



October 28, 2020

MEMORANDUM FOR: REGIONAL COMMISSIONERS, PBS
REGIONAL LEASING DIRECTORS
REGIONAL LEASE ACQUISITION OFFICERS

FROM: JOHN D. THOMAS DocuSigned by: **John D. Thomas**
ACTING ASSISTANT COMMISSIONER FOR OFFICE OF
LEASING – PR

SUBJECT: LEASING ALERT (LA-20-11) – **Addendum 1** – Prohibition
on Contracting for Certain Telecommunications and Video
Surveillance Services or Equipment

1. **Purpose.** This Leasing Alert issues **supplemental** leasing guidance for implementation of Section 889(a)(1)(B) (“Part B”) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232) for the Public Buildings Service (PBS) leasing program. Leasing Alert [LA-20-11](#), originally issued on August 24, 2020, addressed the [first interim rule](#) for Part B. This Addendum 1 addresses the [second interim rule](#) for Part B, which went into effect October 26, 2020, to reflect revisions in both the FAR representation 52.204-26 and FAR representation 52.204-24. As a result, this addendum issues a revised FAR representation 52.204-24 (Attachment 1 of LA-20-11) and a revised FAR Representation and Clauses Chart (Attachment 5 of LA-20-11). This Addendum also issues guidance with respect to post-occupancy alteration projects. Finally, this Addendum issues revised General Clauses (GSA Forms 3517A and 3517B) to reflect the increase in the Small Business Subcontracting Threshold from \$700,000 to \$750,000, which came into effect October 2020 via [FAR Case 2019-013](#). **Except for as noted in this Addendum 1, the guidance issued under [LA-20-11](#) and the other attachments remain unchanged and LCOs should continue to follow the guidance under [LA-20-11](#).**
2. **Background.**
 - a. On August 24, 2020, the Office of Leasing (OL) issued Leasing Alert [LA-20-11](#) to implement the [first interim rule](#) for Section 889(a)(1)(B) of the NDAA

(“Part B”), which prohibits the head of an executive agency from entering into a contract (or extending or renewing a contract) with an entity that *uses* 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 part of any system, as of August 13, 2020. The [first interim rule](#) did not update the FAR System for Award Management (SAM) representation 52.204-26 to include the second (Part B) prohibition and the offeror instructions for FAR 52.204-24 representation (**original** Attachment 1 to [LA-20-11](#)) only covered the Part A prohibition.

- b. On August 27, 2020, a [second interim rule](#) for Part B was issued, to be effective October 26, 2020, which incorporates the Part B representation into the FAR representation 52.204-26, which is completed by offerors as part of the online SAM representations and certifications. This [second interim rule](#) also updates the instructions under the FAR representation 52.204-24 to allow an offeror who responds “does not use” to the newly added Part B representation under FAR 52.204-26 (c)(2) to skip the offer-by-offer representation for paragraph (d)(2) within the FAR representation 52.204-24. This Addendum incorporates the [second interim rule](#).
 - c. [LA-20-11](#) did not address application of section 889 prohibitions to post-occupancy alterations projects. As it is possible that the scope of work for post-occupancy alterations could include prohibited telecommunication or video surveillance equipment or services, it is important that the contract for such alterations include FAR language to prevent the procurement of such prohibited telecommunication or video surveillance equipment or services. This addendum provides additional guidance for LCO and his/her designees to follow with respect to alteration projects.
 - d. [FAR Case 2019-013](#) increased certain acquisition thresholds, including the Small Business Subcontracting Threshold, effective October 2020. This addendum revises the General Clauses (GSA Forms 3517A and 3517B) to reflect the new threshold (\$750,000 total contract value).
3. **Effective Date.** This **Addendum 1** to [LA-20-11](#) is effective as of October 26, 2020 unless modified, canceled, or reissued.

4. **Applicability.** This Leasing Alert and its attachments are mandatory and apply to all GSA real property leasing activities and activities delegated by GSA to other Federal agencies.
5. **Cancellation.** None.
6. **Instructions and Procedures.** Additional guidance concerning implementation of Sections 889(a)(1)(A) and 889(a)(1)(B) of the NDAA are as follows:
 - a. For lease projects where GSA has not issued an RLP as of the effective date of this Leasing Alert, the LCO must use the updated FAR representation 52.204-24 dated OCT 2020 (revised Attachment 1) in the RLP/Lease package, along with the updated General Clauses, GSA Form 3517A or 3517B dated 10/2020 (revised Attachments 3 or 4)
 - FAR 52.204-24 is a two-part representation to address Parts A and B of Section 889.
 - SAM includes an online representation (FAR 52.204-26) that now addresses both Part A and Part B.
 - If an offeror responds “does not provide” to the (c)(1) SAM online representation (Part A), the offeror does not need to complete the first, (d)(1), of the two representations under 52.204-24. If an offeror responds “does provide” to this representation or has not made any representation in FAR 52.204–26, then the offeror must complete (d)(1) of the 52.204-24 representation.
 - If an offeror responds “does not use” to the (c)(2) SAM online representation (Part B), the offeror does not need to complete the second, (d)(2), of the two representations under 52.204-24. If an offeror responds “does use” to this representation or has not made any representation in FAR 52.204–26, then the offeror must complete (d)(2) of the 52.204-24 representation.
 - b. For lease projects where GSA has already issued the RLP, LCO’s may use discretion regarding whether to amend the RLP to include the updated (OCT 2020) FAR 52.204-24 representation form or follow guidance from the original [LA-20-11](#). If the LCO chooses not to amend an already-issued RLP, all offerors must respond to the second, (d)(2), of the two representations under

52.204-24, regardless of the offerors' responses in SAM. LCOs may also use discretion regarding whether or not to amend the RLP to include the updated General Clauses.

- c. For Automated Advanced Acquisition Program (AAAP) procurements, OL will amend FY21 RLP packages to replace the AUG 2020 representation with the OCT 2020 version. LCOs do not need to obtain the revised (OCT 2020) FAR 52.204-24 representation from the lowest priced offeror if they already have the AUG 2020 version of this representation. OL will also replace the General Clauses (GSA Form 3717B) with the updated version.
- d. Alterations: For all alterations projects, LCOs or his/her designees must include the FAR reporting clause 52.204-25 (AUG 2020) as part of the lease amendment for the alterations, unless clause is already contained within the lease. In the event the Lessor reports that the scope of work contains prohibited telecommunications or video surveillance equipment or services, LCO must follow the steps outlined for when a current contractor reports a prohibited use prior to executing the lease amendment.
- e. Expansion or reduction actions: No Section 889 compliance steps are required for expansion or reduction actions.
- f. Lease extension or renewal actions: Please refer to the original guidance issued under [LA-20-11](#) for Section 889 compliance requirements for extension and renewals.
- g. Steps for affirmative responses/waivers: Please refer to the original guidance issued under [LA-20-11](#).

Attachments:

- **Attachment 1 (Revised)**, FAR clause 52.204-24, "Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment" (revised August 2020)
- **Attachment 3 (Revised)**, GSA Form 3517A, renamed as "General Clauses - Acquisition of Leasehold Interests in Real Property for Leases at or Below the Simplified Lease Acquisition Threshold – SLAT"
- **Attachment 4 (Revised)**, GSA Form 3517B, General Clauses- Acquisition of Leasehold Interests in Real Property

- **Attachment 5 (Revised)**, FAR Representation and Clauses Chart

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