



## **SIA Update on Video Surveillance Procurement Provisions in 2019 Defense Bill (Sec. 889)**

### **SUMMARY**

This update follows a July communication to SIA members on a provision under consideration as part of the annual defense bill (National Defense Authorization Act, "NDAA") that would restrict federal procurement of products and services involving video surveillance, telecommunications, and radio communications equipment produced by certain Chinese firms.

These restrictions – in significantly modified form – were included within section 889 of the National Defense Authorization Act (NDAA) for Fiscal 2019 (P.L. 115-232), which became law on August 13, 2018. Additional discussion on Section 889 and the legislative text of the provision can be found in the conference report on the bill ([H. Rept. 115-874](#)).

### **SIA ANALYSIS**

**The unusual and complex language found in the new provision creates considerable ambiguity regarding specific aspects of its expected implementation.** For example, it includes several important terms that are undefined, which will presumably be determined through the regulatory process and implemented through an addition to the Federal Acquisition Regulation (FAR) and other agency guidance ahead of the next year's effective date.

Despite this ambiguity, there are certain aspects of the provision that SIA understands so far:

- **The scope of the prohibition, included in the acquisition title of the NDAA, is limited to federal procurement, federal contracts and use of federal grant and loan funds.**
    - Beginning one year after enactment, federal agencies may not *"procure or obtain"* or *"extend or renew a contract to procure or obtain"* any *"equipment, system or service"* that uses equipment covered by the prohibition, as well as enter into, extend or renew contracts with entities that use them.
    - Beginning two years after enactment, federal grant and loan funds may not be expended to *"procure or obtain"* any *"equipment, system or service"* that uses equipment covered by the prohibition.
    - The prohibition does not specifically require the removal or replacement of installed equipment. However, its applicability to procurement and services contracts and the expenditure of grant and loan funds after the effective dates may impact end-user decision-making regarding future equipment deployment.
- Products covered by the prohibition include the following (subject to conditions):**
- Telecommunications equipment produced by ***Huawei Technologies Company*** or ***ZTE Corporation***.

- Video surveillance and telecommunications equipment produced by **Hytera Communications Corporation, Hangzhou Technology Company (Hikvision)** and **Dahua Technology Company**.
  - Equipment produced by “*any subsidiaries or affiliates of such entities*” (the terms “subsidiary” and “affiliate” generally refer to degrees of ownership by the parent company).
  - Telecommunications or video surveillance services provided by such entities or using such equipment.
  - Potential additional telecommunications or video surveillance equipment and services, if determined by the Secretary of Defense, in consultation with several other agencies, to be produced or provided by “*entities owned or controlled by, or otherwise connected to*” the Chinese government.
- **Applicability of the prohibition to video surveillance equipment and services is conditional.**
    - The restriction on Hikvision and Dahua video surveillance equipment is narrower than the restriction on Huawei and ZTE telecommunications equipment, as it is applicable (to federal procurement, contracts and use of federal grant and loan funds) only when the equipment is used for “*the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes.*” (Note: these terms are undefined in the statute)
    - The prohibition is also limited, in both categories, to equipment, systems or services that use the covered equipment or services as a “*substantial or essential component*” or “*as critical technology as part of any system*” indicating there is a level of use threshold that applies as well. (Note: these terms are undefined in the statute)
  - **Waivers will be possible, but difficult.**
    - Federal agencies have the authority to grant suppliers and contractors (and possibly, components within agencies) with a one-time waiver of the prohibition of up to two years after the prohibition goes into effect. However, there are extremely stringent disclosure and phase-out requirements that apply, including the disclosure of the request to congressional committees.

### **ISSUES FOR INDUSTRY CONSIDERATION**

While federal procurement of products manufactured in China is already limited in scale by restrictions in both the Buy American Act (BAA) and Trade Agreements Act (TAA), at a minimum the provisions of Section 889 highlight the need for security companies to examine any video surveillance products they are offering to the federal government to ensure compliance by the effective date.

**However, clarification of certain ambiguities in the provision’s language through the rulemaking process will first be necessary for suppliers and contractors to ensure they are fully compliant.**

Such language includes the prohibition related to contracting (and the implied obligations for federal contractors). SIA believes this prohibition in subsection (a)(1)(B) is reasonably applicable to use of the covered equipment in the performance of specific federal contracts. This ensures that the restriction encompasses equipment and services used by private entities in performing contracts with federal

agencies (or third parties utilizing federal grant and loan funding) as well as prohibiting direct procurement.

Additionally, the statute also does not address the extent to which, if any, the prohibition could apply to any equipment produced by U.S. or other manufacturers that incorporates elements supplied by one or more of the companies named in the prohibition, as original equipment manufacturers (OEMs), original design manufacturers (ODMs) or through other types of supplier relationships.

### **SIA ACTIONS**

SIA will continue to work to provide members with information about how this new law will be implemented. SIA also will continue to engage with policymakers to (1) ensure that the security industry has the clearest and most accurate guidance on how to effectively prepare for and fully comply with the requirements and (2) ensure that implementation avoids any overreach that could harm U.S. manufacturers and security integrators that serve the commercial marketplace and other non-federal customers.

**SIA CONTACT:** SIA appreciates the input previously provided by our members about this issue. For further information or to provide additional input regarding this matter, SIA members are encouraged to contact Jake Parker, SIA Director of Government Relations, at [jparker@securityindustry.org](mailto:jparker@securityindustry.org).

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