

Federal Acquisition Regulation (FAR): Prohibition on a ByteDance Covered Application

Introduction

The June 2, 2023, issue of the Federal Register ([88 FR 36430](#)) included an amendment to the FAR Clauses to “*implement the prohibition on having or using the social networking service TikTok or any successor application or service developed or provided*” directly or indirectly by ByteDance Limited. The new requirement went into effect immediately on June 2, 2023 and applies to purchases at or below the micro-purchase threshold.

The prohibition under FAR 52.204–27 is very broad and applies to “*the presence or use of any covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the contractor under a contract, including equipment provided by the contractor's employees.*”

Applicability

The banned applications include TikTok and any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited “Covered Applications”.¹

The prohibition under FAR 52.204–27 applies to all information technology, as that term is defined in 40 U.S.C. 11101(6),² regardless of whether the device is owned by the Government, the contractor or the contractor’s employees. Information technology includes computers, cell phones, iPads, tablets, and similar devices used in receiving e-mails or data, used by a federal contractor under a contract that requires the use of that information technology expressly or to a *significant extent* in the performance of any service or furnishing of a product. Equipment

¹ Currently, there is no guidance on the meaning of “successor application or service.” If we become aware of additional applications owned directly or indirectly by ByteDance Limited that are subject to the ban, we will update this guidance.

² *Information technology, as defined in 40 U.S.C. 11101(6)—*

(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(i) Of that equipment; or

(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.

incidental to the federal contract is not covered. Neither the FAR clause nor guidance from the Office of Management and Budget defines “significant extent” or “incidental.”

The prohibition does not apply to grants and cooperative agreements. Agencies may grant written exceptions for certain law enforcement activities, national security interests and activities, and security research activities, but the OMB has instructed agencies to grant these exceptions sparingly.

Interim Implementation Procedures

Federal agencies have been instructed to include the FAR clause in any solicitation issued on or after June 2, 2023, and in any contract award on or after July 3, 2023. Public comments on the Interim Rule can be submitted until August 1, 2023.

It is possible that the FAR clause will be modified as a result of rulemaking. However, as the prohibition is effective immediately, the following procedures are being implemented until further notice:

- All contracting officers, including procurement offices, negotiating any federal contract must review incoming contracts for the existence of the FAR 52.204–27 prohibition clause.
- If the existence of the clause is confirmed:
 - The contracting officer must notify the primary contact person for the contract of the existence of the prohibition.
 - The primary contact person must identify all individuals (faculty, staff, students, visitors, etc.) working on the contract (“Covered Individuals”).
 - The primary contact person must require Covered Individuals to remove all Covered Applications from devices provided or issued by Harvard University. Covered Individuals should contact their local Harvard University Information Technology representative with any questions about how to remove these applications.
 - The primary contact person must require Covered Individuals to **either** (i) remove all Covered Applications from personally owned devices used in the performance of the contract **or** (ii) refrain from using personally owned devices in the performance of the contract (including, for example, using a Harvard email account on a personal phone).
 - The contracting officer must provide a copy of the [Attestation Letter](#) and require the primary contact person to obtain a signed attestation from each Covered Individual and return a copy *prior* to the acceptance of the contract.
 - The contracting officer must identify all subcontracts and include the FAR clause in those subcontracts, including subcontracts for the acquisition of commercial products or services.
- Harvard University may perform periodic audits to verify compliance with these requirements.