

SUMMARY OF FOREIGN ADVERSARY CONTRACTING PROHIBITION ACT LB 1300, SECTIONS 7-13, NEBRASKA LEGISLATURE (2024)

Legislative Intent:

The Foreign Adversary Contracting Prohibition Act was passed and signed by the Governor on April 16, 2024, pursuant to LB 1300, with an emergency clause attached for sections 7-13 for the Foreign Adversary Contracting Prohibition Act.

Purpose: The Legislature finds that dealing with commercial entities organized under the laws of a foreign adversary or with a principal place of business within a foreign adversary tend to carry increased political risk and threaten state security and the privacy of residents. In response to the risk, the Act prohibits public entities, including a political subdivision and any entity acting on behalf of the political subdivision, from entering into contracts with companies organized under the laws of or controlled by the government of a foreign adversary for technology related products or services for performance of the contract. The Act requires the political subdivision to obtain a certification from any company providing technology related products or services to certify they are not a scrutinized company, organized under the laws of, or controlled by a foreign adversary.

Under the bill, a scrutinized company shall not bid on, submit a proposal for, or enter into, directly or indirectly through a third party, any contract or contract renewal with any public entity for any technology-related public product or service, (See Section 10). No public entity shall enter into any contract or renewal that results in state or local government funds being transferred to a scrutinized company in connection with any technology related product or service in performance of the contract or to any company in connection with any technology related product or service that originates with a scrutinized company. (See Section 12(1)).

Certification – Not a Scrutinized Company

A public entity shall require a company that submits a bid or proposal or enters into a contract or renewal for any technology related product or service to certify that the company is not a scrutinized company and that the company will not subcontract with any scrutinized company for any aspect of performance of the contemplated contract and that any products or services to be provided do not originate with a scrutinized company. (See Section 11).

Definitions- Section 9

Under the Act, the following terms have the following meanings:

Company means: any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association that exists for the purpose of making a profit, including all wholly owned subsidiaries, majority owned subsidiaries, parent companies, or affiliates of any such entity or business association.

Foreign adversary means: a foreign adversary as determined pursuant to 15 CFR 7.4. Per 15 CFR 7.4 foreign adversaries include the People’s Republic of China, including the Hong Kong Special Administrative Region (China); Cuba, Iran, North Korea, Russia, and Maduro Regime.

Owned in whole or in part means: (a) For a publicly traded company, any share of ownership that entails the ability to direct or influence the operations of the company, the ability to appoint or discharge any board members, officers, or directors, or any other rights beyond those available to a retail investor holding an equivalent share of ownership; and (b) For a privately held company, any share of ownership.

Public entity means: the state or any department, agency, commission, or other body of state government, including publicly funded institutions of higher education, any political subdivision of the state, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any such public entity.

Scrutinized company means:

- (a) Any company organized under the laws of a foreign adversary or having its principal place of business within a foreign adversary, and any subsidiary of any such company; or
- (b) Any company owned in whole or in part or operated by the government of a foreign adversary, an entity controlled by the government of a foreign adversary, or any subsidiary or parent of any such company; or
- (c) Any company that sells to a public entity a final technology-related product or service that originates with a company described in (a) or (b) above, without incorporating that product or service into another final product or service.

Technology-related product or service means: a product or service used for information systems, surveillance, light detection and ranging, or communications. Although there are no definitions provided in the legislation, the city offers the following examples to aid companies as they prepare and submit the certification:

- a. For information systems, this would include technology related products and services used by an organization to collect, transfer, organize, and store city information or that works together to transform data into useful information. Such products or services could include a collection of hardware, software, data centers, servers, the internet, and other hardware devices.
- b. For surveillance, this would include products and services used to monitor an individual's digital and physical actions and communications. This could include facial recognitions software, security cameras, and wearable computing devices,
- c. For light detection and ranging, this would include products and services that utilize Lidar technology to measure large areas of terrain through 3D models.
- d. For communications, this would include products and services for the acquisition, storage, management, transmission, or reception of data or information by the City and could include equipment such as computers, cell phones, telephones, video conferencing equipment, satellite, fiber optics, radio, or any other electronic device enabling the transfer of text, audio, or video content.

EXCEPTION FOR GOODS: A public entity may enter into a contract with a scrutinized company for goods manufactured by a scrutinized company if: there is no other reasonable option for procuring such good and the contract is preapproved by the Nebraska Department of Administrative Services and not procuring such good would pose a greater threat to the state than the threat associated with the good itself OR if the purchasing entity is an electric supplier that is not out of compliance with the Critical Infrastructure Protection requirements issued by the North American Electric Reliability Corporation. (See Section 12(2)).

NULL AND VOID: Any contract entered into in violation of the Act shall be null and void. (See Section 13).

PENALTY: Any scrutinized company that bids on or contracts or renews a contract for any technology related product or service or that violates the certification provided pursuant to the Act shall be liable for a civil penalty up to \$250,000 or twice the amount of the contract bid, or the amount of any losses suffered by the public entity as a result of such violation, whichever amount is higher. The contractor shall also be ineligible to enter into any contract with any public entity for a period of five years. The Attorney General may bring an action in any court of competent jurisdiction against any person that violates the Act. (See Section 13).

NOTICE OF VIOLATION: If a public entity believes that a company has violated the certification process, they shall give the company notice of the alleged violation with 60 days to respond. After responding, the public entity has 60 days to make a final determination and if a violation has occurred may refer the matter to the Attorney General. A whistleblower provision allows any individual to report suspected violations to the Attorney General. (See Section 13(4)).

PROCESS: All bid proposals, contracts, and contract renewals need to have a [Certification Form](#) submitted by the contractor and attached to the contract and the Foreign Adversary Contracting Prohibition Act Certification contract clause should be included in all contracts and renewals. If the contractor indicates on the form they are not supplying technology related goods or services, the contractor will not need to resubmit another certification form for any subsequent renewals.