effective August 13, 2019 upon publication of an interim FAR rule. See Under the Wire—FAR Council Announces Interim Rule to Implement NDAA Procurement Ban on Huawei and Certain Other Chinese Telecommunications Equipment.

Concurrently, GSA issued a class deviation addressing GSA’s implementation of the NDAA procurement ban in light of GSA’s array of different contract vehicles, including long-term federal supply schedule contracts. First, the class deviation includes a distinct “Representation” clause, GSAR 552.204-70, which requires contractors to represent, both at proposal submission and on an annual basis thereafter, that they will not provide covered telecommunications equipment or services. Second, the class deviation exempts certain low and medium-risk IDIQ contracts from the FAR obligation to provide the representation both in the initial contract and with each order under the contract. High risk contracts – those likely to include the provision of telecommunications equipment or services, such as Schedule 70 contracts – and orders under them, will include both the FAR and the GSAR Representation clauses.

Finally, the class deviation establishes GSA-specific implementation timelines by contract types for new solicitations, pending awards and existing contracts. Generally, the statute requires that the prohibition be made applicable to any contract entered into on or after August 13, 2019, and to any existing contract before its performance period is extended or any option exercised. GSA suggested that all indefinite delivery contracts be modified to include the new clauses by the end of the first quarter of FY 2020 and all other contracts as soon as practicable but no later than March 31, 2020.

The mass “bilateral” modifications of MAS contracts is GSA’s effort to meet these deadlines. GSA suggests contractors will have 60 days to accept the bilateral modification, noting that it may cancel the contracts of those that do not accept the modification. GSA has invited contractors to provide comments on the draft mass modification by September 23, 2019 – presumably by posting on the announcement page. In commenting and evaluating the GSA’s approach, contractors should carefully consider the impact this change could have on their current contract. In particular, contractors should consider whether and how to seek a price increase before executing any bilateral modification, taking into account their contract-specific pricing and the potential additional contract administration costs associated with meeting the new clauses’ requirements.

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