

STATE OF NEW YORK

81

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. SAYEGH, PAULIN, THIELE, DeSTEFANO, MIKULIN,
PALMESANO -- read once and referred to the Committee on Governmental
Operations

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 Assem-
bly, 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

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

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1 section, shall not be deemed a responsive bidder or offeror pursuant to
2 section one hundred sixty-three of this article.

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

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

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

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

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

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

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

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

53 (ii) The state agency makes a determination that the commodities or
54 services are necessary for the state agency to perform its functions and
55 that, absent such an exemption, the state agency would be unable to

1 obtain the commodities or services for which the contract is offered.
2 Such determination shall be entered into the procurement record.

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

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

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

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

41 § 3. This act shall take effect immediately.