



U.S. General Services Administration

August 14, 2020

Mr. Paul Ray, Administrator
Office of Management and Budget
Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, D.C. 20006

Dear Administrator Ray:

Pursuant to 5 CFR § 1320.13, the General Services Administration (GSA) requests Office of Management and Budget (OMB) emergency approval of an Information Collection Requirement (ICR) to collect information to support GSA's implementation of Section 889 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232). Section 889(a)(1)(A) (Part A) prohibits the head of an executive agency from procuring or obtaining, or extending or renewing a contract to procure or obtain, 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. In addition, section 889(a)(1)(B) (Part B) prohibits executive agencies from entering into, extending, or renewing contracts with any entity that uses equipment, systems, or services that use telecommunications equipment or services from certain named companies as a substantial or essential component or critical technology as part of any system.

The provisions above went into effect on August 13, 2019, and August 13, 2020, respectively, and are being implemented for GSA's lease acquisitions of real property (lease acquisitions) and commercial solution openings (CSOs) under Class Deviation CD-2020-15. The additional information that will be collected consists of the following: 1) a representation requiring all offerors to represent, after conducting a reasonable inquiry, whether covered telecommunications equipment or services are used by the offeror and, if so, detailed information about the use of such equipment or services; and 2) reporting if prohibited equipment, systems, and services are discovered during the performance of a contract. This information collection will be provided through a solicitation provision and a contract clause, included in the Federal Acquisition Regulation (FAR).

Passage of Section 889 reflects concern on the part of Congress that certain entities providing covered telecommunications equipment and services represent an unacceptable risk to Government information, information and telecommunication systems, and national security. As the NDAA applies to all Federal contracts, not just to FAR-based contracts, GSA's Class Deviation applies the FAR

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representations and reporting requirement to GSA's lease acquisitions and CSOs. The Part B prohibition took effect on August 13, 2020, and GSA is already planning for lease acquisitions that will be awarded beyond this date. The information to be collected is necessary to ensure that this is done responsibly and consistent with national security.

GSA could not issue policy to apply the FAR representations and reporting requirements to GSA's lease acquisitions and CSOs until the FAR regulations were approved by OMB and the signatory agencies, and sent to the Office of the Federal Register. Once FAR Case 2019-009 was published on July 14, 2020 (85 FR 42665), GSA was able to fully understand the extent of GSA implementation guidance needed and could assess the applicability of existing information collections.

In view of the foregoing, GSA requests emergency OMB approval for this ICR, to be effective immediately for the maximum period of 6 months. The collection of information is needed prior to the expiration of time periods established in order to ensure proper implementation of Section 889 and is essential to the successful implementation of this national security effort, which is an essential mission requirement for GSA.

Moreover, GSA cannot comply with the normal clearance procedures because public harm is reasonably likely to result if current clearance procedures are followed. Specifically, authorizing collection of this information will ensure that GSA does not enter into leases or contracts that are in violation of the prohibition in section 889(a)(1)(A) or enter into, extend, or renew contracts with any entity that uses equipment, systems, or services in violation of section 889(a)(1)(B).

For these reasons, GSA requests a waiver under the requirements set forth in 5 CFR § 1320.13, for prior publication in the *Federal Register*, due to the urgent requirement to implement the Section 889 prohibitions.

Going forward, and in response to public comments received, GSA will take all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information. Such steps will include preparing a *Federal Register* notice in order to submit a permanent ICR.

If you have any questions, please contact Jeffrey Koses, Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, at 703-932-2406 or email jeffrey.koses@gsa.gov.

Sincerely,

<small>DocuSigned by:</small>  <small>EDB77260AEC64B7...</small>	8/14/2020
_____ Allison Fahrenkopf Brigati Deputy Administrator U.S. General Services Administration	_____ Date