

# PRATT'S GOVERNMENT CONTRACTING LAW REPORT

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VOLUME 8

NUMBER 8

August 2022

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Library of Congress Card Number:

ISBN: 978-1-6328-2705-0 (print)

ISSN: 2688-7290

Cite this publication as:

[author name], [article title], [vol. no.] PRATT’S GOVERNMENT CONTRACTING LAW REPORT [page number] (LexisNexis A.S. Pratt).

Michelle E. Litteken, GAO Holds NASA Exceeded Its Discretion in Protest of FSS Task Order, 1 PRATT’S GOVERNMENT CONTRACTING LAW REPORT 30 (LexisNexis A.S. Pratt)

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# Proposed Legislation Bans U.S. Government Contractors Doing Business in Russia

*By Jessica C. Abrahams, Dana B. Pashkoff and Michelle Y. Francois\**

*In an effort to ensure that American taxpayer dollars do not reach Russia after its invasion of Ukraine, Representative Carolyn Maloney (D-NY) introduced the Federal Contracting for Peace and Security Act. The Act prohibits federal procurement from companies operating in Russia. The authors of this article discuss the proposed legislation.*

All eyes have been on Ukraine since Russia launched its military invasion earlier this year. The U.S. government has imposed numerous sanctions on Russia in response to the invasion and promises to continue its economic reprisal. Although the sanctions are targeted at Russia, the U.S. government's actions are likely to have a more sweeping effect, including on U.S. government contractors. And, if conventional wisdom is accurate, we are moving toward a total ban on all things Russia-related. As with many things, the federal procurement process will be used to advance relevant policy positions. Recent legislation aimed at government contractors underscores this reality.

## **FEDERAL CONTRACTING FOR PEACE AND SECURITY ACT**

In an effort to ensure that American taxpayer dollars do not reach Russia, Representative Carolyn Maloney (D-NY) has introduced the Federal Contracting for Peace and Security Act (the "Act" or "H.R. 7185") to prohibit federal procurement from companies operating in Russia. The Act's stated purpose is to support the policy of the U.S. government "not to conduct business with companies that undermine United States national security interests and international law by continuing to operate in the Russian Federation during its ongoing war of aggression against Ukraine."

If passed, the Act would prohibit federal agencies from entering into, continuing, extending or renewing a covered contract with a company that conducts business operations in Russia between the date of the Act's enactment

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and the end of the covered period. The “covered period” begins 60 days after the date of enactment and will end on a date determined jointly by the Secretary of State and the Secretary of Treasury based on the steps Russia takes “to restore the safety, sovereignty, and condition” of Ukraine.

The Act requires agencies to initiate proceedings to terminate covered contracts at the commencement of the covered period. However, agencies may grant 30-day “good faith extensions” if the contractor has “(A) pursued and continues to pursue all reasonable steps in demonstrating a good faith effort to comply with the requirements of this Act; and (B) provided to the executive agency a reasonable, written plan to achieve compliance with such requirements.” An agency must provide contractors advance written notice at least 15 days before the initiation of termination proceedings of a covered contract. The Act defines a “covered contract” as a prime contract entered into by an executive agency and any major subcontract of that contract with a company (including any parent, subsidiary, successor entity or beneficial owner of such company) that conducts business operations in Russia during the covered period.

In evaluating the applicability of the Act, contractors must assess whether their activities, or those of their major subcontractors, constitute “business operations.” As currently drafted, “business operations” means “engaging in commerce in any form, including acquiring, developing, selling, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.”

The Act does provide for certain exceptions, including “the provision of products or services for compliance with legal, reporting, other requirements of the laws or standards of countries other than the Russian Federation” and certain journalistic activities, among others. Notably, the Act includes both exemptions and waivers to the prohibition and the termination requirement and will not apply to:

- Contracts for the benefit, either directly or through the efforts of regional allies, of Ukraine.
- Contracts for humanitarian purposes to meet basic human needs.
- Contracts with a contractor that has suspended or terminated its business operations in Russia.

Agencies may also grant a waiver if an agency:

certifies in writing to the President that such waiver is for the national security of the United States or in the public interest of the United States, and includes in such certification a justification for the waiver and description of the contract to which the waiver applies.

## NEXT STEPS

The House Committee on Oversight and Reform voted to pass H.R. 7185. It will now go to the full House for consideration and approval before going to the Senate. If the Act becomes law, the Office of Management and Budget (“OMB”) will have 30 days to issue regulations using emergency rulemaking procedures. The Act provides that OMB should consider public comments during the rulemaking process to “the greatest extent practicable.” The regulations must include:

- A list of equipment, facilities, personnel, products, services, or other items or activities, the engagement with which would be considered business operations, subject to the Act’s prohibition.
- A requirement for a contractor or offeror to represent whether such contractor or offeror uses any of the items on the business operations list.
- A definition of the characteristics of any major subcontract that qualifies as a covered contract under the Act.
- A description of the process for determining a good faith extension described in the Act.

While the future of this particular Act remains uncertain, given the expectation of something close to a complete Russia ban, government contractors need to be prepared if this Act or similar legislation does become law. Contractors should assess their supply chains now to determine if their companies, or subcontractors, conduct business operations in Russia. Contractors engaging in Russian business operations should begin identifying alternative suppliers and developing a compliance plan that would allow them to avail themselves of a good faith extension.