

DIRECTOR OF NATIONAL INTELLIGENCE  
WASHINGTON, DC

ES 2020-00733

MEMORANDUM FOR Ms. Ellen M. Lord  
Under Secretary for Acquisition and Sustainment  
Department of Defense

SUBJECT: (U) Department of Defense Request for Waiver of Section 889 of  
Fiscal Year 2019 National Defense Authorization Act

REFERENCE: (U) Department of Defense (DoD) Memorandum, Request for  
Waiver of Section 889 of Fiscal Year of 2019 NDAA, 12 August  
2020

(U) Thank you for your memorandum dated 12 August 2020 requesting a waiver to the prohibitions under Section 889 of John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232). Specifically, Section 889(a)(1)(B) prohibits executive agencies from procuring or obtaining, or entering into contracts to procure or obtain, “covered telecommunications equipment or services” produced or provided by entities connected to the People’s Republic of China, including certain equipment produced by Huawei Technologies Company, ZTE Corporation, Hangzhou Hikvision Digital Technology Company, Hytera Communications Corporation, and Dahua Technology Company (or any subsidiary or affiliate of such entities). This provision takes effect on 13 August 2020.

(U) As you acknowledged in your memorandum, Section 889(d)(2) provides the Director of National Intelligence (DNI) with the authority to grant a waiver to the head of an agency of the prohibitions contained in Section 889 if the waiver is in the national security interest of the United States. This waiver authority is distinct from the authority of an agency head to provide a waiver pursuant to Section 889(d)(1) and can be exercised in my sole discretion.

(U) I have preliminarily considered your request and have determined that it appears on its face to have sufficient nexus to the national security interests of the United States. Specifically, it appears that you reviewed and applied ODNI’s Strategic Supply Chain Security Guidance and you have asserted that the products and services identified in your request are related to the national security interests of the United States. You stated that DoD’s statutory requirement to provide for the military forces needed to deter war and protect the security of our country is critically important to the national security. Therefore, the procurement of goods and services in support of DoD’s statutory mission is also in the national security interests of the United States. The Section 889(d)(2) waiver you seek 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.

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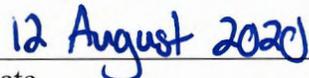
(U//FOUO) Based on the information in the reference document, I am granting a temporary waiver under section 889(d)(2) until 30 September 2020 to allow DoD to continue its contracting activities that would otherwise be prohibited under section 889(a)(1)(B) and to provide additional information to the ODNI to further assess your waiver request. During this temporary waiver period, please work with my staff and provide all the information they need to complete a more thorough review of your request for a national security waiver. Specifically, please provide the following additional information:

1. (U//FOUO) Demonstrate an understanding of the potential increased risks;
2. (U//FOUO) Describe specific mitigation measures in place to address such risks; and
3. (U//FOUO) Describe a committed plan to seeking alternatives to contracting with entities that use prohibited goods and services.

(U) After receiving the above information, a more thorough review of this waiver request will be conducted by subject matter experts, who will make a further recommendation as to whether or not continuing this waiver beyond 30 September 2020 is in the national security interests of the United States.

(U//FOUO) My point of contact for this matter is Mr. William Evanina, and he may be reached at 932-0705 (secure).

  
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John Ratcliffe

  
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Date