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

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

2. For purposes of this section, a person engages in investment activities in Russia if:

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

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

3. (a) A person that is identified on a list created pursuant to paragraph (b) of this subdivision as a person engaging in investment activities in Russia as described in subdivision two of this section, shall not be deemed a responsive bidder or offerer pursuant to section one hundred sixty-three of this article.

(b) (1) 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, a list of persons it determines engage in investment activities in Russia as described in subdivision two 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 this section shall take effect. Such list, when completed, shall be posted on the website of the office of general services.

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

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

(A) 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 offerer. The notice shall specify that the person, if it ceases its engagement in investment activities in Russia as described in subdivision two of this section, may be removed from the list.

(B) The commissioner shall provide a person with an opportunity to comment in writing that it is not engaged in investment activities in Russia. If the person demonstrates to the commissioner that the person is not engaged in investment activities in Russia as described in subdivision two of this section, the person shall not be included on the list.

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

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

(1) The investment activities in Russia were made before the effective date of this section, the investment activities in Russia 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 the investment activities in Russia and to refrain from engaging in any new investments in Russia; or

(2) 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.

4. (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 seven of the New York state printing and public documents law, 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 three 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 seven of the New York state printing and public documents law, 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 three of this section.

5. Upon receiving information that a person who has made the certification required by subdivision four 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 is has ceased its engagement in the investment which is in violation of this section 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.

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

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

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

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

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

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

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

2. For purposes of this section, a person engages in investment activities in Russia if:

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

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

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

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

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

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

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

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

(1) The investment activities in Russia were made before the effective date of this section, the investment activities in Russia 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 the investment activities in Russia and to refrain from engaging in any new investments in Russia; or

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

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

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

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

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

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

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

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

2. For purposes of this section, a person engages in investment activities in Russia if:

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

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

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

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

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

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

b. Notwithstanding paragraph a of this subdivision, the statement of non-investment in the Russian energy sector may be submitted electronically.

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

(1) The investment activities in Russia were made before the effective date of this section, the investment activities in Russia 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 the investment activities in Russia and to refrain from engaging in any new investments in Russia; or

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

§ 4. This act shall take effect immediately.