SCRM Criteria for Section 889 Part B

8/13/2020

Developed by: SCRM Review Board

Criteria for Evaluating Exceptions and Applicability for Section 889 Part B

In general, the following decision tree can be used to determine whether a prohibition or exception applies per Section 889 Part B.

- 1. START
- 2. Does Prohibition under Part B Apply? Is the equipment or service identified by the offeror/contractor as covered telecommunications equipment or service being **used** by the prime offeror/contractor?
 - a. If No, STOP -- Prohibition under Part B does not apply.
 - b. If Yes, continue through the rubric to determine if Prohibition under Part B applies.
- 3. Is the **equipment** identified by the offeror/contractor covered? *If you are only reviewing a telecommunications* **service**, *skip section 3 and go to section 4 of the rubric.*
 - a. Is the answer to any of the following "Yes"?
 - i. Per (f)(3)(A) of Section 889 Is the equipment telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation or a subsidiary or affiliate of either?
 - ii. Per (f)(3)(B) of Section 889 Is the equipment video surveillance and telecommunication equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company or a subsidiary or affiliate **AND** do any of the following purposes of the use of technology apply?
 - 1. Public Safety?
 - 2. Security of Government facilities?
 - 3. Physical security surveillance of critical infrastructure?
 - 4. Other National Security Purposes?
 - iii. Is the equipment covered?
 - 1. If the answer to both 3(a)(i) and 3(a)(ii) of the rubric is No, STOP -- Prohibition under Part B does not apply.
 - 2. If the answer to either 3(a)(i) or 3(a)(ii) of the rubric is Yes, continue through the rubric to determine if Prohibition under Part B applies.
 - b. Exception Can the equipment route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles? (Assess whether the equipment has the ability to do so, not how the offeror/contractor chooses to use it; this

exception only applies to equipment that "cannot" route or redirect user data traffic or permit visibility into any user data, not equipment that "does not" based on its current configuration.)

- i. If No, exception at Section 889(a)(2)(B) applies and Prohibition under Part B does not apply.
- ii. If Yes, continue through the rubric to determine if Prohibition under Part B applies.
- c. Repeat Section 3 for each piece of equipment identified by the offeror/contractor.
- 4. Is the **service** identified by the offeror/contractor covered? *If you are only reviewing telecommunications* **equipment**, use section 3 of the rubric and skip section 4.
 - a. Is the answer to any of the following "Yes"?
 - i. Per (f)(3)(C) of Section 889 Is the service telecommunications or video surveillance services provided by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company or a subsidiary or affiliate?
 - ii. Per (f)(3)(C) of Section 889 Is the service using telecommunications or video surveillance equipment produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company or a subsidiary or affiliate?
 - iii. Is the service covered?
 - 1. If the answer to both 4(a)(i) and 4(a)(ii) of the rubric is No, STOP -- Prohibition under Part B does not apply.
 - 2. If the answer to either 4(a)(i) or 4(a)(ii) of the rubric is Yes, continue through the rubric to determine if Prohibition under Part B applies.
 - b. Exception Note that the exception at Section 889(a)(2)(A) only applies to services provided to the Government; this exception does not apply to an offeror's or contractor's use of a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements. Therefore, there is no exception to consider when evaluating an offer's or contractor's use of covered telecommunications services.
 - c. Repeat section 4 for each service identified by the offeror/contractor.
- 5. Is the telecommunications equipment or service identified by the offeror/contractor prohibited? (please review additional information provided by the offeror/contractor about the equipment/service(s))
 - a. System
 - i. Is the covered equipment or service part of a system?
 - 1. If No, STOP -- Prohibition under Part B does not apply.
 - 2. If Yes, continue through the rubric to determine if Prohibition under Part B applies.
 - ii. What is the system (define the system) that it is a part of?
 - b. Substantial/Essential, Critical Is the answer to either of the following "Yes"?
 - i. Is the covered equipment or service a substantial or essential component of the defined system?
 - ii. Is the covered equipment or service Critical Technology of the defined system?
 - 1. If the answer to both 5(b)(i) and 5(b)(ii) of the rubric is No, STOP -- Prohibition under Part B does not apply.

2. If the answer to either 5(b)(i) or 5(b)(ii) of the rubric is Yes, **Prohibition** under Part B applies.

If there is doubt about how to evaluate a specific component after using this decision tree and reviewing the examples, contact the SCRM Review Board.