

New Federal Ban Prohibits TikTok on Devices Used on Government Contracts

JUNE 26, 2023

On June 2, 2023, the Federal Government issued a new Federal Acquisition Regulation (FAR) clause, FAR 52.204-27, the No TikTok on Government Devices Act,^[1] which prohibits the presence or use of the TikTok app on information technology (IT) equipment used by government contractors and contractor personnel in the performance of a contract (“TikTok Ban” or “Ban”).^[2] The Government enacted the Ban to safeguard government information amid national security concerns. The new regulation is effective immediately and applies to all new government contracts, including those at or below the simplified acquisition threshold, contracts for commercial products (including commercially available, off-the-shelf items), and contracts for commercial services.^[3] The TikTok Ban also must be flowed-down to all subcontractors. Due to the TikTok Ban’s broad application, federal contractors will need to review and revise their compliance programs.

SCOPE OF THE TIKTOK BAN

TikTok is a software application owned and operated by ByteDance Limited, a privately held company headquartered in Beijing, China. Pursuant to the new Ban, TikTok or “any successor application or service of TikTok developed or provided by ByteDance Limited or an entity owned by ByteDance Limited” must be removed from all information technology owned or managed by the Government.^[4] Information technology encompasses not only IT owned and operated by agencies, but also any IT used by a contractor, its employees, and all subcontractors under a contract with a federal agency.

Specifically, the TikTok Ban “applies to devices regardless of whether the device is owned by the Government, the contractor, or the contractor’s employees (e.g., employee-owned devices that are used as part of an employer bring your own device (BYOD) program).” This includes all desktop computers, laptops, tablets and smartphone devices used on the contract. Although there is an exception for a “personally-owned cell phone that is not used in the performance of the contract,” the Government failed to define the meaning of the clause “not used in the performance of the contract,” which likely will lead to confusion.

COMPLIANCE AND CONSEQUENCES

Contractors must act quickly to ensure that all employees, independent contractors, and subcontractors are in compliance with the new Ban under the company’s current contracts and in advance of future ones. The

Government expects that “contractors already have technology in place to block access to unwanted or nefarious websites, prevent the download of prohibited applications (apps) to devices, and remove a downloaded app.”^[5] The Government also “expect[s] that contractors already have policies in place for employees to follow for workplace technology” in order to comply with the new TikTok Ban.^[6]

While the new FAR Clause does not specify consequences for a company’s failure to comply with the TikTok Ban, it can be inferred that violations of this regulation potentially could result in contract suspension or termination, potential debarment from all federal contracts, negative past-performance reviews, mandatory disclosure of violations of the Ban, alleged false claims by whistleblowers for submitting invoices for payment while violating the Ban, and disputes with subcontractors or team members over violations or compliance with the Ban.

COMPLIANCE RECOMMENDATIONS

Contractors should consider taking the following steps to comply with the new TikTok Ban as soon as possible:

- Provide written notice to all affected employees, independent contractors and subcontractors working (or expected to work) on the company’s federal contracts
- Update existing company employee handbook and policies to incorporate the TikTok Ban
- Require all affected workers to sign acknowledgments
- Develop and implement a system to ensure compliance with the TikTok Ban on all devices being used under the company’s federal contracts
- Establish a system to periodically monitor compliance with the Ban
- Track the costs of compliance/monitoring compliance under existing contracts as these costs may be reimbursable by the Government
- Consider the additional costs of compliance with the Ban when formulating new contract bids

If you have questions regarding compliance with the TikTok Ban, please contact the authors, or your Winston & Strawn relationship attorney: [Lawrence Sher](#), [Lawrence Block](#), [Elizabeth Leavy](#), and [William Kirkwood](#).

Summer Associate Andy Smithey also contributed to this blog post.

[Learn about the European Commission’s suspended use of TikTok on its corporate devices and on personal devices enrolled in the European Commission mobile device service.](#)

^[1] FAR 52.204-27 was issued in accordance with implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance (“M-23-13 Memorandum”).

^[2] H.R.2617 Consolidated Appropriations Act, 2023 117th Congress. Although the Ban was published as an interim rule, it is effective immediately. Comments on the interim rule must be submitted by August 1, 2023 to be considered in the formation of the final rule.

^[3] The TikTok Ban broadly applies to any solicitation or contract issued on or after June 2, 2023. In addition, the Government is required to amend existing IDIQ contracts to include FAR 52.204-27 by July 3, 2023 for future task orders, as well as include it in any contract modifications or options for existing contracts or task or delivery orders that extend the period of performance. See 88 Fed. Reg. 36430; see also M-23-13 Memorandum at 2.

^[4] 88 Fed. Reg. 36430 at (C)(IV) (June 2, 2023).

^[5] *Id.*

^[6] *Id.*

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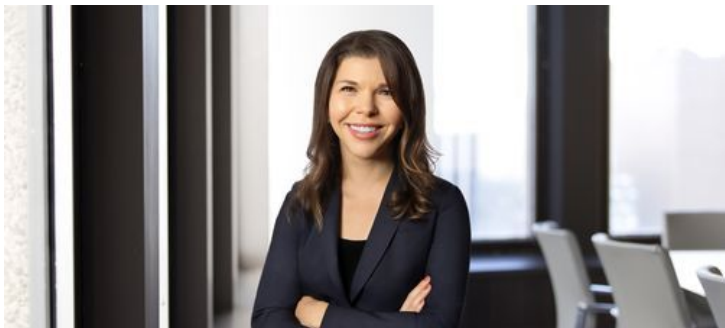
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