

SENATE BILL 2859

By Roberts

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 9 and Title 12, relative to procurement.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Procurement Protection Act."

SECTION 2. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following as a new section:

(a) As used in this section:

(1) "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exist for the purpose of making a profit;

(2) "Domicile" means the country in which a company is registered, where the company's affairs are primarily completed, or where the majority of ownership shares are held;

(3) "Federally banned corporation" means a company currently banned or at any point hereto banned from doing business in the United States by the federal government. Such bans include, but are not limited to, those resulting from actions taken by the following federal agencies or pursuant to the following acts:

(A) The federal communications commission, including, but not limited to, any equipment or service deemed to pose a threat to national security identified on the Covered List developed pursuant to 47 C.F.R. 1.50002, and published by the public safety and homeland security bureau of the federal communications commission pursuant to the federal Secure and Trust Communications Networks Act of 2019, 47 U.S.C. § 1601 et seq.;

(B) The United States commerce department;

(C) The United States cybersecurity and infrastructure security agency;

(D) The federal acquisition security council; and

(E) Section 889 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115-232);

(4) "Foreign adversary" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agent of or any other entity under significant control of such foreign country of concern, or any other entity deemed a foreign adversary by the governor in consultation with the department of safety and homeland security; and

(5) "Foreign adversary company" means a company owned or controlled, in whole or in part, by the government of a foreign adversary, by individuals acting in official government capacities of a foreign adversary, by a company domiciled in a foreign adversary, or by a company otherwise under control of a foreign adversary.

(b)

(1) Except as provided under subdivision (b)(4), the following entities are ineligible to, and shall not, bid on or submit a proposal for a contract with a state agency or political subdivision of this state for goods or services:

(A) A foreign adversary company;

(B) A federally banned corporation; or

(C) A company that offers to provide goods or services manufactured or produced by an entity described in subdivision (b)(1)(A) or (B).

(2) A company that submits a bid or proposal with respect to a contract with a state agency or political subdivision of this state for goods or services shall certify that the company is not ineligible to bid on the contract pursuant to subdivision (b)(1).

(3) If the department of general services determines that a company has submitted a false certification under subdivision (b)(2):

(A) The company is liable for a civil penalty in an amount that is equal to the greater of two hundred fifty thousand dollars (\$250,000) or twice the amount of the contract for which a bid or proposal was submitted;

(B) The state agency or political subdivision shall terminate the contract with the company; and

(C) The company is ineligible to, and shall not, bid on a state contract for sixty (60) months, regardless of whether the company becomes otherwise eligible to submit a bid.

(4) A state agency or political subdivision may enter into a contract for goods manufactured by a company that is ineligible under subdivision (b)(1) if:

(A) No other reasonable option for procuring the goods exists;

(B) The contract is pre-approved by the department of general services; and

(C) Not procuring the goods would pose a greater threat to this state or a political subdivision thereof than the threat associated with the goods themselves.

(c)

(1) Each bid or offer submitted for a contract with this state or a political subdivision of this state must include a disclosure of whether the bidder, offeror, or its corporate parents or subsidiaries, within the twenty-four-month period before submission of the bid or offer, had business operations that involved contracts with, or the provision of goods or services from or to, a foreign adversary or a foreign adversary company.

(2) A bid or offer that does not include the disclosure required by subdivision (c)(1) may be given a reasonable period after the bid or offer is submitted to cure non-disclosure. The public entity evaluating bids may consider the disclosure when evaluating the bid or offer or awarding the contract.

(3) The public entity that evaluates bids that receives a disclosure under subdivision (c)(1) shall provide such disclosures to the department of general services.

(d)

(1) No bid or offer may be submitted for a state contract or for any contract with a political subdivision of this state if the bidder, offeror, or any of its

corporate parents or subsidiaries, within the sixty (60) months before submission of the bid or offer, had business operations that involved contracts with or the provision of goods or services to a military entity of a foreign adversary, a foreign adversary company, a political party of a foreign adversary, or a federally banned corporation.

(2) A company submitting a bid or offer for a contract with this state or a political subdivision of this state must certify with the public entity accepting the bid that the bidder, offeror, or any of its corporate parents or subsidiaries, has not within the sixty (60) months before submission of the bid or offer, had business operations that involved contracts with or the provision of goods or services to a military entity of a foreign adversary, a foreign adversary company, a political party of a foreign adversary, or a federally banned corporation.

(3) The public entity that evaluates bids that receives a certification under subdivision (d)(2) shall provide such disclosures to the department of general services.

(4) If the department of general services determines that a company has submitted a false certification under subdivision (d)(2):

(A) The company is liable for a civil penalty in an amount that is equal to the greater of two hundred fifty thousand dollars (\$250,000) or twice the amount of the contract for which a bid or proposal was submitted;

(B) The state agency or political subdivision shall terminate the contract with the company; and

(C) The company is ineligible to, and shall not, bid on a state contract for sixty (60) months, regardless of whether the company becomes otherwise eligible to submit a bid.

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 4. This act takes effect July 1, 2024, the public welfare requiring it.