

Lawmakers Seek Emergency Powers for Pentagon's Ukraine War Contracting

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Bipartisan legislation introduced in the Senate would grant the Pentagon wartime procurement powers, allowing it to buy massive amounts high-priority munitions using multi-year contracts to help [Ukraine](#) fight Russia and to refill U.S. stockpiles.

The Senate Armed Services Committee's chairman, Sen. [Jack Reed](#), D-R.I., and ranking member, Sen. [Jim Inhofe](#), R-Okla., proposed the legislation as an amendment to the annual defense authorization bill, which the Senate is expected to vote on in November. It was offered instead of the [critical munitions acquisition fund](#) that the Pentagon and some lawmakers sought for the same purposes, before Senate appropriators rejected it.

The amendment, the text of which was released last week, offers multi-year contracting authorities typically reserved for Navy vessels and major aircraft. As drafted, it would let the Pentagon lock in purchases of certain munitions made by [Lockheed Martin](#), [Raytheon Technologies](#), [BAE Systems](#) and [Kongsberg Defence & Aerospace](#) over fiscal 2023 and 2024, a step aimed at encouraging manufacturers to expand production lines for sought-after munitions.

The Pentagon would also be permitted to team with NATO to buy weapons for its members in mass quantities, and for Ukraine-related contracts, the legislation would ease several key legal restrictions on Pentagon procurement through fiscal 2024 — a sign lawmakers see the war dragging on.

The intent of the legislation is to spur the Pentagon and industry to move more aggressively by removing bureaucratic barriers, with an eye not only on Russia but the potential for a confrontation with China over Taiwan, according to a senior congressional aide who spoke to Defense News on condition of anonymity because they were not authorized to speak with the press.

“Whether you want to call it wartime contracting or emergency contracting, we can’t play around anymore,” the aide said. “We can’t pussyfoot around with minimum-sustaining-rate buys of these munitions. It’s hard to think of something as high on everybody’s list as buying a ton of munitions for the next few years, for our operational plans against China and continuing to supply Ukraine.”

If the language becomes law, the Department of Defense would be allowed to make non-competitive awards to arms manufacturers for Ukraine-related contracts, an idea spearheaded in legislation from Sen. [Jeanne Shaheen](#), D-N.H., and 13 other senators.

The Inhofe-Reed amendment would also grant special emergency procurement authorities reserved for contingency operations and waive a requirement that contractors provide certified cost and pricing data, a safeguard intended to help ensure the Pentagon is paying reasonable prices.

Criticism from Capitol Hill

The move comes amid criticism from Capitol Hill and the defense industry that the Pentagon is moving too slowly. Of the \$6 billion Congress appropriated this year to buy equipment for Ukraine, DoD has awarded \$1.2 billion, and of \$12.5 billion appropriated to replace U.S. stockpiles of weapons sent to Ukraine, just \$1.5 billion has been awarded, the Pentagon said Sept. 20.

“This is an effort to speed up contracting,” said Mark Cancian, a defense budget analyst at the Center for Strategic and International Studies. “We’ve been hearing from industry, when we talk to them about this issue, that they want to see a demand signal. DoD has been saying the right things but they haven’t been providing that demand signal. And when you look at the amount of money actually obligated, it’s very low.”

One aim of the amendment is to signal to the defense industry that it’s time to restart or to re-energize dormant supply lines. Lockheed CEO [Jim Taiclet said](#) during a July earnings call that the Pentagon had yet to put the contracts in place or coordinate with industry to buy more supplies, a process that could take two to three years. “And I can tell you the clutch isn’t engaged yet,” Taiclet said.

While the legislation will likely be welcomed by the defense industry, Julia Gledhill, a defense analyst in the Center for Defense Information at the non-partisan watchdog group Project on Government Oversight, said Monday that Congress should leave protections against defense spending bloat in place.

“Ukraine aid shouldn’t be another way for contractors to nickel and dime the Pentagon, wasting taxpayer dollars and undermining the purpose of assistance: to support the Ukrainian people,” Gledhill said. “But the amendment further deteriorates already weak guardrails in place to prevent corporate price gouging of the military.”

Mobilizing munitions manufacturing

Concerned about constraints on the U.S. defense industrial base’s ability to produce munitions to resupply U.S. stocks transferred to Ukraine, Congress this year appropriated \$600 million in Defense Production Act funding. Some of the money is to expand domestic capacity and invest in domestic production of strategic and critical materials.

The Senate Armed Services Committee authorized \$2.7 billion for future munitions production when it advanced the FY23 NDAA in June. And while multi-year contract authorities could save the Defense Department money on munitions procurement over annual contracts, they could also add several billion dollars more per year in non-discretionary spending to the defense budget topline – an annual, contentious debate in Congress.

The House NDAA, which passed 329-101 in July, contains a more limited critical munitions acquisition fund offered as an amendment from the House Armed Services Committee's chairman, Rep. Adam Smith, D-Wash. That amendment would apply only to high-demand munitions transferred to Ukraine and its European neighbors.

The sheer volumes of weapons that the legislation authorizes contracts for equipment sent to Ukraine includes 750,000 XM1128 and XM1123 rounds for 155mm artillery; 1,000 M777 Howitzers; 700 M142 High Mobility Artillery Rocket Systems and 100,000 Guided Multiple Launch Rocket Systems.

But it extends far beyond what the U.S. needs to replenish stocks sent to Ukraine. For instance, it authorizes contracts to procure up to 20,000 Stinger anti-aircraft missiles and 25,000 Javelin anti-tank missiles. That far exceeds the approximately 1,400 Stingers and 5,500 Javelins that the U.S. has sent to Ukraine from its stocks.

"These numbers are much larger than just replenishing stocks," said Cancian. "These are huge numbers. They are not driven by what we've given to Ukraine, but sort of related to what we've given to Ukraine."

"This isn't replacing what we've given them," he added. "It's building stockpiles for a major ground war in the future. This is not the list you would use for China. For China we'd have a very different list."

The amendment also authorizes buying up to 30,000 AGM-114 Hellfire missiles; 36,000 AGM-179 Joint Air-to-Ground Missiles; 1,000 Harpoon missiles; 800 Naval Strike Missiles; and 10,000 Patriot Advanced Capability – 3 air defense system and 6,000 MGM-140 Army Tactical Missile Systems.

The proposed legislation also authorizes contracts for 20,000 AIM-120 Advanced Medium-Range Air-to-Air missiles, which Ukraine has not fired extensively – if at all. Britain announced last week that it would donate these AMRAAM rockets to Kyiv for its use in the Norwegian Advanced Surface-to-Air Missile System, which the United States has pledged to provide in the future via the Ukraine Security Assistance Initiative.

Co-production with NATO

To that end, the legislation aims to facilitate co-production of weapons systems with NATO allies. For example, the proposed legislation also authorizes sharing designs for the large-caliber cannon, which Cancian noted was developed by Britain.

In a separate provision that would allow bulk weapons purchases between the U.S. and NATO, the amendment would expand existing authorizations that cover NATO's bulk purchases of logistics support items, like fuel, to cover acquisitions of any kind. The idea is that the U.S. and allies would be able to pool resources for artillery shells and other weapons and potentially save costs by buying together.

European countries are focused on boosting the defense industry's production capacity to provide for countries future needs and to backfill stockpiles sent to Ukraine.

While U.S. Defense Secretary [Lloyd Austin](#) was in Brussels last week, NATO Secretary General [Jens Stoltenberg](#) said that the alliance had decided to increase stockpiles of munitions and equipment — and to speed up aid deliveries to Ukraine.

Because allies are digging deeper into their stocks to be able to provide more support to Ukraine, "it's important that we also are able to ramp up production," Stoltenberg said, adding that emerging NATO plans would provide industry with the long-term demand it need to boost production.

Austin led a meeting of Ukraine donor nations in Brussels where the defense chiefs discussed how to keep supplying Ukraine "in the difficult months and years ahead" and pushed to "galvanize our industrial bases to fire up production for the systems to defend Ukraine, even while meeting our own security needs."

In Washington last week, the U.S. Defense Security Cooperation Agency's director, [James Hursch](#), projected U.S. arms sales would increase continuously over the next three years as the conflict fuels demand from Europe.

"They are drawing lessons from the conflict that we see today about the kinds of systems they need to have," Hursch said, projecting demand for armored vehicles, precision fires and integrated missile defense systems.

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