Mr. John Barsa  
Acting Administrator  
United States Agency for International Development  
1001 Pennsylvanian Ave N.W.  
Washington, DC 20004  

Administrator Barsa:  

(U) Thank you for your letter dated 07 August 2020 requesting a waiver to certain prohibitions under Section 889 of John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232). Specifically, Section 889 generally prohibits executive agencies from procuring or obtaining, or entering into contracts to procure or obtain, “covered telecommunications equipment or services” produced or provided by entities connected to the People’s Republic of China, including certain equipment produced by Huawei Technologies Company, ZTE Corporation, Hangzhou Hikvision Digital Technology Company, Hytera Communications Corporation, and Dahua Technology Company (or any subsidiary or affiliate of such entities); and from entering into, extending, or renewing contracts with an entity that uses covered telecommunications equipment or services. Section 889 extends these prohibitions to the use of loan or grant funds provided by executive agencies. These provisions take full effect on 13 August 2020.  

(U) As you acknowledged in your letter, Section 889(d)(2) provides the Director of National Intelligence (DNI) with the authority to grant a waiver to the head of an agency of the prohibitions contained in Section 889 if the waiver is in the national security interest of the United States. This waiver authority is distinct from the authority of an agency head to provide a waiver pursuant to Section 889(d)(1) and can be exercised in my sole discretion.  

(U) I have preliminarily considered your request and have determined that it appears on its face to have sufficient nexus to the national security interests of the United States. Specifically, you stated that at least 70% of USAID’s Missions in sub-Saharan Africa and at least 67% in Asia rely on service providers that use prohibited equipment and services under Section 889. Moreover, as the prohibition applies to your contractors and grantees, they would also be hindered as they would be prohibited from using grant monies to secure communications and internet services from providers that use covered equipment or services in these regions. A communications disruption in these posts may jeopardize the critical work of the USAID’s mission as well as add risks to the USAID workers in those regions. The Section 889(d)(2) waiver you seek would allow your agency to continue to contract for or permit use of grant funds to obtain communications and internet service from prohibited providers in an overseas region.  

(U) Therefore, I am granting a temporary waiver under section 889(d)(2) until 30 September 2020 to allow the USAID Administrator to continue overseas contracting activities related to telecommunications and internet services that would otherwise be prohibited under...
Mr. John Barsa

section 889(a)(1)(B) or section 889(b). During this temporary waiver period, please work with my staff and provide all the information they need to complete a more thorough review of your request for a national security waiver. Specifically, please provide the following additional information:

1. (U/FOUO) Demonstrate an understanding of the potential increased risks:
2. (U/FOUO) Describe mitigation measures in place to address such risks; and
3. (U/FOUO) Describe a committed plan to seeking alternatives to contracting with entities that use prohibited goods and services.

(U) After receiving the above information, a more thorough review of this waiver request will be conducted by subject matter experts, who will make a further recommendation as to whether or not continuing this waiver beyond 30 September 2020 is in the national security interests of the United States.

(U/FOUO) My point of contact for this matter is Mr. William Evanina, and he may be reached at (301) 243-0407 (unsecure).

Sincerely,

John Ratcliffe