

PRATT’S GOVERNMENT CONTRACTING LAW REPORT

VOLUME 11

NUMBER 3

March 2025

Editor’s Note: Retaining Consultants Victoria Prussen Spears	481
New Law Appears to Restrict Defense Contractors from Retaining Consultants Who Lobby for Chinese Military Companies Robert K. Kelner, Scott A. Freling, Zachary G. Parks, Stephanie Barna and Channing Ruff	483
Don’t Be Suspicious, Don’t Be Suspicious: New Special Fraud Alert Warns About Suspect Payments in Medicare Advantage Marketing Arrangements Robert E. Slavkin, John C. Hood and Ameer Al-Khudari	486
U.S. Court of Appeals for the Federal Circuit Revives Boeing’s Challenge to Federal Acquisition Regulation’s Implementation of Cost Accounting Standards’ Offset Rules: Impacts for Government Contractors Subject to CAS and Future Implications Under <i>Loper Bright</i> Gale R. Monahan, Natalie Seelig, Steven M. Masiello and Seamus Curley	490
In the Courts Steven A. Meyerowitz	495

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call or email:

Julie Chee at 1-800-306-5230
Email: Julie.Chee@lexisnexus.com

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Services Department at (800) 833-9844
Outside the United States and Canada, please call (518) 487-3385
Fax Number (800) 828-8341
LexisNexis® Support Center <https://supportcenter.lexisnexus.com/app/home/>

For information on other Matthew Bender publications, please call

Your account manager or (800) 223-1940
Outside the United States and Canada, please call (518) 487-3385

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)

Because the section you are citing may be revised in a later release, you may wish to photocopy or print out the section for convenient future reference.

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. Matthew Bender, the Matthew Bender Flame Design, and A.S. Pratt are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2025 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved. Originally published in: 2017

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexus.com

MATTHEW  BENDER

Editor-in-Chief, Editor & Board of Editors

EDITOR-IN-CHIEF

STEVEN A. MEYEROWITZ

President, Meyerowitz Communications Inc.

EDITOR

VICTORIA PRUSSEN SPEARS

Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

ERIC S. CRUSIUS

Partner, Hunton Andrews Kurth LLP

PABLO J. DAVIS

Of Counsel, Dinsmore & Shohl LLP

MERLE M. DELANCEY JR.

Partner, Blank Rome LLP

J. ANDREW HOWARD

Partner, Alston & Bird LLP

KYLE R. JEFcoat

Counsel, Latham & Watkins LLP

JOHN E. JENSEN

Partner, Pillsbury Winthrop Shaw Pittman LLP

DISMAS LOCARIA

Partner, Venable LLP

KEVIN P. MULLEN

Partner, Morrison & Foerster LLP

VINCENT J. NAPOLEON

Partner, Nixon Peabody LLP

KEITH SZELIGA

Partner, Sheppard, Mullin, Richter & Hampton LLP

STUART W. TURNER

Counsel, Arnold & Porter

ERIC WHYTSELL

Partner, Stinson Leonard Street LLP

Pratt's Government Contracting Law Report is published 12 times a year by Matthew Bender & Company, Inc. Copyright © 2025 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact LexisNexis Matthew Bender, 9443 Springboro Pike, Miamisburg, OH 45342 or call Customer Support at 1-800-833-9844. Direct any editorial inquiries and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway Suite 18R, Floral Park, New York 11005, smeyerowitz@meyerowitzcommunications.com, 631.291.5541. Material for publication is welcomed—articles, decisions, or other items of interest to lawyers and law firms, in-house counsel, government lawyers, senior business executives, and anyone interested in privacy and cybersecurity related issues and legal developments. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

POSTMASTER: Send address changes to *Pratt's Government Contracting Law Report*, LexisNexis Matthew Bender, 230 Park Ave. 7th Floor, New York NY 10169.

New Law Appears to Restrict Defense Contractors from Retaining Consultants Who Lobby for Chinese Military Companies

By Robert K. Kelner, Scott A. Freling, Zachary G. Parks, Stephanie Barna and Channing Ruff

In this article, the authors review a new law governing defense contractors' use of outside consultants.

Under a newly enacted law, beginning June 30, 2026, defense contractors risk losing all future contracts with the Defense Department if they engage outside consultants that lobby for certain Chinese companies. On December 23, 2024, President Biden signed the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2025,¹ which sets annual spending and policy for the Pentagon. While media coverage has largely focused on other provisions of the FY 2025 NDAA, buried within its 794 pages is a short provision governing defense contractors' use of outside consultants.

Section 851 of the bill, titled "Prohibition on Contracting with Covered Entities that Contract with Lobbyists for Chinese Military Companies," appears to establish a future ban on the Defense Department from contracting with any company (or its subsidiaries or parent company) that contracts with a person that engages in lobbying activities on behalf of certain Chinese military companies. This prohibition, which will be codified in a new 10 U.S.C. § 4663(a), appears to be missing a key word or phrase.

Specifically, it states that absent a waiver, "the Secretary of Defense may not enter into a contract with an entity, a parent company of such entity, or a subsidiary of such entity is a party to a contract with a covered lobbyist." Given the title, Congress may have intended for the provision to read as follows: "the Secretary of Defense may not enter into a contract with an entity, [if the entity,] a parent company of such entity, or a subsidiary of such entity is a party to a contract with a covered lobbyist." Or perhaps Congress intended for the missing words to be placed later in the sentence, slightly changing the provision's meaning: "the Secretary of Defense may not enter into a contract with an entity, a parent company of such entity, or a subsidiary of such entity,

* The authors, attorneys with Covington & Burling LLP, may be contacted at rkelnr@cov.com, sfreling@cov.com, zparks@cov.com, sbarna@cov.com and jruff@cov.com, respectively.

¹ <https://www.congress.gov/bill/118th-congress/house-bill/5009>.

[if the entity] is a party to a contract with a covered lobbyist.” The absence of these words in the statute itself creates some ambiguity as to the scope of disqualifying activities.

Thankfully, there is time for Congress and the Defense Department to resolve this ambiguity, as the prohibition does not take effect until June 30, 2026.

What is clear is that Section 851 ties its lobbying related definitions to the Lobbying Disclosure Act of 1995 (LDA), meaning defense contractors will need to conduct additional due diligence to ensure their outside consultants are not engaged in federal lobbying activities on behalf of specifically listed People’s Republic of China (PRC) military companies (even where those lobbying activities are entirely unrelated to the defense contractor).

RELEVANT PROVISIONS AND DEFINITIONS

The new prohibition will apply to Defense Department contractors that retain a “covered lobbyist,” defined as any entity that engages in federal lobbying activities on behalf of entities listed by the Pentagon as PRC military companies. The list of PRC military companies is updated annually, in accordance with a provision first passed as section 1260H of the FY 2021 NDAA, and it currently includes over 50 parent companies and dozens of subsidiaries.²

The term “lobbying activities” is given the same meaning as in 10 U.S.C. § 971 note prec. (added by the FY 2018 NDAA), which defines “lobbying activities” as having “the meaning given such term[] in section 3” of the LDA, found in 2 U.S.C. § 1602. The LDA in turn defines lobbying activities as “lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.” The term “lobbying contact” means any oral or written communication (including an electronic communication) to a covered federal executive branch official or legislative branch official that is made on behalf of a client with regard to influencing federal legislation, rules, regulations, procurement, executive orders, nominations and confirmations, “or any other program, policy, or position of the United States Government.” Under the LDA, covered legislative branch officials include members of Congress and their staff, while covered executive branch officials include the

² The most recent version of the list, released in January 2025, can be found at https://public-inspection.federalregister.gov/2025-00070.pdf?utm_campaign=pi+subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov.

president and vice president, Executive Schedule I–V officials, Schedule C political appointees, employees in the Executive Office of the President, and certain senior military officials.

SUGGESTED DUE DILIGENCE FOR DEFENSE CONTRACTORS

Notably, the language of Section 851 creates a safe harbor, specifically stating that the prohibition shall not apply to defense contractors “that made reasonable inquiries regarding the lobbying activities of another entity and determined such entity was not a covered lobbyist.” Given these broad definitions and provisions, defense contractors should begin evaluating their outside lobbyists and other consulting firms, at some point in advance of the June 2026 effective date, to ensure they do not engage covered lobbyists. Otherwise, absent a waiver, contractors risk imperiling future business with the Defense Department.

Presumably the Defense Department will implement the Section 851 prohibition and safe harbor through a new Defense Federal Acquisition Regulation Supplement clause in the coming months. In anticipation of the prohibition taking effect in June 2026, defense contractors should take steps to review the LDA and Foreign Agents Registration Act (FARA) disclosures (if any), along with other publicly available information, of both current and prospective outside lobbyists, lobbying firms, and consultants to ensure their clients do not include listed PRC military companies.

In some circumstances, an outside consultant may be engaged in behind-the-scenes lobbying activities for PRC military companies and yet not be registered under the FARA or LDA. Thus, a search of the FARA or LDA databases for the name of the outside consultant, while prudent before the new provision takes effect in 2026, may not be sufficient. Also, particularly with respect to FARA, some consultants may not be registered even though they should be registered.

Prior to the effective date of the new provision, companies interested in doing business with the Defense Department should consider requiring outside lobbyists and other consultants to certify in their contracts that they are not engaging, and will not engage, in lobbying activities for a Chinese military company on the 1260H list.