



32nd Annual

**OUNCE OF
PREVENTION
SEMINAR**

May 25-26, 2016

International Issues in Government Contracting

Addie Cliffe
Carlton Greene
Yuan Zhou



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Agenda

- I. Introduction
- II. Supply Chain Concerns
- III. Foreign Investment & M&A
- IV. Developments in Economic Sanctions
- V. Questions



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Section II: Supply Chain Concerns



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Human Trafficking

- **Supply chain due diligence:**
 - Contractors must comply with the Government’s zero-tolerance policy for trafficking in persons
- **FAR Subpart 22.17, Combating Trafficking in Persons, and associated contract clause at FAR 52.222-50 (Mar 2015):**
 - Expanded definition of human trafficking
 - Enhanced monitoring and reporting obligations (e.g., conduct of “agents”, reporting of “credible information” to CO and agency IG)
 - Additional compliance and certification requirements (e.g., compliance plan when services/non-COTS supplies outside the U.S. exceed \$500,000)



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Human Trafficking

- **Contractors face significant risks for inadequate compliance or violations of the new regulations:**
 - Termination for default
 - Suspension or debarment
 - Declining to exercise available options
 - Loss of award fee during performance period in which Government determined contractor non-compliance
- **Responsible Sourcing Tool:**
 - <http://www.responsiblesourcingtool.org>
 - Model compliance plan
 - No one-size fits all solution



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Domestic Preferences

- Tightening up of restrictions and focus on enforcement
 - FTA – Congress imposes stricter Buy America requirements for rolling stock
 - FHWA – court vacates “clarifications” that eased Buy America requirements
 - GSA launches sweeping TAA compliance review effort



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Section III: Foreign Investment Considerations



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Transactional Considerations

- Review by the Committee on Foreign Investment in the United States (CFIUS)
- Mitigation of Foreign Ownership, Control, or Influence (for contractors with a facility clearance)
- Notification to the Directorate of Defense Trade Controls (DDTC)



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Other Considerations

- Data room considerations
 - Classified information
 - Export controlled information
- Export control issues
 - Jurisdiction and classification
 - Authorization
- Sanctions
- Supply chain issues
 - Cybersecurity and data protection
 - Domestic preferences
 - Avoidance of human trafficking
 - Avoidance of counterfeit parts
- Anticorruption compliance



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Section IV: Developments in Economic Sanctions



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Iran: Background to the Nuclear Deal

- **Overview of the “Joint Comprehensive Plan of Action” (“JCPOA”)**
 - Nuclear deal struck with Iran
 - Signatories: Iran and P5+1 (United States, UK, Germany, France, China, Russia)
 - Provides for suspension or lifting of United Nations, EU, and U.S. sanctions in exchange for Iran’s agreement to limit or reverse aspects of its nuclear program
- **Key Dates:**
 - July 14, 2015: Agreement Finalized and Approved
 - October 18, 2015: Adoption Day
 - January 16, 2016: Implementation Day (Sanctions officially lifted)
 - October 20, 2023: Transition Day (Lifting of arms and ballistic missile embargoes)

Key Takeaway: Divergence between EU and US Approach to Iran create a compliance challenge and business disadvantage for U.S. entities



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Iran (cont.): Summary of U.S. Changes

U.S. Changes applied differently for three types of persons

- **U.S. Persons:**
 - Virtually no change for most U.S. Persons
 - U.S. Persons remain prohibited from virtually all transactions with Iran
 - Two (small) new exceptions
 - (1) Civil commercial passenger aircraft: supportive licensing policy
 - (2) Import of Iranian-origin food stuffs and carpets: new general license

- **Non-U.S. Entities “Owned or Controlled” by U.S. Persons:**
 - Authorized to engage in most activities with Iran
 - Conditions
 - No U.S. touch-point for the transaction: No U.S. person involvement (including parent company), U.S. financing, U.S.-origin goods or services, etc.
 - No transactions with SDNs
 - No transactions with military, paramilitary, or related organization

- **Other Non-U.S. Persons (secondary sanctions):**
 - Suspend enforcement of most existing secondary sanctions
 - Limitations
 - No “significant” transactions with certain Iranian SDNs
 - No transactions with U.S. touchpoint (including U.S.-origin financing)



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Iran (cont.): Implications for Contractors

- Limited direct impact on “U.S. Person” contractors
 - Could have effect on (a) non-U.S. subsidiaries of U.S. contractors and (b) non-U.S. person contractors
- **No Change to Existing FAR Certifications**
 - Three current FAR certifications related to Iran (25.703-2):
 - Activity for which sanctions “may be imposed” pursuant to Iran Sanctions Act
 - Transactions with the Islamic Revolutionary Guards Corps
 - Transactions involving the export of “sensitive technology”
 - Issue: Conflict between certification and JCPOA authorization
 - Certification applies to contractor and entities it owns or controls
 - JCPOA authorizes non-U.S. entities to undertake certain activity potentially infringing certification requirement
 - No official position issued yet by U.S. government
- **No Change to Existing State-Level Requirements**
 - Pre-existing state-level requirements:
 - Divestment: Roughly 31 states authorize Iran-related divestment
 - State Contracting: Roughly 16 states have Iran-related state contracting prohibitions
 - Not directly affected by JCPOA
 - State Department has requested states not to enforce provisions



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Cuba: Significant Relaxations

- Announcement of policy reversal in January 2015
 - Additional changes in March & Sept. 2015 and Jan. and March 2016
- Statutory embargo remains in place
 - Virtually all activity by U.S. persons with Cuba remains prohibited UNLESS subject to an exemption, license, or authorization
- Newly authorized activity includes, *inter alia*:
 - Travel: General license for 12 types of travel
 - Includes professional meetings, conferences, and trips to identify potential export markets
 - Permitted to import \$400 (including \$100 of rum/cigars) for personal use
 - NOTE: tourist travel remains prohibited
 - Exports: New authorizations, subject to conditions, for:
 - (1) Transactions in Support of the Cuban People (“SCP”)
 - (2) Consumer Communications Devices (“CCD”)
 - (3) Expanded specific licensing policy for a range of items including (a) telecommunications and (b) items related to environmental protection (including renewable energy)
 - Financial Services: Expanded financial interactions including
 - (a) use of credit cards authorized in Cuba, and
 - (b) U.S. correspondent accounts in Cuba
- Removal of State Sponsor of Terrorism designation

TAKEAWAY: The relaxations offer substantial potential opportunity for new transactions in Cuba, but practical challenges (e.g., financing, identifying private sector customers) exist in the Cuban market, and potential risk of policy changes under a new Administration



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

Additional U.S. Developments

- **North Korea**
 - Expansion of existing restrictions into full embargo
 - New FAR certification requirement
 - Contractor does not engage in certain NK-related activities
 - Precise language has not yet been published
 - Remedy for false certification is (a) contract termination, (b) debarment/suspension, and (c) inclusion on Debarred List
- **Russia**
 - No major programmatic changes since May 2015
 - U.S. / EU regularly issue new designations under existing authorities
 - Remains enforcement focus for agencies
- **Other Significant Changes in Last 12 Months**
 - Belarus: Authorize trade with Belarusneft and other entities
 - Burma/Myanmar: Authorize trade through Asia World-owned ports
 - Burundi: New sanctions program added (Nov. 23, 2015)
 - Liberia: Sanctions program removed (Nov. 12, 2015)
 - Summary: Changes to 24 of 29 OFAC sanctions programs since May 2015



GOVERNMENT
CONTRACTORS
UNDER THE
MAGNIFYING
GLASS

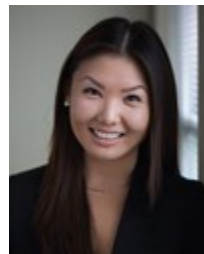
Contacts



Addie Cliffe
Counsel
202-624-2816
acliffe@crowell.com



Carlton Greene
Partner
202-624-2818
cgreene@crowell.com



Yuan Zhou
Associate
202-624-2666
yzhou@crowell.com