

In or Out? Latest House Bill Exerts Pressure on Federal Contractors to Exit Russian Market

On April 6, 2022, the House Committee on Oversight and Reform passed H.R. 7185, the Federal Contracting for Peace and Security Act, which would prohibit the U.S. government (USG) from contracting with any companies continuing to do business in the Russian Federation in response to the ongoing war in Ukraine.

The Act formally establishes that it is the policy of the USG not to conduct business with companies continuing to operate in Russia during the “covered period,” defined as beginning 60 days after enactment of the Act and ending upon a joint determination by the secretaries of State and Treasury that Russia has taken steps to “restore the safety, sovereignty, and condition of” Ukraine.

As a result, the Act would prohibit the USG from entering into, continuing, extending, or renewing a “covered contract” with any company that conducts business operations in Russia during the “covered period.” Notably, a “covered contract” includes both prime contracts and “major subcontracts” and applies to any parent, subsidiary, or beneficial owner of a prime contractor or major subcontractor beyond the contracting entity itself.

Additionally, “business operations” is broadly defined as “engaging in commerce in any form” with limited exceptions for:

1. national security,
2. products or services benefiting Ukraine,
3. humanitarian products and services, and
4. journalistic activities.

The Act provides emergency rulemaking authority to the Office of Management and Budget (OMB) to promulgate regulations that would further define the contours of the Act, including:

1. specific items and activities that would constitute prohibited “business operations,”
2. a requirement that contractors certify or represent that they are in compliance with the Act, and
3. characteristics to further delineate what constitutes a “major subcontract.”

For federal contractors and subcontractors currently operating in Russia, the Act requires executive agencies to initiate termination proceedings when the “covered period” begins and with 15 days advance notice. The Act does provide for certain 30-day “good faith” extensions if a contractor is pursuing all reasonable steps to comply with the requirements of the Act (*i.e.*, exiting business operations in Russia). However, the processes for determining good faith will be further defined and described by the OMB’s rulemaking.

For all businesses considering bidding on government contracts, it will likely be beneficial to begin reviewing all operations now, including operations throughout the supply chain, to determine any ongoing activities in Russia that may be subject to the Act.

Although it remains unclear whether the Act will go into effect, it will create a very short timeframe if it becomes law, and the covered period could continue indefinitely. Given the broad scope of the Act’s jurisdiction and prohibitions, contractors should begin to consider the costs and benefits of any current operations in Russia if such operations become prohibited.



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