

CLIENT ALERT

Industry & DoD Push for Delay in Implementing the Section 889(a)(1)(B) Prohibition

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Section 889(a)(1)(B) of the FY 2019 NDAA, scheduled to become effective on August 13, 2020, bars the Government from entering into a contract, or extending or renewing a contract, with any entity that uses certain covered telecommunications equipment or services. The prohibition against “use” of covered equipment applies broadly to a contractor’s “use” anywhere within the company (including affiliates), and is not limited to its performance of government contracts. Industry has expressed substantial concerns over the reach of this prohibition and over whether compliance is even possible. On June 10, 2020, as the deadline for implementation looms and FAR Case 19-009 remains pending, Under Secretary of Defense for Acquisition and Sustainment Ellen Lord testified before the House Armed Services Committee, seeking Congress to delay Section 889(a)(1)(B)’s effective date.

Under Secretary Lord expressed concerns with the DoD’s ability to implement the restrictions by the rapidly approaching deadline, and to ensure complete compliance within two years. Given the complexity of the defense supply chain, she suggested that an additional year is needed to prevent the statutory prohibition from creating any potential unintended consequences to the defense industrial base. Industry would also like to see a delay in implementation, as well as a scaling back of the prohibition’s reach.

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