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:

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

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

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

(a) "Person" means:

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

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

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

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

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

LBD14854-03-2

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

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

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

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

(2) In the event a person included by the commissioner on the list to be developed and published in accordance with this paragraph, demonstrates to the commissioner or to a supreme court that such person is not engaged in such business activities as described in subdivision one of this section, or has ceased such business activities, the commissioner shall remove such person from the list developed and published in accordance with this paragraph; and

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

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

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

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

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

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

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

5. The commissioner shall report to the governor, the comptroller, the temporary president of the senate and the speaker of the assembly annually on or before October first, on the status of this section and any rules or regulations adopted thereunder.

§ 3. This act shall take effect immediately.