

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 682 (Delegate Rosenberg)
Health and Government Operations

Procurement - Prohibited Russian Entities

This bill bars specified “prohibited Russian entities” from bidding on, submitting a proposal for, or entering into or renewing a contract with the State or other specified public bodies. The Board of Public Works (BPW) must develop and maintain a list of prohibited Russian entities under specified federal laws. The bill includes penalties for submitting false certifications, and it preempts any local laws involving procurement with a prohibited Russian entity. Provisions of the bill are severable. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: No material effect on State procurement costs. State agencies can implement the bill with existing budgeted resources. No material effect on revenues.

Local Effect: The bill does not materially affect local governmental operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The public bodies affected by the bill are (1) the State; (2) a county, municipal corporation, or other political subdivision; (3) a public instrumentality; and (4) any governmental unit authorized to award a contract.

“Prohibited Russian Entities”

“Prohibited Russian entities” are persons who are sanctioned under specified federal laws, and they include the government of the Russian Federation or an agency or instrumentality of the Russian Federation. In developing the list of prohibited Russian entities (which must be done by December 31, 2019), BPW must provide each person it identifies with the opportunity to certify in writing that the person is not a prohibited Russian entity. BPW must not include any person on the list if the person successfully demonstrates that they are not a prohibited Russian entity, and BPW must remove any person from the list when they are no longer a prohibited entity. The list must be updated every 180 days and be published on the Internet.

Enforcement

Beginning January 1, 2020, a public body must require all bidders or offerors to certify at the time of submission that the bidder or offeror is not on the list and is not engaging in activities that would qualify it as a prohibited Russian entity. If a public body, using credible information, determines that a person has submitted a false certification, the public body must give the person an opportunity to demonstrate in writing that the person is not a prohibited Russian entity.

If a person fails to do so within 90 days, the public body must refer specified information to the Attorney General, who may institute an action against the person. Any action brought by the Attorney General must be made within three years of the certification. If a court finds that the person made a false certification, the person must pay specified costs incurred by the public body and the Attorney General, and the court may impose a civil penalty that is the greater of \$1.0 million or twice the value of the contract. The person is subject to additional penalties and sanctions specified by the bill. The bill does not create or authorize a private right of action.

Current Law: State procurement law does not address procurement by Russian entities. However, Chapters 446 and 447 of 2012 include similar provisions related to persons engaged in investment activities in Iran. Specifically, Chapters 446 and 447 prohibit a person who is identified as engaging in investment activities in Iran from participating in procurement with a public body in the State. They require BPW to develop and regularly update a list of persons that engage in investment activities in Iran. As of January 1, 2013, a public body in the State must require persons engaging in procurement to certify that they are not engaged in investment activities in Iran. Persons who falsely certify to a public body that they are not engaged in investment activities in Iran are subject to civil action by the State within three years of the false certification. If the action is successful, the person is ineligible to bid on a public contract for three years and is subject to civil fines and other penalties.

Chapters 446 and 447 remain in effect until (1) the President of the United States or the U.S. Congress declares that Iran is no longer seeking nuclear weapons and no longer supports international terrorism or (2) federal law no longer authorizes states to adopt and enforce provisions of the type authorized by Chapters 446 and 447.

Engaging in investment activities in Iran consists of:

- providing goods or services of at least \$20.0 million in the energy sector of Iran; or
- for financial institutions, extending credit of at least \$20.0 million to another person for at least 45 days if the person is on the BPW list and will use the credit to provide goods or services in the energy sector of Iran.

Chapters 446 and 447 require BPW to adopt regulations that change the above dollar amounts and/or parameters in response to changes to the federal Act or other enacted federal laws that regulate investment activities in Iran.

BPW must use credible information available to the public to develop the list of persons engaged in investment activities in Iran; the list must be updated every 180 days. Ninety days before adding a person to the list, BPW must provide notice to the person of its intention to add the person to the list and that inclusion on the list prohibits the person from contracting with public bodies in the State. During the 90-day period, the person may provide written documentation demonstrating that the person is not engaged in investment activities in Iran. BPW must make every effort to avoid erroneously including a person on the list and must publish the list on the Internet.

Certification by a person to a State or local governmental procurement unit that the person is not on the BPW list and is not engaged in investment activities in Iran must be made at the time a bid or proposal is submitted or a contract is renewed.

Penalties for falsely certifying that a person is not engaged in investment activities in Iran include:

- a civil penalty equal to the greater of \$1.0 million or twice the amount of the contract for which the false certification was made; and
- ineligibility to bid on a contract for three years.

In addition, any existing contracts may be terminated, and the person is responsible for any reasonable costs and fees incurred by the Attorney General in bringing the action and any costs incurred by the public body for the investigation that led to the finding of false certification. A procurement contract may not be awarded to a person that submits a false certification.

Background: The Office of Foreign Assets Control within the U.S. Department of the Treasury administers and enforces economic and trade sanctions against foreign countries. It maintains a list of entities sanctioned under federal law, including Russian entities under the federal statutes specified in the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of General Services; Board of Public Works; U.S. Department of the Treasury; Department of Legislative Services

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