Government Contracts & International Trade Blog
The Latest Updates on Developments Affecting Government Contracts
Presented By SheppardMullin

Government Contracts, Investigations & International Trade Blog

June 16, 2011 by Sheppard Mullin

California and Florida Lead Trend of New State-Level Iran Sanctions

By Reid Whitten and Corey Phelps

On June 2, 2011, Florida Governor Rick Scott signed a new state law prohibiting Florida government entities from contracting with companies invested in Iran's petroleum energy sector. Florida's law, and a similar California law that went into effect on June 1, 2011, announce a coming trend of state laws targeting potential contractors that also deal with Iran. These two laws, and several others on the horizon, present pitfalls for unwary companies as well as unique opportunities for informed, well-advised businesses.

On July 1, 2010, President Obama signed the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") into law. CISADA targets companies invested in Iran's petroleum sector through provisions prohibiting the U.S. Government from contracting with such companies. CISADA also permits the states to enact similar prohibitions against state contracts with companies invested in the Iranian petroleum sector. Within months of enactment of the U.S. law, California and Florida passed their own laws, citing the desire to put further economic pressure on such companies. The legislatures of Oregon, Kansas, and other states are considering similar actions. Arizona also has a prohibition on contracting with companies invested in Iran that became law as part of a 2008 divestment act. Companies, particularly non-U.S. companies, intending to bid on state government contracts need to pay close attention to individual state statues, and review their own investments for connections to Iran's petroleum energy sector. U.S.-organized companies are unlikely to have such investments because (except in very narrow circumstances) the pre-existing U.S. economic embargo against Iran prohibits them.

On September 30, 2010, California passed the Iran Contracting Act of 2010 ("California Act") requiring, among other actions, that the California Department of General Services

compile a list of persons or companies involved in business or investment activities in Iran. The California Act also declares that any person identified as having business or investment activities of $20 million dollars or more in the energy sector of Iran "is ineligible to, and shall not bid on, submit a proposal for, or enter into or renew, a contract with a public entity for goods or services of one million dollars ($1,000,000) or more." *See* Cal. Pub. Contr. § 2203(a)(1) (West 2010). Companies that are notified of their designation as doing significant business in Iran's petroleum energy sectors must demonstrate to the government's satisfaction that they should not be so designated. If they fail to do so, they will be subject to the contracting prohibition.

Similarly, the Florida Scrutinized Companies law ("Florida Act") will take effect July 1, 2011. Under a 2008 Iran divestment act, Florida's State Board of Administration maintains a "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List" ("Scrutinized Companies List"). The Florida Act prohibits a Florida state agency or local governmental entity from contracting for goods and services of more than $1 million dollars or more with any company on the Scrutinized Companies List.

The Florida Act requires contractors to certify that they are not on the Scrutinized Companies List before submitting a bid for, entering into, or renewing a contract with, a state agency or local government entity. In addition, any contract entered into or renewed on or after July 1, 2011 must contain a provision allowing for termination of that contract if the company is found to have submitted a false certification. Further, the bill would require the Florida state government to bring a civil action against any company that does not disprove a determination of false certification within a specified time.

The state laws present both a concern and an opportunity for contracting companies. Concerns, in particular, arise because states lack substantial experience in administering international sanctions policy. As a result, Companies may be mistakenly designated as a business significantly invested in Iran's energy petroleum industry. Individual state resources, already spread thin, may not provide the means accurately to designate the correct companies falling under the new laws' prohibitions. States are likely to borrow names of possible target companies from Federal CISADA actions and from one another, sometimes without independently verifying the alleged reasons for designating a company. Additionally, we have seen instances of private groups (such as human rights and anti-nuclear activists groups) distributing inaccurate lists of companies alleged to be violating CISADA.

Contracting companies may be presented with an opportunity, however, to get ahead of this trend of state sanctions in a number of ways. If a company receives notice that it is under scrutiny from one state, that company and its counsel can prepare a response that is both tailored and general; a response that not only answers the initial notice but that can also be repeated to respond to any other notices it might receive from other states in the future. Companies may also have opportunities to communicate with the state administrators of these new laws about their application. Many of these administrators may not have extensive substantive experience with international

sanctions policy; therefore, companies and their counsel, particularly counsel with experience in international sanctions work, would be in a strong position to discuss with state officials the laws and the means of implementation.

Companies intending to contract with any state agencies need to pay close attention to the changing landscape of state-level sanctions laws and remain aware of the continuing risks and opportunities that landscape presents.

Authored by:

Reid Whitten
(202) 469-4968
rwhitten@sheppardmullin.com

and

Corey Phelps
(202) 469-4981
cphelps@sheppardmullin.com