

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:

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 41 USC
11 4713.

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. Notwithstanding any inconsistent provision of law, the state and
21 any department, bureau, board, commission, authority, or any other agen-
22 cy or instrumentality of the state shall not enter into or renew any
23 contract or agreement to procure any electronic parts, products, or
24 services, or enter into a contract, or extend or renew a contract, with
25 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

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

10 3. The commissioner of homeland security and emergency services, the
11 adjutant general, the chief information officer, the chief cyber offi-
12 cer, the chief technology officer of the city of New York and any feder-
13 al agency authorized under 41 USC 4713, may provide a waiver from this
14 section if:

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

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

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

22 4. Nothing in this section shall be construed:

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

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

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

31 § 2. The general municipal law is amended by adding a new section
32 103-h to read as follows:

33 § 103-h. Restriction on purchasing certain technology which poses a
34 security threat. 1. (a) Notwithstanding any inconsistent provision of
35 law a political subdivision shall not enter into or renew any contract
36 or agreement to procure information and communications technology,
37 including hardware, systems, devices, software, or services that include
38 embedded or incidental information technology, which are prohibited from
39 federal procurement pursuant to 41 USC 4713.

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

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

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

43 (iii) telecommunications equipment and telecommunications services, as
44 those terms are defined in section 3 of the Communications Act of 1934
45 (47 U.S.C. 153).

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

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

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

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

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

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

15 4. Nothing in this section shall be construed:

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

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

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

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

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