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United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

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May 4, 2020

Mr. Russell Vought
Acting Director
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Acting Director Vought:

We write with regard to the implementation of Section 889(a)(1)(B) of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019* (FY2019 NDAA). This provision is a vital step toward securing our supply chain through the prohibition of potentially harmful Chinese products and services. However, we are concerned that if the regulatory implementation language fails to adequately consider small businesses, this process could not only result in an ineffective implementation of the prohibition, but also be both harmful and costly to thousands of small federal contractors.

As you know, the FY2019 NDAA, under section 889, prohibits the federal government from directly procuring “any equipment, system or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as a part of any system” or entering into a contract with any entity that uses such covered telecommunications equipment or services. The legislative text required that section 889(a)(1)(A) and 889(a)(1)(B) be implemented one and two years following enactment of the FY2019 NDAA, respectively. As such, on August 13, 2019, section 889(a)(1)(A) went into effect with the publication of Federal Acquisition Regulation (FAR): Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (FAR 52.204-24, FAR 52.204-25, and FAR 52.204-26). Section 889(a)(1)(B) of FY2019 NDAA is statutorily required to be implemented by August 13, 2020, but regulatory language has yet to be published.

It is our understanding that the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration have drafted the proposed rule to implement section 889(a)(1)(B), which is now under review by the Office of Information and Regulatory Affairs within the Office of Management and Budget.

The effective implementation of section 889(a)(1)(B) hinges on federal contractors’ ability to effectively understand the regulation, have transparency into their supply chains, and make any necessary changes to become compliant. While many larger contractors have the resources and personnel to comply quickly, small business contractors may need more assistance and time. Considering that roughly one quarter of federal procurements, accounting for more

than \$120 billion in spending, go to small businesses, we believe it is vital that small businesses be given special consideration when implementing this legislation.

As Chairman and Ranking Member of the Committee on Small Business and Entrepreneurship, we respectfully request that you ensure that any regulations established to implement section 889(a)(1)(B) of the FY2019 NDAA include explicit processes by which small business contractors can examine their supply chains and efficiently become compliant. By providing these small firms with a clear path toward compliance and a reasonable time frame, we believe that the goal of securing the United States supply chain will be better achieved.

Thank you for your attention to this important matter.

Sincerely,



Marco Rubio
Chairman



Benjamin L. Cardin
Ranking Member