

House Engrossed

state contracts; foreign adversary; prohibition

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2436

AN ACT

AMENDING TITLE 41, CHAPTER 23, ARTICLE 3, ARIZONA REVISED STATUTES, BY
ADDING SECTION 41-2559.01; RELATING TO THE PROCUREMENT CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 41, chapter 23, article 3, Arizona Revised
3 Statutes, is amended by adding section 41-2559.01, to read:

4 41-2559.01. State contracts; covered company; certification
5 letter; civil penalty; foreign adversary;
6 disclosure penalties; definitions

7 A. A COVERED COMPANY MAY NOT BID ON, SUBMIT A PROPOSAL FOR OR ENTER
8 INTO A CONTRACT WITH A STATE AGENCY OR POLITICAL SUBDIVISION OF THIS STATE
9 FOR GOODS OR SERVICES. ALL COMPANIES THAT SUBMIT A BID OR PROPOSAL FOR A
10 STATE CONTRACT FOR GOODS OR SERVICES SHALL SUBMIT A CERTIFICATION LETTER
11 TO THE DEPARTMENT CERTIFYING THAT THE COMPANY IS NOT A COVERED COMPANY.

12 B. IF THE DEPARTMENT DETERMINES THAT A COMPANY HAS SUBMITTED A
13 CERTIFICATION LETTER THAT IS FALSE OR MISLEADING, ALL OF THE FOLLOWING
14 SHALL OCCUR:

15 1. THE COMPANY IS LIABLE FOR A CIVIL PENALTY OF \$250,000 OR TWICE
16 THE AMOUNT OF THE CONTRACT FOR WHICH THE BID OR PROPOSAL WAS SUBMITTED,
17 WHICHEVER IS GREATER.

18 2. THE STATE AGENCY OR THE DEPARTMENT SHALL TERMINATE THE CONTRACT
19 WITH THE COMPANY.

20 3. THE COMPANY MAY NOT BID ON ANY STATE CONTRACTS FOR AT LEAST
21 SIXTY MONTHS.

22 C. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A STATE AGENCY MAY
23 ENTER INTO A CONTRACT FOR GOODS MANUFACTURED BY A COVERED COMPANY IF ALL
24 OF THE FOLLOWING APPLY:

25 1. THERE ARE NO OTHER REASONABLE OPTIONS FOR THE PROCUREMENT OF THE
26 SPECIFIC GOOD.

27 2. THE CONTRACT IS PREAPPROVED BY THE DEPARTMENT.

28 3. NOT PROCURING THE SPECIFIC GOOD WOULD POSE A GREATER THREAT TO
29 THIS STATE THAN THE THREAT ASSOCIATED WITH THE MANUFACTURE OF THE GOOD BY
30 A COVERED COMPANY.

31 D. EACH BID OR OFFER SUBMITTED FOR A STATE CONTRACT SHALL INCLUDE A
32 DISCLOSURE STATING WHETHER, TWENTY-FOUR MONTHS BEFORE SUBMISSION OF A BID
33 OR OFFER, THE BIDDER OR THE OFFERER OR ANY SUBSIDIARIES OF THE BIDDER OR
34 OFFERER HAD ANY BUSINESS OPERATIONS INVOLVING CONTRACTS WITH OR SERVICES
35 FROM ANY OF THE FOLLOWING:

36 1. A FOREIGN ADVERSARY.

37 2. A STATE-OWNED ENTERPRISE OF A FOREIGN ADVERSARY.

38 3. A COMPANY DOMICILED WITHIN A FOREIGN ADVERSARY.

39 E. IF A BID OR OFFER SUBMITTED FOR A STATE CONTRACT DOES NOT
40 INCLUDE A DISCLOSURE PURSUANT TO SUBSECTION D OF THIS SECTION, THE BIDDER
41 OR OFFERER MAY BE GIVEN AN OPPORTUNITY AFTER THE BID OR OFFER IS SUBMITTED
42 TO SUBMIT THE DISCLOSURE. A PROCUREMENT OFFICER MAY CONSIDER THE
43 DISCLOSURE WHEN EVALUATING THE BID OR OFFER OR WHEN AWARDING THE CONTRACT.

1 F. EACH PROCUREMENT OFFICER SHALL PROVIDE THE STATE AGENCY WITH THE
2 NAME OF EACH ENTITY DISCLOSED IN THE DISCLOSURE SUBMITTED PURSUANT TO
3 SUBSECTION D OF THIS SECTION.

4 G. A BID OR OFFER MAY NOT BE SUBMITTED FOR A STATE CONTRACT OR FOR
5 A CONTRACT WITH A POLITICAL SUBDIVISION OF THIS STATE IF THE BIDDER, THE
6 OFFERER OR ANY SUBSIDIARIES OF THE BIDDER OR OFFERER HAS, AT LEAST SIXTY
7 MONTHS BEFORE SUBMISSION OF THE BID OR OFFER, HAD ANY BUSINESS OPERATIONS
8 INVOLVING CONTRACTS WITH OR SERVICES FROM ANY OF THE FOLLOWING:

- 9 1. A MILITARY ENTITY OF ANY FOREIGN ADVERSARY.
- 10 2. A POLITICAL PARTY OF A FOREIGN ADVERSARY.
- 11 3. A FEDERALLY BANNED CORPORATION.

12 H. IF THE DEPARTMENT DETERMINES THAT A COMPANY HAS VIOLATED
13 SUBSECTION G OF THIS SECTION, ALL OF THE FOLLOWING SHALL OCCUR:

14 1. THE COMPANY IS LIABLE FOR A CIVIL PENALTY OF \$250,000 OR TWICE
15 THE AMOUNT OF THE CONTRACT FOR WHICH THE BID OR PROPOSAL WAS SUBMITTED,
16 WHICHEVER IS GREATER.

17 2. THE STATE AGENCY OR THE DEPARTMENT SHALL TERMINATE THE CONTRACT
18 WITH THE COMPANY.

19 3. THE COMPANY MAY NOT BID ON ANY STATE CONTRACTS FOR AT LEAST
20 SIXTY MONTHS.

21 I. FOR THE PURPOSES OF THIS SECTION:

22 1. "COMPANY":

23 (a) MEANS ANY OF THE FOLLOWING THAT EXISTS FOR THE PURPOSE OF
24 MAKING A PROFIT:

- 25 (i) A SOLE PROPRIETORSHIP.
- 26 (ii) AN ORGANIZATION.
- 27 (iii) A CORPORATION.
- 28 (iv) AN ASSOCIATION.
- 29 (v) A PARTNERSHIP.
- 30 (vi) A JOINT VENTURE.
- 31 (vii) A LIMITED PARTNERSHIP.
- 32 (viii) A LIMITED LIABILITY PARTNERSHIP.
- 33 (ix) A LIMITED LIABILITY COMPANY.
- 34 (x) ANY OTHER ENTITY OR BUSINESS ASSOCIATION.

35 (b) INCLUDES ANY OF THE FOLLOWING:

- 36 (i) A WHOLLY OWNED SUBSIDIARY.
- 37 (ii) A MAJORITY OWNED SUBSIDIARY.
- 38 (iii) A PARENT COMPANY.
- 39 (iv) AN AFFILIATE OF ANY ENTITIES OR BUSINESS ASSOCIATIONS.

40 2. "COVERED COMPANY":

41 (a) MEANS ANY OF THE FOLLOWING:

- 42 (i) A STATE-OWNED ENTERPRISE OF A FOREIGN ADVERSARY.
- 43 (ii) A COMPANY DOMICILED WITHIN A FOREIGN ADVERSARY.
- 44 (iii) A FEDERALLY BANNED CORPORATION.
- 45 (iv) A COMPANY OF A FOREIGN ADVERSARY.

1 (b) INCLUDES A COMPANY OWNED OR CONTROLLED, IN WHOLE OR IN PART, BY
2 EITHER OF THE FOLLOWING:

3 (i) THE GOVERNMENT OF A FOREIGN ADVERSARY.

4 (ii) INDIVIDUALS ACTING IN OFFICIAL GOVERNMENT CAPACITIES OF A
5 FOREIGN ADVERSARY.

6 (c) INCLUDES ANY OTHER COMPANY THAT SELLS THE GOODS OR SERVICES OF
7 A COVERED COMPANY TO ANY STATE AGENCY OR POLITICAL SUBDIVISION OF THIS
8 STATE AS A THIRD-PARTY VENDOR.

9 3. "DOMICILE" MEANS ANY OF THE FOLLOWING:

10 (a) THE COUNTRY WHERE A COMPANY IS REGISTERED.

11 (b) THE COUNTRY WHERE THE COMPANY'S AFFAIRS ARE PRIMARILY
12 COMPLETED.

13 (c) THE COUNTRY WHERE THE MAJORITY OF OWNERSHIP SHARE IS HELD.

14 4. "FEDERALLY BANNED CORPORATION" INCLUDES COMPANIES BANNED BY ANY
15 OF THE FOLLOWING:

16 (a) THE FEDERAL COMMUNICATIONS COMMISSION.

17 (b) THE UNITED STATES DEPARTMENT OF COMMERCE.

18 (c) THE FEDERAL ACQUISITION SECURITY COUNCIL.

19 5. "FOREIGN ADVERSARY":

20 (a) MEANS ANY OF THE FOLLOWING:

21 (i) CHINA, INCLUDING THE HONG KONG SPECIAL ADMINISTRATION REGION.

22 (ii) CUBA.

23 (iii) IRAN.

24 (iv) NORTH KOREA.

25 (v) RUSSIA.

26 (vi) SAUDI ARABIA.

27 (vii) SYRIA.

28 (viii) VENEZUELA.

29 (b) INCLUDES ANY AGENT OR ANY OTHER ENTITY UNDER SIGNIFICANT
30 CONTROL OF SUCH FOREIGN ADVERSARY OR ANY OTHER ENTITY DEEMED BY THE
31 GOVERNOR.

32 Sec. 2. Short title

33 This act shall be known as the "Protection Procurement Act".