

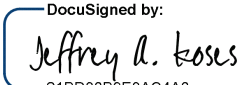


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GSA Office of Governmentwide Policy

Acquisition Alert AA-2024-01

MEMORANDUM FOR THE GSA ACQUISITION WORKFORCE

FROM: JEFFREY A. KOSES 
21BD80B9E8AC4A0
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: Prohibition on a ByteDance Covered Application “TikTok” Interim FAR Rule Guidance

The purpose of this Acquisition Alert (AA) is to assist the GSA acquisition workforce with implementing and applying the “No TikTok on Government Devices¹” prohibition and the related interim FAR rule.

This AA aims to provide answers to common questions received from the GSA acquisition workforce. It provides examples to help clarify key concepts.

As more information becomes available, the guidance posted to GSA’s Cyber-Supply Chain Risk Management (C-SCRM) InSite page will be updated.² GSA’s acquisition workforce is also encouraged to utilize the below resources when questions arise:

- Seek help from their Service Office’s [C-SCRM Policy Advisor](#)³
- Join a C-SCRM Office Hours Chat; check GSA’s C-SCRM InSite page for the calendar invite and details.
- Engage with your assigned legal counsel
- Engage with GSA IT⁴ when this guide does not provide the necessary information

Any questions regarding this letter from GSA’s acquisition workforce may be directed to GSARPolicy@gsa.gov.

¹ This AA will reference both ByteDance and TikTok. Question 5, below, distinguishes the difference. However, readers should not assume a difference in general.

² GSA’s C-SCRM InSite page (insite.gsa.gov/cscrm) is an internal resource accessible by GSA employees only.

³ GSA’s C-SCRM Policy Advisors are listed on GSA’s C-SCRM InSite page (insite.gsa.gov/cscrm).

⁴ GSA IT may be contacted via the GSA IT Service Desk by phone at 866-450-5250 or by email at ITServiceDesk@gsa.gov.

1. What's the background of this FAR rule?

On June 2, 2023, the FAR interim rule, *Prohibition on a ByteDance Covered Application*⁵, became effective. The interim rule implements the *No TikTok on Government Devices Act*⁶, and its implementing guidance under *OMB Memorandum M-23-13*⁷, dated February 27, 2023.

In this rule, the FAR was changed to implement the prohibition on having or using the social networking service “TikTok” on information technology used or provided by a contractor or contractor employees. The rule permits incidental use of TikTok but explains that use “to a significant extent” in performance of a contract is not allowed. While the FAR rule outlines an exception process, GSA does not anticipate pursuing this authority on contracts for its own use. For assisted acquisition, GSA defers the issue of exceptions to the direction of funding agencies

The prohibition also applies to any future applications or services developed or provided by ByteDance Limited.

A new clause, FAR 52.204-27, *Prohibition on a ByteDance Covered Application*, was introduced through the interim rule.

2. What are the risks addressed by the rule?

Congress determined ByteDance Covered Applications, including “TikTok”, are potential threats to the United States. Foreign adversaries and bad actors may have the ability to direct misinformation through the applications and to collect data from them and from devices upon which they are installed/operate. This threat provides foreign adversaries and bad actors a platform for information operations and for surveillance. This prohibition addresses this national security threat.

3. My contracts don't really have anything to do with the internet, or mobile devices, or apps, so why does this matter to me?

Our world is connected more than ever, whether we realize it or not. Smart devices, internet-connected devices, and other connected devices are all around us. This means that even if your contract is not for technology, the prohibition still extends to technology used by the contractor “to a significant extent” in performance of the contract.

⁵ [FAR Case 2023-010, 88 FR 36430](#)

⁶ Pub. L. No. 117-328, div. R, §§ 101-02, available at <https://www.congress.gov/bill/117th-congress/housebill/2617>

⁷ [OMB M-23-13](#)

For example, most of our federally-controlled facilities, including our leased spaces, contain building and access control systems--computers that monitor and control building operations such as elevators, electrical power, and heating, ventilation, and air conditioning--that are increasingly being connected to other information systems and the Internet.

Foreign adversaries and bad actors could use TikTok to not only collect data on GSA employees and contractor employees, but also to penetrate our smart building technology.

4. I don't know how to explain or communicate this rule to offerors and contractors. Any suggestions?

Explain that GSA is trying to reduce the risk of foreign adversaries and bad actors collecting data or surveilling through Federal computer networks.

5. What's the difference between ByteDance, TikTok, and ByteDance Covered Applications?

ByteDance Limited is the company that developed and owns TikTok.

TikTok is a video-sharing social networking service, accessible both via the web (URL) and via the TikTok application (or app).

ByteDance Covered Applications references TikTok, as well as other future apps developed by ByteDance Limited⁸.

Because TikTok is the only "ByteDance Covered Application" today, this alert uses "TikTok" throughout, but remember that the prohibition will also apply to successor applications and services.

6. What definition of "information technology" (IT) is used for this prohibition?

The interim rule uses the statutory definition of IT because this is the [definition used in the *No TikTok on Government Devices Act*](#). This definition is different from the current FAR definition of IT at FAR 2.101. The main difference between the two definitions is that this prohibition includes embedded IT (FAR 2.101 excludes it).

7. Is this prohibition limited to information technology (IT) owned or operated by GSA (or other executive agencies)?

⁸ As of October 2023, there is currently no successor application or service to TikTok that is developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

No. The prohibition applies -

- When IT is used by a contractor when required by the contract, or
- When IT is used by a contractor, even if not required by the contract, “to a significant extent” in the performance of a service or the furnishing of a product.

The prohibition does not apply to IT equipment when use by the Federal contractor is incidental to a Federal contract.

8. How is the determination made regarding whether equipment is used “to a significant” extent in the performance of a contract?

Contractors should consider:

- A. How big a role the equipment contributes to achieving the contractual objectives and requirements; and
- B. How frequently the equipment is used for contract performance.

GSA contracting officers may share these two factors with contractors to help them determine when to prohibit use of TikTok by their employees (or subcontractors).

Attachment A contains hypothetical scenarios to help illustrate the difference between incidental use and use “to a significant extent”.

9. Does accessing a TikTok URL⁹ violate the prohibition?

Receiving a TikTok URL (e.g., via text message, an email, or a posted link on a social media site other than TikTok) does not constitute presence or use under this prohibition.

Visiting (or opening or accessing) TikTok using a URL, could violate this prohibition, but see the scenarios in Attachment A for greater clarity.

10. The interim rule included a new clause. Do I need to use it?

Yes. Contracting officers must insert the FAR clause at 52.204–27, *Prohibition on a ByteDance Covered Application*, in all solicitations and contracts. Contracting Officers must also add this clause to existing contracts (or task/delivery orders, or leases) prior to extending the period of performance, including the exercise of options.

⁹ URL stands for Uniform Resource Locator. For example, www.GSA.gov is the URL for GSA’s website.

While the FAR rule permits an exception, GSA does not anticipate pursuing this authority on contracts for its own use. If you expect to need such an exception, immediately contact your Service Office's C-SCRM Policy Advisor¹⁰.

For acquisitions on behalf of another agency, the funding agency will decide whether an exception should be pursued. Follow the funding agency's guidance.

11. What about Mobile Device Management System Containers? Do they apply?

First, let's tackle what "containers" mean. Most organizations (including GSA) allow employees to use their own mobile device (smartphone or tablet) to connect their personal devices to organizational IT resources. For example, many employees access GSA email through a personal device.

Generally, using a personal device while working is referred to as "Bring Your Own Device" (BYOD). Many GSA contractors and industry partners allow for BYOD.

However, GSA IT¹¹, and many IT departments of our contractors and industry partners, utilize device management software on BYOD devices to separate personal applications and software from work-related applications and software. By separating personal applications from work-application via the device management software, the applications are considered to be in "containers".

The statute does not provide an exception for any IT with a security container or other mitigation measures. Therefore, a contractor-owned device, including a BYOD device, with a container can still be subject to the prohibition.

12. Some examples would be helpful. Do you have anything to help?

GSA has developed hypothetical scenarios to help determine if and when the TikTok prohibition may apply. Hopefully these scenarios, which may be found in Attachment A, help provide a level of understanding.

When questions arise, GSA contracting offices are encouraged to seek guidance from the sources listed on page one of this AA.

Attachment A - Example Scenarios

¹⁰ GSA's C-SCRM Policy Advisors are listed on GSA's C-SCRM InSite page (insite.gsa.gov/cscrm).

¹¹ [GSA IT Security Procedural Guide: Securing Mobile Devices and Applications, CIO-IT Security 12-67](#)

Attachment A

Owner of the IT	Scenario	Prohibited?
GSA	The GSA Office of Information Technology (GSA IT) purchases a smartphone for GSA employee use or as Government Furnished Equipment (GFE) for contractor use.	Yes. The smartphone purchased by GSA IT is prohibited from having the ByteDance (i.e., Tik Tok) application on the phone or allowing the application to be accessible via the phone's browser.
Contractor ABC - Provided Equipment in Support of a Contract	GSA awarded a contract to Contractor ABC. The contract is for guard services. Guards are required to communicate with the COR via electronic communication to meet contractual objectives. To meet this requirement, the guards are provided <u>company smartphones</u> .	Most likely prohibited. When considering the factors outlined in question 8, each factor is most likely met by use of the smartphone by the guard(s). In this case, the smartphone purchased by Contractor ABC, and provided to Contractor ABC's guards, are most likely prohibited from having the ByteDance (i.e., Tik Tok) application on the phone or allowing the application to be accessible via the phone's browser.
Contract ABC - Personal Phone not in Support of a Contract	GSA awarded a contract to Contractor ABC. The contract is for guard services. Guards are required to communicate with the COR via electronic communication to meet contractual objectives. To meet this requirement, the guards are provided company smartphones. The guards also carry <u>personal cell phones not intended for use in the contract</u> .	Most likely not prohibited. Assuming in this scenario that the guard carries two smartphones (one provided by the employer (Contractor ABC) for contract-specific work, and one that is a personal phone that does not support contract work), the personal phone is most likely not prohibited from utilizing TikTok (as it is not generally used in performance of contractual duties). If, one day, the guard forgot the company phone and used a personal phone, this would likely not invoke the prohibition. But, if the guard began routinely using the personal phone to communicate with the COR, it would likely invoke the prohibition. For guidance on the company provided smartphone, see the above row in this table.
Contract ABC	GSA awarded a contract to Contractor ABC.	Most likely prohibited. Because the contractor employee routinely

<p>- Personal Phone in Support of a Contract (BYOD)</p>	<p>The contract is for guard services. Guards are required to communicate with the COR via electronic communication to meet contractual objectives. To meet this requirement, Contractor ABC implemented a company Bring Your Own Device (BYOD) policy that allows guards to use their personal smartphones to make phone calls, check and respond to emails, and complete other tasks via the phone in support of the contract.</p>	<p>uses a personal cell phone in performing duties under the contract (communicating with the COR), the factors outlined in question 8 are most likely met by use of the personal smartphone by the guard(s). The personal smartphone, used under the contractor's BYOD program, is most likely prohibited from having the ByteDance (i.e., Tik Tok) application on the phone or allowing the application to be accessible via the phone's browser.</p>
<p>Contractor ABC - Ancillary Equipment Not in Direct Support of a Contract</p>	<p>GSA awarded a contract to Contractor ABC. The contract is for professional services. Contractor ABC's corporate office uses company-provided computers to process payroll transactions via cloud-based software.</p>	<p>Most likely not prohibited. Processing payroll transactions is an example of an ancillary activity by employees not directly involved in performance of the work. These types of "back office" activities (human resources, accounting, administration) are usually covered under General and Administrative costs. Further, when considering the factors outlined in question 8, each factor is most likely not met through use of the support equipment in this specific scenario.</p>