

STATE OF NEW YORK

8446--A

IN SENATE

March 1, 2022

Introduced by Sens. REICHLIN-MELNICK, MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, in relation to enacting the "stop Russian aggression act"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "stop Russian aggression act".

3 § 2. The state finance law is amended by adding a new section 165-b to
4 read as follows:

5 § 165-b. Purchasing restrictions; persons doing business with or in
6 the Russian federation. 1. As used in this section, the following terms
7 shall have the following meanings:

8 (a) "Person" means:

9 (i) A natural person, corporation, company, limited liability company,
10 business, business association, partnership, society, trust, or any
11 other nongovernmental entity, organization, or group.

12 (ii) Any successor, subunit, parent entity, or subsidiary of, or any
13 entity under common ownership or control with, any entity described in
14 subparagraph (i) of this paragraph.

15 (b) "Doing business with or in the Russian federation" means engaging
16 in any activity or transaction for the purpose of financial or pecuniary
17 gain or profit with the Russian federation or persons based in or with
18 locations in the Russian federation or in territories controlled by the
19 Russian federation.

20 2. (a) A person that is identified on a list created pursuant to para-
21 graph (b) of this subdivision as a person that is doing business with or
22 in the Russian federation as described in subdivision one of this
23 section, shall not be deemed a responsive bidder or offeror pursuant to
24 section one hundred sixty-three of this article.

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

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1 (b) (i) Not later than one hundred twenty days after the effective
2 date of this section, the commissioner shall develop or contract to
3 develop, using credible information available to the public, including
4 but not limited to information provided by non-profit organizations,
5 research firms, international organizations and government entities, a
6 list of persons it determines is doing business with or in the Russian
7 federation as described in subdivision one of this section. If the
8 commissioner has contracted to develop the list, the list shall be
9 finally developed not later than one hundred twenty days after the
10 effective date of this section. Such list, when completed, shall be
11 posted on the website of the office of general services. A statement by
12 a person or representative of a person with apparent authority to make
13 such a statement, that it is doing business with or in the Russian
14 federation, shall be considered as evidence that a company is doing
15 business with or in the Russian federation. The commissioner may
16 exclude from the list persons who engage in activities or transactions
17 of nominal or negligible value.

18 (ii) The commissioner shall update the list every one hundred eighty
19 days.

20 (iii) Before finalizing an initial list pursuant to subparagraph (i)
21 of this paragraph or an updated list pursuant to subparagraph (ii) of
22 this paragraph, the commissioner shall do all of the following:

23 (1) Provide ninety days' written notice of the commissioner's intent
24 to include the person on the list. The notice shall inform the person
25 that inclusion on the list would make the person a non-responsive bidder
26 or offeror. The notice shall specify the business activities as
27 described in subdivision one of this section, and provide that such
28 person may apply to the commissioner, or to a supreme court, to be
29 removed from such list pursuant to the requirements of this paragraph,
30 if it ceases such activities;

31 (2) In the event a person included by the commissioner on the list to
32 be developed and published in accordance with this paragraph, demon-
33 strates to the commissioner or to a supreme court that such person is
34 not engaged in such business activities as described in subdivision one
35 of this section, or has ceased such business activities, the commission-
36 er shall remove such person from the list developed and published in
37 accordance with this paragraph; and

38 (3) The commissioner shall make a good faith effort to avoid including
39 a person on the list who is not doing business with or in the Russian
40 federation.

41 (c) Notwithstanding paragraphs (a) and (b) of this subdivision, a
42 state agency may permit a person doing business with or in the Russian
43 federation as described by subdivision one of this section to be deemed
44 a responsive bidder or offeror, on a case-by-case basis with a state
45 agency if:

46 (i) The business activities were made before the effective date of
47 this section, such activities have not been expanded or renewed after
48 the effective date of this section, and the person has adopted, publi-
49 cized, and is implementing a plan to cease such activities and to
50 refrain from engaging in any new business activities; or

51 (ii) The state agency makes a determination that the commodities or
52 services are necessary for the state agency to perform its functions and
53 that, absent such an exemption, the state agency would be unable to
54 obtain the commodities or services for which the contract is offered.
55 Such determination shall be entered into the procurement record.

1 3. (a) A state agency shall require a person that submits a bid or
2 offer in response to a notice of procurement, or that proposes to renew
3 an existing procurement contract with a state agency or proposes to
4 assume the responsibility of a contractor pursuant to a procurement
5 contract with a state agency or otherwise proposes to enter into a
6 contract with a state agency with respect to a contract for commodities,
7 services, construction, or contracts entered pursuant to section eight
8 of the public buildings law or section thirty-eight of the highway law,
9 to certify, at the time the bid is submitted or the contract is renewed
10 or assigned, that the person or the assignee is not identified on a list
11 created pursuant to paragraph (b) of subdivision two of this section. A
12 state agency shall include certification information in the procurement
13 record.

14 (b) A person that submits a bid or offer in response to a notice of
15 procurement or that proposes to renew an existing procurement contract
16 with a state agency or proposes to assume the responsibility of a
17 contractor pursuant to a procurement contract with a state agency, or
18 otherwise proposes to enter into a contract with a state agency with
19 respect to a contract for commodities, services, construction, or
20 contracts entered pursuant to section eight of the public buildings law
21 or section thirty-eight of the highway law shall not utilize, on the
22 contract with the state agency, any subcontractor that is identified on
23 a list created pursuant to paragraph (b) of subdivision two of this
24 section.

25 4. Upon receiving information that a person who has made the certif-
26 ication required by subdivision three of this section is in violation
27 thereof, the state agency shall review such information and offer the
28 person an opportunity to respond. If the person fails to demonstrate
29 that it has ceased its business activities which are in violation of
30 this act within ninety days after the determination of such violation,
31 then the state agency shall take such action as may be appropriate and
32 provided for by law, rule or contract, including, but not limited to,
33 imposing sanctions, seeking compliance, recovering damages or declaring
34 the contractor in default.

35 5. The commissioner shall report to the governor, the comptroller, the
36 temporary president of the senate and the speaker of the assembly annu-
37 ally on or before October first, on the status of this section and any
38 rules or regulations adopted thereunder.

39 § 3. This act shall take effect immediately.