STATE OF NEW YORK

9364--A

IN SENATE

May 14, 2024

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law and the general municipal law, in relation to prohibiting procurement of certain technology that poses security threats

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 163-e to read as follows:

§ 163-e. Restriction on purchasing certain technology which poses a security threat. 1. (a) Notwithstanding any inconsistent provision of law, the state and any department, bureau, board, commission, authority, and any other agency or instrumentality of the state shall not enter into or renew any contract or agreement to procure information and communications technology, including hardware, systems, devices, software, or services that include embedded or incidental information technology, which are prohibited from federal procurement pursuant to 41 USC 4713.

(b) The term "information and communications technology" means:

(i) information technology, as defined in section 11101 of title 40;

(ii) information systems, as defined in 44 U.S.C. 3502; and

(iii) telecommunications equipment and telecommunications services, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(c) The term "information and communications technology" shall not include automated-decision making systems.

2. Notwithstanding any inconsistent provision of law, the state and any department, bureau, board, commission, authority, or any other agency or instrumentality of the state shall not enter into or renew any contract or agreement to procure any electronic parts, products, or services, or enter into a contract, or extend or renew a contract, with an entity to procure or obtain electronic parts or products that use any

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

LBD14405-05-4

electronic parts or products that include products, from any entity prohibited from federal contracting (or any subsidiary, affiliates, or successors of such entity) as set forth in Pub. L. 117-263, div. E, title LIX, § 5949; or any entity (or any subsidiary, affiliates, or successors of such entity) designated as prohibited from federal contracting pursuant to Pub. L. 115-232, div. A, title VIII, § 889; or from any entity (or any subsidiary, affiliates, or successors of such entity) determined to be a threat to national security by DODIG-2019-106.

3. The commissioner of homeland security and emergency services, the adjutant general, the chief information officer, the chief cyber officer, the chief technology officer of the city of New York and any federal agency authorized under 41 USC 4713, may provide a waiver from this section if:

(a) any such entity determines the waiver is in the critical state or national security interests; and

(b) no compliant product or service is available to be procured as, and when, needed at United States market prices or a price that is not considered prohibitively expensive; and

(c) such waiver could not reasonably be expected to compromise the critical state or national security interests.

4. Nothing in this section shall be construed:

(a) to require any covered products or services resident in equipment, systems, or services as of the day before the effective date of this section to be removed or replaced;

(b) to prohibit or limit the utilization of such covered products or services throughout the lifecycle of such existing equipment; or

(c) to require the recipient of a state contract, grant, loan, or loan guarantee to replace covered products or services resident in equipment, systems, or services before the effective date of this section.

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

§ 103-h. Restriction on purchasing certain technology which poses a security threat. 1. (a) Notwithstanding any inconsistent provision of law a political subdivision shall not enter into or renew any contract or agreement to procure information and communications technology, including hardware, systems, devices, software, or services that include embedded or incidental information technology, which are prohibited from federal procurement pursuant to 41 USC 4713.

(b) The term "information and communications technology" means:

(i) information technology, as defined in 40 U.S.C. 11101;

(ii) information systems, as defined in 44 U.S.C. 3502; and

(iii) telecommunications equipment and telecommunications services, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

2. Notwithstanding any inconsistent provision of law, a political subdivision or any district therein shall not enter into or renew any contract or agreement to procure any electronic parts, products, or services, or enter into a contract, or extend or renew a contract, with an entity to procure or obtain electronic parts or products that use any electronic parts or products that include products or services, in violation of the provisions as set forth in Pub. L. 117-263, div. E, title LIX, § 5949; or from any entity (or any subsidiary, affiliates, or successors of such entity) designated as prohibited from federal contracting pursuant to Pub. L. 115-232, div. A, title VIII, §889; or

from any entity (or any subsidiary, affiliates, or successors of such entity) determined to be a cybersecurity risk by DODIG-2019-106.

3. The commissioner of homeland security and emergency services, the adjutant general, the chief information officer, the chief cyber officer, the chief technology officer of the city of New York and any federal agency authorized under 41 U.S.C 4713, may provide a waiver from this section if:

(a) any such entity determines the waiver is in the critical state or national security interests; and

(b) no compliant product or service is available to be procured as, and when, needed at United States market prices or a price that is not considered prohibitively expensive; and

(c) such waiver could not reasonably be expected to compromise the critical national security interests of the United States.

4. Nothing in this section shall be construed:

(a) to require any covered products or services resident in equipment, systems, or services as of the day before the effective date of this section to be removed or replaced;

(b) to prohibit or limit the utilization of such covered products or services throughout the lifecycle of such existing equipment; or

(c) to require the recipient of a state contract, grant, loan, or loan guarantee to replace covered products or services resident in equipment, systems, or services before the effective date of this section.

§ 3. No later than the effective date of this act, the office of general services shall promulgate rules and regulations and issue guidance to all state agencies and local procurement authorities necessary, including providing updates on prohibited or excluded entities for procurement contracts in conformity with federal law, rules and regulations, no later than sixty days after any entity is prohibited or excluded.

§ 4. This act shall take effect five years after it shall have become a law. Effective immediately, the office of general services is authorized to promulgate rules and regulations and issue guidance to all state agencies and local procurement authorities necessary for the implementation of this act on its effective date, including providing updates on prohibited or excluded entities for procurement contracts in conformity with federal law, rules and regulations.