SB220

WD2J55E-1

By Senators Roberts, Orr, Jones, Shelnutt

RFD: County and Municipal Government

First Read: 19-Mar-24

SYNOPSIS:

Under existing law, all public contracts by certain local awarding authorities for goods or services involving $30,000 or more must be entered into by free and open competitive bidding, on sealed bids, to the lowest responsible and responsive bidder.

Also under existing law, the method of awarding state contracts for goods and services is subject to the state procurement laws administered by the Division of Procurement within the Department of Finance.

This bill would prohibit any state or local awarding authority from awarding a contract to an entity organized under the laws of the People's Republic of China or that is owned or operated by the People's Republic of China.

This bill would also provide criminal and civil penalties for a violation.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or

provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the section. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the section.

A BILL

TO BE ENTITLED

AN ACT

Public contracts; to prohibit certain companies affiliated with the People's Republic of China from entering into public contracts with a public awarding authority; to provide criminal and civil penalties for a violation; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The Legislature finds and declares the following:

(1) The Chinese Communist Party's (CCP) authoritarian governance over the People's Republic of China (PRC) includes

extensive efforts to destroy any meaningful distinction between the CCP, the PRC state, and commercial entities in the PRC.

(2) Dealings with PRC commercial entities tend to be less commercially sound because the entities are unusually likely to be acting on noncommercial motivations and carry increased political risk, including the risk of federal sanctions from the United States government.

(3) While no PRC commercial entity is beyond the reach of the CCP, PRC state-owned entities present heightened concerns and threaten the State of Alabama's security, including by making accessible to the CCP and PRC government information about the structure, operations, resources, and infrastructure of the government of this state.

(4) Business transactions with PRC commercial entities, especially PRC state-owned entities, threaten the privacy and security of the residents of this state, especially when the personal information of the residents of this state is involved in the business transactions.

Section 2. (a) As used in this act, the following terms have the following meanings:

(1) COMMUNICATIONS TECHNOLOGIES. Includes communications technologies and the components, networks, systems, or services thereof.

(2) COMPANY. Any 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 profit.

(3) OWNED. Includes an ownership interest in whole or in part. For purposes of a publicly traded company, the term means any share of ownership that includes the ability to direct or influence the operations of the company, the ability to appoint or discharge any board member, officer, or director, or any other rights beyond those available to a retail investor holding an equivalent share of ownership.

(4) PUBLIC ENTITY. The state or any department, agency, commission, or other body of the state, including publicly funded institutions of higher education, and any local governing body, political subdivision, or school district, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public entity.

(5) SCRUTINIZED COMPANY. A company to which any of the following applies:

a. Is organized under the laws of the People's Republic of China (PRC) or has its principal place of business in the PRC.

b. Is owned or operated, in whole or in part, by the government of the PRC or any entity controlled by the government of the PRC.

c. Any subsidiary or parent company of any company described in this subdivision.

(b) A scrutinized company shall be ineligible to, and

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 awarding authority for any information or communications technologies.

(c) No public awarding authority shall enter into any contract or contract renewal that would result in any public funds being transferred under either of the following circumstances:

(1) To a scrutinized company in connection with any information or communications technologies.

(2) To any company in connection with any information or communications technologies that originate with a scrutinized company.

(d) A public awarding authority shall require a company that submits a bid or proposal with respect to a contract for goods or services or that enters into any contract or contract renewal with any public awarding authority for any information or communications technologies to certify all of the following:

(1) The company is not a scrutinized company.

(2) The company will not subcontract with any scrutinized company for any aspect of its performance of the contract.

(3) That any products or services that are to be provided pursuant to the contract do not originate with a scrutinized company.

(e) Any contract determined by the Chief Procurement Officer to be in violation of this act shall be void ab

initio.

(f) Any person who knowingly violates this act shall be guilty of a Class C felony.

(g) In addition to the penalties provided in subsection (f), the person shall be subject to both of the following:

(1) Liable for a civil penalty in an amount that is equal to the greater of: (i) two hundred fifty thousand dollars ($250,000); (ii) twice the amount of the contract for which a bid or proposal was submitted; or (iii) the amount of any losses suffered by the public awarding authority or the state as a result of the violation.

(2) Ineligible to enter into any contract with any public awarding authority in the state for a period of 10 years.

(h) The Attorney General may bring an action in any court of competent jurisdiction against any person that violates this act.

(i) The Chief Procurement Officer shall adopt rules to implement this section. The rules shall include a procedure for a public awarding authority to challenge a company's certification under this section and a procedure to obtain a determination from the Chief Procurement Officer that a potential contract complies with the requirements of this section.

Section 3. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Section 111.05 of the Constitution of

Alabama of 2022, because the bill defines a new crime or amends the definition of an existing crime.

Section 4. This act shall become effective on October 1, 2024.