

STATE OF NEW YORK

9364

IN SENATE

May 14, 2024

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts

AN ACT to amend the state finance law and the general municipal law, in relation to prohibiting procurement of certain technology that poses security threats

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The state finance law is amended by adding a new section
2 163-e to read as follows:

3 § 163-e. Restriction on purchasing certain technology which poses a
4 security threat. 1. (a) Notwithstanding any inconsistent provision of
5 law, the state and any department, bureau, board, commission, authority,
6 and any other agency or instrumentality of the state shall not enter
7 into or renew any contract or agreement to procure information and
8 communications technology, including hardware, systems, devices, soft-
9 ware, or services that include embedded or incidental information tech-
10 nology, which are prohibited from federal procurement pursuant to 41 USC
11 4713.

12 (b) The term "information and communications technology" means:
13 (i) information technology, as defined in section 11101 of title 40;
14 (ii) information systems, as defined in 44 U.S.C. 3502; and
15 (iii) telecommunications equipment and telecommunications services, as
16 those terms are defined in section 3 of the Communications Act of 1934
17 (47 U.S.C. 153).

18 2. Notwithstanding any inconsistent provision of law, the state and
19 any department, bureau, board, commission, authority, or any other agen-
20 cy or instrumentality of the state shall not enter into or renew any
21 contract or agreement to procure any electronic parts, products, or
22 services, or enter into a contract, or extend or renew a contract, with
23 an entity to procure or obtain electronic parts or products that use any
24 electronic parts or products that include products, from any entity
25 prohibited from federal contracting (or any subsidiary, affiliates, or
26 successors of such entity) as set forth in Pub. L. 117-263, div. E,
27 title LIX, § 5949; or any entity (or any subsidiary, affiliates, or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 successors of such entity) designated as prohibited from federal
2 contracting pursuant to Pub. L. 115-232, div. A, title VIII, § 889; or
3 from any entity (or any subsidiary, affiliates, or successors of such
4 entity) determined to be a threat to national security by
5 DODIG-2019-106.

6 3. The commissioner of homeland security and emergency services, the
7 adjutant general, the chief information officer, the chief cyber offi-
8 cer, the chief technology officer of the city of New York and any feder-
9 al agency authorized under 41 USC 4713, may provide a waiver from this
10 section if:

11 (a) any such entity determines the waiver is in the critical state or
12 national security interests; and

13 (b) no compliant product or service is available to be procured as,
14 and when, needed at United States market prices or a price that is not
15 considered prohibitively expensive; and

16 (c) such waiver could not reasonably be expected to compromise the
17 critical state or national security interests.

18 4. Nothing in this section shall be construed:

19 (a) to require any covered products or services resident in equipment,
20 systems, or services as of the day before the effective date of this
21 section to be removed or replaced;

22 (b) to prohibit or limit the utilization of such covered products or
23 services throughout the lifecycle of such existing equipment; or

24 (c) to require the recipient of a state contract, grant, loan, or loan
25 guarantee to replace covered products or services resident in equipment,
26 systems, or services before the effective date of this section.

27 § 2. The general municipal law is amended by adding a new section
28 103-h to read as follows:

29 § 103-h. Restriction on purchasing certain technology which poses a
30 security threat. 1. (a) Notwithstanding any inconsistent provision of
31 law a political subdivision shall not enter into or renew any contract
32 or agreement to procure information and communications technology,
33 including hardware, systems, devices, software, or services that include
34 embedded or incidental information technology, which are prohibited from
35 federal procurement pursuant to 41 USC 4713.

36 (b) The term "information and communications technology" means:

37 (i) information technology, as defined in 40 U.S.C. 11101;

38 (ii) information systems, as defined in 44 U.S.C. 3502; and

39 (iii) telecommunications equipment and telecommunications services, as
40 those terms are defined in section 3 of the Communications Act of 1934
41 (47 U.S.C. 153).

42 2. Notwithstanding any inconsistent provision of law, a political
43 subdivision or any district therein shall not enter into or renew any
44 contract or agreement to procure any electronic parts, products, or
45 services, or enter into a contract, or extend or renew a contract, with
46 an entity to procure or obtain electronic parts or products that use any
47 electronic parts or products that include products or services, in
48 violation of the provisions as set forth in Pub. L. 117-263, div. E,
49 title LIX, § 5949; or from any entity (or any subsidiary, affiliates, or
50 successors of such entity) designated as prohibited from federal
51 contracting pursuant to Pub. L. 115-232, div. A, title VIII, §889; or
52 from any entity (or any subsidiary, affiliates, or successors of such
53 entity) determined to be a cybersecurity risk by DODIG-2019-106.

54 3. The commissioner of homeland security and emergency services, the
55 adjutant general, the chief information officer, the chief cyber offi-
56 cer, the chief technology officer of the city of New York and any feder-

1 al agency authorized under 41 U.S.C 4713, may provide a waiver from this
2 section if:

3 (a) any such entity determines the waiver is in the critical state or
4 national security interests; and

5 (b) no compliant product or service is available to be procured as,
6 and when, needed at United States market prices or a price that is not
7 considered prohibitively expensive; and

8 (c) such waiver could not reasonably be expected to compromise the
9 critical national security interests of the United States.

10 4. Nothing in this section shall be construed:

11 (a) to require any covered products or services resident in equipment,
12 systems, or services as of the day before the effective date of this
13 section to be removed or replaced;

14 (b) to prohibit or limit the utilization of such covered products or
15 services throughout the lifecycle of such existing equipment; or

16 (c) to require the recipient of a state contract, grant, loan, or loan
17 guarantee to replace covered products or services resident in equipment,
18 systems, or services before the effective date of this section.

19 § 3. No later than the effective date of this act, the office of
20 general services shall promulgate rules and regulations and issue guid-
21 ance to all state agencies and local procurement authorities necessary,
22 including providing updates on prohibited or excluded entities for
23 procurement contracts in conformity with federal law, rules and regu-
24 lations, no later than sixty days after any entity is prohibited or
25 excluded.

26 § 4. This act shall take effect five years after it shall have become
27 a law. Effective immediately, the office of general services is author-
28 ized to promulgate rules and regulations and issue guidance to all state
29 agencies and local procurement authorities necessary for the implementa-
30 tion of this act on its effective date, including providing updates on
31 prohibited or excluded entities for procurement contracts in conformity
32 with federal law, rules and regulations.