

STATE OF NEW YORK

9364--B

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 -- 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:

1 Section 1. The state finance law is amended by adding a new section
2 163-e to read as follows:

3 § 163-e. Restriction on purchasing certain technology which poses a
4 security threat. 1. (a) Notwithstanding any inconsistent provision of
5 law, the state and any department, bureau, board, commission, authority,
6 and any other agency or instrumentality of the state shall not enter
7 into or renew any contract or agreement to procure information and
8 communications technology, including hardware, systems, devices, soft-
9 ware, or services that include embedded or incidental information tech-
10 nology, which are prohibited from federal procurement pursuant to
11 section 889 of Public Law 115-232 of 2018.

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

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

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

15 (iii) telecommunications equipment and telecommunications services, as
16 those terms are defined in section 3 of the Communications Act of 1934
17 (47 U.S.C. 153).

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

20 2. The chief information officer shall, in consultation with the divi-
21 sion of homeland security and emergency services and the office of
22 general services, establish and update regularly a list of restricted
23 information and communications technology. Technology on this list shall

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

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1 not be procured by any state agency, state or local authority, or political
2 subdivision unless a waiver is issued pursuant to subdivision
3 three of this section or the chief information officer determines that
4 the technology shall only be restricted in limited circumstances.

5 The list shall:

6 (a) contain information and communications technologies that pose a
7 security risk to the state of New York or its political subdivisions. In
8 determining whether information and communications technology poses such
9 a risk, the chief information officer shall consult relevant federal
10 sources, including the department of defense inspector general report
11 no. DODIG-2019-106, as well as any other source that shall be determined
12 to be relevant;

13 (b) describe the scope of each restriction, such as whether it is
14 generally prohibited or prohibited in certain circumstances or from
15 certain entities;

16 (c) include an explanation as to why items were included on the list;
17 and

18 (d) be published online and communicated to all relevant procurement
19 officers in all state agencies, state authorities, and political subdi-
20 visions.

21 3. The commissioner of homeland security and emergency services, the
22 commissioner of the office of general services, the adjutant general,
23 the chief information officer, the chief cyber officer, the chief tech-
24 nology officer of the city of New York and any federal agency authorized
25 under section 889 of Public Law 115-232 of 2018, may provide a waiver
26 from this section if:

27 (a) any such entity determines the waiver is in the interests of the
28 state or political subdivision;

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

32 (c) such waiver could not reasonably be expected to compromise the
33 security or integrity of a computer network operated by an instrumental-
34 ity of the state.

35 4. Nothing in this section shall be construed:

36 (a) to require any information and communications technology resident
37 in equipment, systems, or services as of the day before the effective
38 date of this section to be removed or replaced;

39 (b) to prohibit or limit the utilization of such information and
40 communications technology throughout the lifecycle of such existing
41 equipment; or

42 (c) to require the recipient of a state contract, grant, loan, or loan
43 guarantee to replace information and communications technology resident
44 in equipment, systems, or services before the effective date of this
45 section.

46 § 2. The general municipal law is amended by adding a new section
47 103-h to read as follows:

48 § 103-h. Restriction on purchasing certain technology which poses a
49 security threat. 1. (a) Notwithstanding any inconsistent provision of
50 law a political subdivision shall not enter into or renew any contract
51 or agreement to procure information and communications technology,
52 including hardware, systems, devices, software, or services that include
53 embedded or incidental information technology, which are prohibited from
54 federal procurement pursuant to section 889 of Public Law 115-232 of
55 2018, or which are included on the list created pursuant to subdivision
56 two of section one hundred sixty-three-e of the state finance law.

1 (b) The term "information and communications technology" means:
2 (i) information technology, as defined in 40 U.S.C. 11101;
3 (ii) information systems, as defined in 44 U.S.C. 3502; and
4 (iii) telecommunications equipment and telecommunications services, as
5 those terms are defined in section 3 of the Communications Act of 1934
6 (47 U.S.C. 153).

7 2. The commissioner of homeland security and emergency services, the
8 commissioner of the office of general services, the adjutant general,
9 the chief information officer, the chief cyber officer, the chief tech-
10 nology officer of the city of New York and any federal agency authorized
11 under section 889 of Public Law 115-232 of 2018, may provide a waiver
12 from this section if:

13 (a) any such entity determines the waiver is in the interest of the
14 political subdivision;

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

18 (c) such waiver could not reasonably be expected to compromise the
19 security or integrity of a computer network operated by an instrumental-
20 ity of the state.

21 4. Nothing in this section shall be construed:

22 (a) to require any information and communications technology resident
23 in equipment, systems, or services as of the day before the effective
24 date of this section to be removed or replaced;

25 (b) to prohibit or limit the utilization of such information and
26 communications technology throughout the lifecycle of such existing
27 equipment; or

28 (c) to require the recipient of a state contract, grant, loan, or loan
29 guarantee to replace information and communications technology resident
30 in equipment, systems, or services before the effective date of this
31 section.

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

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