

STATE OF NEW YORK

3316

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

Introduced by Sen. BAILEY -- 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, in relation to purchasing restrictions on persons that contract to build a border wall; to amend the retirement and social security law, in relation to the investment of certain public funds in persons that contract to build a border wall; and providing for the repeal of such provisions upon expiration thereof

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
2 165-b to read as follows:

3 § 165-b. Purchasing restrictions; persons that contract to build a
4 border wall. 1. As used in this section, the following definitions shall
5 apply:

6 (a) "contracts to build a border wall" shall mean entering into a
7 contract with the federal government for the purposes of building a wall
8 along the border of Mexico and the United States of America.

9 (b) "person" shall mean any natural person, corporation, limited
10 liability company, unincorporated association or any other nongovern-
11 mental entity, organization, or group, or any successor, subunit,
12 parent, or subsidiary of the same.

13 2. (a) Any person that is identified on a list created pursuant to
14 paragraph (b) of this subdivision as a person that contracts to build a
15 border wall, as defined in paragraph (a) of subdivision one of this
16 section, shall not be deemed a responsive bidder or offerer, pursuant to
17 section one hundred sixty-three of this article.

18 (b) Not later than ninety days after the effective date of this
19 section, and then annually thereafter, the commissioner shall develop
20 and publish, using credible information available to the public, a list
21 of persons determined by the commissioner, that have contracted to build

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

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1 a border wall. Such list, when developed and published, shall be posted
2 on the website of the office of general services.

3 (c) In the event a person included by the commissioner on the list to
4 be developed and published in accordance with paragraph (b) of this
5 subdivision, demonstrates to the commissioner that such person has
6 permanently ceased contracting to build a border wall, or obtains a
7 court order from a supreme court that such person shall be removed from
8 such list due to the court's determination that such person has perma-
9 nently ceased contracting to build a border wall, then the commissioner
10 shall remove such person from such list so developed and published in
11 accordance with paragraph (b) of this subdivision.

12 (d) Prior to the final development and publication of the list
13 required to be produced pursuant to paragraph (b) of this subdivision,
14 the commissioner shall provide written notice of all persons to be
15 included on the list, of the commissioner's intent to so include such
16 person on such list, together with written notice informing such person
17 that inclusion on such list would make such person a non-responsive
18 bidder or offerer, and that such person may apply to the commissioner,
19 or to a supreme court, to be removed from such list pursuant to the
20 requirements of paragraph (c) of this subdivision.

21 (e) Notwithstanding paragraph (a) of this subdivision, a state agency
22 may permit a person contracting to build a border wall to be deemed a
23 responsive bidder or offerer, on a case-by-case basis with a state agen-
24 cy if:

25 (i) the contracting to build a border wall occurred prior to the
26 effective date of this section, such activities have not been expanded
27 or renewed after the effective date of this section, and the person has
28 adopted, publicized, and is implementing a formal plan to cease
29 contracting to build a border wall and to refrain from engaging in any
30 new contracting to build a border wall; or

31 (ii) the state agency makes a formal, written determination that the
32 commodities or services offered by the person named on this list
33 produced by the commissioner pursuant to paragraph (b) of this subdivi-
34 sion, are necessary for the state agency to perform its functions and
35 that, absent such an exemption, the state agency would be unable to
36 obtain the commodities or services for which the contract is offered.

37 3. (a) A state agency shall require all persons that submit a bid or
38 offer in response to a notice of procurement, or that propose to renew
39 an existing procurement contract, or that propose to assume the respon-
40 sibility of a contractor pursuant to a procurement contract, or other-
41 wise propose to enter into a contract with a state agency with respect
42 to a contract for commodities, services, construction, or contracts
43 entered into pursuant to section eight of the public buildings law or
44 section thirty-eight of the highway law, to certify, at the time the bid
45 is submitted, or the contract is renewed or assigned, that the person or
46 the assignee is not identified on the list developed and published
47 pursuant to paragraph (b) of subdivision two of this section, and all
48 state agencies shall include such certification information in the
49 procurement record.

50 (b) All persons that submit a bid or offer in response to a notice of
51 procurement, or that propose to renew an existing procurement contract
52 with a state agency, or that propose to assume the responsibility of a
53 contractor pursuant to a procurement contract with a state agency, or
54 otherwise propose to enter into a contract with a state agency with
55 respect to a contract for commodities, services, construction, or
56 contracts entered into pursuant to section eight of the public buildings

1 law or section thirty-eight of the highway law, shall certify that they
2 have not contracted to build a border wall, and that they are not iden-
3 tified on the list developed and published pursuant to paragraph (b) of
4 subdivision two of this section.

5 4. Upon receiving information that a person who has made the certif-
6 ication required by subdivision three of this section, is, in fact, in
7 violation of such certification, the state agency shall review such
8 information, notify such person and offer them an opportunity to respond
9 to such information, within thirty days of such notice, and if such
10 person fails to demonstrate that they have ceased contracting to build a
11 border wall, then, the state agency shall take such action as may be
12 appropriate and provided for by law, rule or contract, including, but
13 not limited to, notifying the commissioner of such person's contracts to
14 build a border wall, imposing sanctions, seeking compliance, recovering
15 damages, and/or declaring such person in default.

16 5. On or before December fifteenth, two thousand twenty-one, and every
17 year thereafter, the commissioner shall issue a report to the governor,
18 the comptroller, the temporary president of the senate, and the speaker
19 of the assembly, on all the actions taken, and all determinations made,
20 by the commissioner pursuant to this section, and any and all rules or
21 regulations adopted.

22 § 2. The retirement and social security law is amended by adding a new
23 section 423-d to read as follows:

24 § 423-d. Prohibition on investment of certain public funds in persons
25 that contract to build a border wall. 1. As used in this section, the
26 following definitions shall apply:

27 (a) "contracts to build a border wall" shall mean entering into a
28 contract with the federal government for the purposes of building a wall
29 along the border of Mexico and the United States of America.

30 (b) "person" shall mean any natural person, corporation, limited
31 liability company, unincorporated association or any other nongovern-
32 mental entity, organization, or group, or any successor, subunit,
33 parent, or subsidiary of the same.

34 2. (a) Any person that is identified on the list created pursuant to
35 paragraph (b) of subdivision two of section one hundred sixty-five-b of
36 the state finance law, as being a person that contracts to build a
37 border wall, shall not be eligible to receive investment of any moneys
38 or assets of the common retirement fund in any stocks, securities or
39 other obligations of such person so identified on such list developed
40 and published by the commissioner of general services.

41 (b) Notwithstanding any provision of law to the contrary, no assets of
42 any pension or annuity fund under the jurisdiction of the comptroller,
43 shall further be invested in any bank or financial institution which
44 directly, or through a parent or subsidiary contracts to build a border
45 wall and no such assets shall otherwise be invested in the stocks, secu-
46 rities or other obligations of any person which directly, or through a
47 parent or subsidiary entity, contracts to build a border wall.

48 3. The comptroller shall take appropriate action to sell, redeem,
49 divest or withdraw any investment held in violation of the provisions of
50 this section. This section shall not be construed to require the prema-
51 ture or otherwise imprudent sale, redemption, divestment or withdrawal
52 of an investment, but such sale, divestment or withdrawal shall be
53 completed no later than three years following the effective date of this
54 section.

55 4. On or before December fifteenth, two thousand twenty-one, and every
56 year thereafter, the comptroller shall issue a report to the governor,

1 the commissioner of general services, the temporary president of the
2 senate, and the speaker of the assembly, on all the actions taken, and
3 all determinations made, by the comptroller, pursuant to this section,
4 and any and all rules or regulations adopted.

5 § 3. This act shall take effect immediately and shall expire and be
6 deemed repealed January 20, 2025.