

STATE OF NEW YORK

6525

2023-2024 Regular Sessions

IN ASSEMBLY

April 13, 2023

Introduced by M. of A. SMITH -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, the general municipal law and the public authorities law, in relation to Russia divestment

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. Russia divestment. 1. As used in this section, the following definitions shall apply:

(a) "Energy sector" of Russia means activities to develop petroleum or natural gas resources or nuclear power in Russia.

(b) "Financial institution" means:

(1) a banking organization as defined in subdivision eleven of section two of the banking law;

(2) a securities firm, including a broker or dealer;

(3) any insurance company, including any company, agent, broker, or underwriter, licensed or regulated by the department of financial services pursuant to the insurance law; and/or

(4) any other company that provides a financial product or service as defined in subdivision two of section one hundred four of the financial services law.

(c) "Investment" means a commitment or contribution of funds or property, a loan or other extension of credit; and the entry into or renewal of a contract for goods or services.

(d) "Russia" includes the government of Russia and any agency or instrumentality of Russia.

(e) "Person" means any of the following:

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

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

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1 (2) Any governmental entity or instrumentality of a government,
2 including a multilateral development institution, as defined in Section
3 1701(c)(3) of the International Financial Institutions Act (22 U.S.C.
4 262r(c)(3)).

5 (3) Any successor, subunit, parent entity, or subsidiary of, or any
6 entity under common ownership or control with, any entity described in
7 subparagraph one or two of this paragraph.

8 2. For purposes of this section, a person engages in investment activ-
9 ities in Russia if:

10 (a) The person provides goods or services of twenty million dollars or
11 more in the energy sector of Russia, including a person that provides
12 oil or liquefied natural gas tankers, or products used to construct or
13 maintain pipelines used to transport oil or liquefied natural gas, for
14 the energy sector of Russia; or

15 (b) The person is a financial institution that extends twenty million
16 dollars or more in credit to another person, for forty-five days or
17 more, if that person will use the credit to provide goods or services in
18 the energy sector in Russia and is identified on a list created pursuant
19 to paragraph (b) of subdivision three of this section as a person engag-
20 ing in investment activities in Russia as described in paragraph (a) of
21 this subdivision.

22 3. (a) A person that is identified on a list created pursuant to para-
23 graph (b) of this subdivision as a person engaging in investment activ-
24 ities in Russia as described in subdivision two of this section, shall
25 not be deemed a responsive bidder or offerer pursuant to section one
26 hundred sixty-three of this article.

27 (b) (1) Not later than one hundred twenty days after the effective
28 date of this section, the commissioner shall develop or contract to
29 develop, using credible information available to the public, a list of
30 persons it determines engage in investment activities in Russia as
31 described in subdivision two of this section. If the commissioner has
32 contracted to develop the list, the list shall be finally developed not
33 later than one hundred twenty days after this section shall take effect.
34 Such list, when completed, shall be posted on the website of the office
35 of general services.

36 (2) The commissioner shall update the list every one hundred eighty
37 days.

38 (3) Before finalizing an initial list pursuant to subparagraph one of
39 this paragraph or an updated list pursuant to subparagraph two of this
40 paragraph, the commissioner shall do all of the following before a
41 person is included on the list:

42 (A) Provide ninety days' written notice of the commissioner's intent
43 to include the person on the list. The notice shall inform the person
44 that inclusion on the list would make the person a non-responsive bidder
45 or offerer. The notice shall specify that the person, if it ceases its
46 engagement in investment activities in Russia as described in subdivi-
47 sion two of this section, may be removed from the list.

48 (B) The commissioner shall provide a person with an opportunity to
49 comment in writing that it is not engaged in investment activities in
50 Russia. If the person demonstrates to the commissioner that the person
51 is not engaged in investment activities in Russia as described in subdivi-
52 sion two of this section, the person shall not be included on the
53 list.

54 (4) The commissioner shall make every effort to avoid erroneously
55 including a person on the list.

1 (c) Notwithstanding paragraph (a) of this subdivision, a state agency
2 may permit a person engaged in investment activities in Russia as
3 described by subdivision two of this section to be deemed a responsive
4 bidder or offerer, on a case-by-case basis with a state agency if:

5 (1) The investment activities in Russia were made before the effective
6 date of this section, the investment activities in Russia have not been
7 expanded or renewed after the effective date of this section, and the
8 person has adopted, publicized, and is implementing a formal plan to
9 cease the investment activities in Russia and to refrain from engaging
10 in any new investments in Russia; or

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

16 4. (a) A state agency shall require a person that submits a bid or
17 offer in response to a notice of procurement, or that proposes to renew
18 an existing procurement contract with a state agency or proposes to
19 assume the responsibility of a contractor pursuant to a procurement
20 contract with a state agency or otherwise proposes to enter into a
21 contract with a state agency with respect to a contract for commodities,
22 services, construction, or contracts entered pursuant to section seven
23 of the New York state printing and public documents law, section eight
24 of the public buildings law, or section thirty-eight of the highway law,
25 to certify, at the time the bid is submitted or the contract is renewed
26 or assigned, that the person or the assignee is not identified on a list
27 created pursuant to paragraph (b) of subdivision three of this section.
28 A state agency shall include certification information in the procure-
29 ment record.

30 (b) A person that submits a bid or offer in response to a notice of
31 procurement or that proposes to renew an existing procurement contract
32 with a state agency or proposes to assume the responsibility of a
33 contractor pursuant to a procurement contract with a state agency, or
34 otherwise proposes to enter into a contract with a state agency with
35 respect to a contract for commodities, services, construction, or
36 contracts entered pursuant to section seven of the New York state print-
37 ing and public documents law, section eight of the public buildings law,
38 or section thirty-eight of the highway law shall not utilize, on the
39 contract with the state agency, any subcontractor that is identified on
40 a list created pursuant to paragraph (b) of subdivision three of this
41 section.

42 5. Upon receiving information that a person who has made the certif-
43 ication required by subdivision four of this section is in violation
44 thereof, the state agency shall review such information and offer the
45 person an opportunity to respond. If the person fails to demonstrate
46 that is has ceased its engagement in the investment which is in
47 violation of this section within ninety days after the determination of
48 such violation, then the state agency shall take such action as may be
49 appropriate and provided for by law, rule or contract, including, but
50 not limited to, imposing sanctions, seeking compliance, recovering
51 damages or declaring the contractor in default.

52 § 2. The general municipal law is amended by adding a new section
53 103-h to read as follows:

54 § 103-h. Russian energy sector divestment. 1. As used in this section:

1 a. "Energy sector" shall have the same meaning as defined in paragraph
2 (a) of subdivision one of section one hundred sixty-five-b of the state
3 finance law.

4 b. "Financial institution" shall have the same meaning as defined in
5 paragraph (b) of subdivision one of section one hundred sixty-five-b of
6 the state finance law.

7 c. "Investment" shall have the same meaning as defined in paragraph
8 (c) of subdivision one of section one hundred sixty-five-b of the state
9 finance law.

10 d. "Russia" shall have the same meaning as defined in paragraph (d) of
11 subdivision one of section one hundred sixty-five-b of the state finance
12 law.

13 e. "Person" shall have the same meaning as defined in paragraph (e) of
14 subdivision one of section one hundred sixty-five-b of the state finance
15 law.

16 2. For purposes of this section, a person engages in investment activ-
17 ities in Russia if:

18 a. The person provides goods or services of twenty million dollars or
19 more in the energy sector of Russia, including a person that provides
20 oil or liquefied natural gas tankers, or products used to construct or
21 maintain pipelines used to transport oil or liquefied natural gas, for
22 the energy sector of Russia; or

23 b. The person is a financial institution that extends twenty million
24 dollars or more in credit to another person, for forty-five days or
25 more, if that person will use the credit to provide goods or services in
26 the energy sector in Russia.

27 3. A person that is identified on a list created pursuant to paragraph
28 (b) of subdivision three of section one hundred sixty-five-b of the
29 state finance law as a person engaging in investment activities in
30 Russia as described in subdivision two of this section, shall not be
31 deemed a responsible bidder or offerer pursuant to section one hundred
32 three of this article.

33 4. Every bid or proposal hereafter made to a political subdivision of
34 the state or any public department, agency or official thereof where
35 competitive bidding is required by statute, rule, regulation or local
36 law, for work or services performed or to be performed or goods sold or
37 to be sold, shall contain the following statement subscribed by the
38 bidder and affirmed by such bidder as true under the penalties of perju-
39 ry:

40 a. "By submission of this bid, each bidder and each person signing on
41 behalf of any bidder certifies, and in the case of a joint bid each
42 party thereto certifies as to its own organization, under penalty of
43 perjury, that to the best of its knowledge and belief that each bidder
44 is not on the list created pursuant to paragraph (b) of subdivision 3 of
45 section 165-b of the state finance law."

46 b. Notwithstanding paragraph a of this subdivision, the statement of
47 non-investment in the Russian energy sector may be submitted electron-
48 ically in accordance with the provisions of subdivision one of section
49 one hundred three of this article.

50 c. A bid shall not be considered for award nor shall any award be made
51 where the condition set forth in paragraph a of this subdivision has not
52 been complied with; provided, however, that if in any case the bidder
53 cannot make the foregoing certification, the bidder shall so state and
54 shall furnish with the bid a signed statement which sets forth in detail
55 the reasons therefor. A political subdivision may award a bid to a

1 bidder who cannot make the certification pursuant to paragraph a of this
2 subdivision on a case-by-case basis if:

3 (1) The investment activities in Russia were made before the effective
4 date of this section, the investment activities in Russia have not been
5 expanded or renewed after the effective date of this section, and the
6 person has adopted, publicized, and is implementing a formal plan to
7 cease the investment activities in Russia and to refrain from engaging
8 in any new investments in Russia; or

9 (2) The political subdivision makes a determination that the goods or
10 services are necessary for the political subdivision to perform its
11 functions and that, absent such an exemption, the political subdivision
12 would be unable to obtain the goods or services for which the contract
13 is offered. Such determination shall be made in writing and shall be a
14 public document.

15 § 3. The public authorities law is amended by adding a new section
16 2879-d to read as follows:

17 § 2879-d. Russian energy sector divestment. 1. As used in this
18 section:

19 a. "Energy sector" shall have the same meaning as defined in paragraph
20 (a) of subdivision one of section one hundred sixty-five-b of the state
21 finance law.

22 b. "Financial institution" shall have the same meaning as defined in
23 paragraph (b) of subdivision one of section one hundred sixty-five-b of
24 the state finance law.

25 c. "Investment" shall have the same meaning as defined in paragraph
26 (c) of subdivision one of section one hundred sixty-five-b of the state
27 finance law.

28 d. "Russia" shall have the same meaning as defined in paragraph (d) of
29 subdivision one of section one hundred sixty-five-b of the state finance
30 law.

31 e. "Person" shall have the same meaning as defined in paragraph (e) of
32 subdivision one of section one hundred sixty-five-b of the state finance
33 law.

34 2. For purposes of this section, a person engages in investment activ-
35 ities in Russia if:

36 a. The person provides goods or services of twenty million dollars or
37 more in the energy sector of Russia, including a person that provides
38 oil or liquefied natural gas tankers, or products used to construct or
39 maintain pipelines used to transport oil or liquefied natural gas, for
40 the energy sector of Russia; or

41 b. The person is a financial institution that extends twenty million
42 dollars or more in credit to another person, for forty-five days or
43 more, if that person will use the credit to provide goods or services in
44 the energy sector in Russia.

45 3. Notwithstanding any other provision of this chapter or any other
46 law to the contrary, no state or local public authority or an interstate
47 or international authority, or subsidiary thereof, shall enter into any
48 contract for work or services performed or to be performed or goods sold
49 or to be sold, with a person that is identified on a list created pursu-
50 ant to paragraph (b) of subdivision three of section one hundred sixty-
51 five-b of the state finance law as a person engaging in investment
52 activities in Russia as described in subdivision two of this section.

53 4. Notwithstanding any other provision of this chapter or any other
54 law to the contrary, every contract entered into with a state or local
55 public authority or an interstate or international authority for work or
56 services performed or to be performed or goods sold or to be sold, shall

1 contain the following statement subscribed by and affirmed by the person
2 entering into the contract as true under the penalties of perjury:

3 a. "By signing this contract, each person and each person signing on
4 behalf of any other party certifies, and in the case of a joint bid or
5 partnership each party thereto certifies as to its own organization,
6 under penalty of perjury, that to the best of its knowledge and belief
7 that each person is not on the list created pursuant to paragraph (b) of
8 subdivision 3 of section 165-b of the state finance law."

9 b. Notwithstanding paragraph a of this subdivision, the statement of
10 non-investment in the Russian energy sector may be submitted electron-
11 ically.

12 c. A contract shall not be considered nor shall any contract be
13 entered into where the condition set forth in paragraph a of this subdi-
14 vision has not been complied with; provided, however, that if in any
15 case the person cannot make the foregoing certification, the person
16 shall so state and shall furnish with the contract a signed statement
17 which sets forth in detail the reasons therefor. A public authority may
18 award or enter into a contract with a person who cannot make the certif-
19 ication pursuant to paragraph a of this subdivision on a case-by-case
20 basis if:

21 (1) The investment activities in Russia were made before the effective
22 date of this section, the investment activities in Russia have not been
23 expanded or renewed after the effective date of this section, and the
24 person has adopted, publicized, and is implementing a formal plan to
25 cease the investment activities in Russia and to refrain from engaging
26 in any new investments in Russia; or

27 (2) The public authority makes a determination that the goods or
28 services are necessary for the public authority to perform its functions
29 and that, absent such an exemption, the public authority would be unable
30 to obtain the goods or services for which the contract is offered. Such
31 determination shall be made in writing and shall be a public document.

32 § 4. This act shall take effect immediately.