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:

Section 1. The state finance law is amended by adding a new section 165-b to read as follows:

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

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

(b) "person" shall mean any natural person, corporation, limited liability company, unincorporated association or any other nongovernmental entity, organization, or group, or any successor, subunit, parent, or subsidiary of the same.

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

(b) Not later than ninety days after the effective date of this section, and then annually thereafter, the commissioner shall develop and publish, using credible information available to the public, a list 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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a border wall. Such list, when developed and published, shall be posted on the website of the office of general services.

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

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

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

(i) the contracting to build a border wall occurred prior to 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 formal plan to cease contracting to build a border wall and to refrain from engaging in any new contracting to build a border wall; or

(ii) the state agency makes a formal, written determination that the commodities or services offered by the person named on this list produced by the commissioner pursuant to paragraph (b) of this subdivision, 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.

3. (a) A state agency shall require all persons that submit a bid or offer in response to a notice of procurement, or that propose to renew an existing procurement contract, or that propose to assume the responsibility of a contractor pursuant to a procurement contract, or otherwise propose to enter into a contract with a state agency with respect to a contract for commodities, services, construction, or contracts entered into 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 the list developed and published pursuant to paragraph (b) of subdivision two of this section, and all state agencies shall include such certification information in the procurement record.

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

law or section thirty-eight of the highway law, shall certify that they have not contracted to build a border wall, and that they are not identified on the list developed and published 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 fact, in violation of such certification, the state agency shall review such information, notify such person and offer them an opportunity to respond to such information, within thirty days of such notice, and if such person fails to demonstrate that they have ceased contracting to build a border wall, 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, notifying the commissioner of such person's contracts to build a border wall, imposing sanctions, seeking compliance, recovering damages, and/or declaring such person in default.

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

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

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

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

(b) "person" shall mean any natural person, corporation, limited liability company, unincorporated association or any other nongovernmental entity, organization, or group, or any successor, subunit, parent, or subsidiary of the same.

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

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

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

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

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

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