

LFN 2023-11

May 22, 2023

Local Finance Notice

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Persons and Entities Engaging in Prohibited Activities in Russia or Belarus; Russia-Belarus & Iran Investment Certification for Vendors and Contractors

(This Notice supersedes and replaces in its entirety Local Finance Notice 2022-24 originally issued on December 28, 2022. Local officials should review this entire Notice as it provides elaboration and supplemental guidance.)

[P.L. 2022, c. 3](#), signed into law on March 9, 2022, required the State Department of the Treasury (Treasury) to develop, based on credible information available to the public, [a list of persons and entities](#) engaging in prohibited activities in Russia or Belarus (Russia-Belarus list). The list is now available on [Treasury's website](#) and will be updated at least once every six months. P.L. 2022, c. 3 will expire upon the revocation of federal sanctions contained in [Executive Order 14024](#).

This Notice explains the law's impact on procurement by local contracting units, which includes municipalities, counties, authorities, fire districts, boards of education, and county colleges, along with eligibility to participate in a redevelopment or PILOT agreement. Also explained is the recent update to the law requiring vendor and contractor disclosure of investment activities in Iran. For procurement purposes, the Division of Local Government Services (Division) offers a [model certification](#) combining the Russia-Belarus and Iran disclosures onto a single form, which has been revised to eliminate the need for a vendor or contractor to insert the name of the contracting unit in Part 3.

When discussed together, government entities subject to the Local Public Contracts Law, Public School Contracts Law, or County College Contracts Law are herein referenced collectively as "contracting units."

Key Terms

The phrase “engaging in prohibited activities in Russia or Belarus” is defined as companies:

- in which the Governments of Russia or Belarus have any direct equity share;
- having any business operations commencing after the effective date of P.L. 2022, c. 3 that involve contracts with or the provision of goods or services to the Governments of Russia or Belarus;
- headquartered in Russia or having their principal places of business in Russia or Belarus, or
- supporting, assisting, or facilitating the Governments of Russia or Belarus in their campaigns to invade the sovereign country of Ukraine, either through in-kind support or for profit.

A “person or entity” is:

- A natural person, corporation, company, limited partnership, limited liability partnership, limited liability company, business association, sole proprietorship, joint venture, partnership, society, trust, or any other nongovernmental entity, organization, or group;
- Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in Section 1701(c)(3) of the International Financial Institutions Act, 22 U.S.C. 262r(c)(3); or
- Any parent, successor, subunit, direct or indirect subsidiary, or any entity under common ownership or control with, any entity described above.

The broad definition of “person or entity” in the Russia-Belarus law means that the law applies to entities such as non-profits, local governments, and state agencies (both New Jersey and out-of-state) providing goods or services through a contract subject to the Local Public Contracts Law, Public School Contracts Law, or the County College Contracts Law, but not a federal government agency due to Constitutional considerations.

Impact on Procurement

Persons or entities included on Treasury’s [Russia-Belarus list](#) cannot enter into or renew a contract for the provision of goods and services with a State agency, State college or university, a contracting unit as defined in the Local Public Contracts Law, a board of education as defined in the Public School Contracts Law (including charter schools), or a county college as defined in the County College Contracts Law.

Although investor-owned, BPU-regulated utility companies fall under the definition of a “person or entity” under the Russia-Belarus law, payment of electric, gas, water, or sewer bills would not require a Russia-Belarus vendor certification as there is no discretionary award on the part of the contracting unit. See also N.J.S.A. 40A:5-16.d (generally prohibiting a local government subject to the Local Fiscal Affairs Law from requiring, prior to making payment, a certification from a BPU-regulated utility that a bill or demand is correct.) However, a contract for energy supply separate from distribution, or a contract for any other good or service, awarded to an investor-owned utility would be subject to the Russia-Belarus vendor certification requirement.

Vendor/Contractor Certification

When a contract for goods or services is **awarded, renewed, amended, or extended**, a contracting unit shall 1) require a vendor or contractor to certify that the vendor or contractor is not identified on Treasury's Russia-Belarus list, and 2) review the Russia-Belarus list to determine whether the vendor or contractor appears on the list. The Local Public Contracts Law, Public School Contracts Law, and the County College Contracts Law, respectively, generally require contracting units under those laws to implement and comply with the provisions of P.L. 2022, c.3 applicable to State agencies. See N.J.S.A. 40A:11-2.2; 18A:18A-49.5; 18A:64A-25.44. A vendor or contractor is not required to provide a Russia-Belarus certification prior to the award of a State contract for goods or services that is beneath the State agency quote threshold of \$1,000. See Section III Paragraph A of Treasury Circular [23-09-DPP](#) on page 2. Given the threshold for vendor/contractor certification applied to State goods or services contracts, combined with the practical considerations of local purchasing, a contracting unit should rely on the advice of legal counsel in determining whether to apply its own local quote threshold to the Russia-Belarus certification; the Division will defer to contracting units on this point. However, be mindful that determinations of aggregation would apply here just as they would when determining whether a contract is subject to public bidding.

The certification required shall be executed on behalf of the applicable person by an authorized officer or representative of the vendor or contractor. If a person is unable to make the certification required because the person, parent entity, subsidiary, or affiliate has engaged in prohibited activity in Russia or Belarus, the person shall, prior to the contracting unit's deadline for delivery of such certification, provide to the contracting unit a detailed and precise description of such activities, with such description to be provided under penalty of perjury. The person or entity must cease engaging in any prohibited activities and provide an updated certification before the contract can be entered into. The required certification or disclosures shall be made available to the public (e.g., OPRA request). A vendor or contractor is not required to provide the Russia-Belarus certification with its bid or proposal but must provide the certification before the contract award in accordance with the deadline established by the contracting unit. If an Ownership Disclosure Statement has been submitted with a bid or proposal pursuant to N.J.S.A. 52:25-24.2, a contracting unit is not required to review the stockholders, partners, or LLC members named on the statement against the Russia-Belarus list or the certification prior to contract award.

Because the law states that a contracting unit shall rely on the Russia-Belarus list, a contracting unit need not independently confirm the veracity of a vendor's or contractor's certification. However, if the contracting unit becomes aware of credible, publicly available information indicating a certification may be false and, based on that information, determines that a certification is false, the contracting unit must terminate the contract. It shall report the false certification to the New Jersey Attorney General, who may initiate a civil action against the vendor or contractor in an amount equal to the greater of \$1,000,000 or twice the amount of the contract. The contracting unit may authorize its attorney to collect the above-referenced penalty if the Attorney General's Office is not already undertaking a civil action against the vendor or contractor. Prior to taking action, the contracting unit shall provide notice to the vendor or contractor and

afford them an opportunity to submit written comment demonstrating they either 1) are not engaging in prohibited activities in Russia or Belarus, or 2) have ceased engaging in the prohibited activities in Russia or Belarus within 90 days after the contracting unit's determination of a false certification. Contracting units learning that a vendor's or contractor's Russia-Belarus certification may be false should seek advice from legal counsel before taking further action.

Local units or boards of education providing services under a shared services agreement do not need to complete the certification. The certification requirement would also not apply in circumstances where there is no underlying contract award, regardless of whether a purchase order is issued for the payment. For example, the certification would not be needed to pay tax revenues to counties and school districts, reimburse employee expenses, pay for permits issued by the Department of Environmental Protection, or to pay pension obligations to the Department of Treasury.

Public Works Contracts

Public works contracts that are considered "provision of goods and services," for example, repair, maintenance, and painting contracts or any other "public works" contracts featured on the list of State contracts maintained by Treasury's Division of Purchase and Property, are subject to the requirements of P.L. 2022, c. 3 pertaining to referencing the Russia-Belarus list and requiring the certification.

With respect to construction contracts, while persons or entities on the Russia-Belarus list cannot file or renew a Public Works Contractor Registration (PWCR) with the State Department of Labor and Workforce Development, the law does not require a contracting unit to review the Russia-Belarus list and ask for a certification prior to awarding a construction contract. This means that a contracting unit is not required to reference the Russia-Belarus list or request a certification from a contractor prior to awarding a construction contract, regardless of whether or not those contracts are above or below the contracting unit's prevailing wage threshold. If Treasury places a construction contractor with a PWCR on the Russia-Belarus list, that contractor may continue to be awarded construction contracts until the expiration of their PWCR. Please note that a certification form would be required from an engineering or architectural firm awarded a contract in connection with a construction contract, as those are professional services.

Purchase Orders

As a purchase order is a contract as defined pursuant to the Local Public and Public School Contracts Laws, the Russia-Belarus certification must be supplied by a vendor or contractor when a purchase order is issued. However, if purchase orders are issued against an open-end contract previously awarded by the contracting unit, and the certification from the vendor was obtained before award, then the contracting unit is not required to obtain a certification from the vendor or contractor in connection with each purchase order; however, a new certification would be required if the underlying open-end contract is amended, renewed, or extended. As was explained above, when a purchase order is issued for payment, even though the purchase order itself is not a

contract award, such as for employee expense reimbursement or a taxpayer refund, the certification is not needed.

Cooperative Purchasing

The lead agent of a DLGS-registered cooperative pricing system, or the Division of Purchase and Property in the case of a State contract available for local use, must obtain the Russia-Belarus certification prior to awarding a contract. In addition, because a local contracting unit is considered to be making its own individual award when utilizing a contract from a cooperative pricing system or a State contract available for local use (See N.J.A.C. 5:34-7.11 and 5:34-7.29), the local contracting unit must obtain its own Russia-Belarus certification from the vendor or contractor. Upon a local contracting unit's initial award of an open-end State contract or cooperative pricing system contract and receipt of the Russia-Belarus certification, a new certification is not required to be obtained for each purchase order issued under that contract until the underlying contract is renewed, extended, or amended. Contracting units are reminded to track the expiration dates of the cooperative contracts they utilize. For a joint purchasing system or a commodity resale system, where the lead agent makes purchases on behalf of the system's other members, the lead agent is solely responsible for obtaining the certification.

Emergency Purchases

Unlike items such as a Business Registration Certificate (BRC), the Russia-Belarus law does not contain a provision addressing emergency contracts. In emergency situations where time is often of the essence, it may not be practical to wait for a completed Russia-Belarus certification prior to awarding an emergency contract. Contracting units are encouraged to consult with legal counsel concerning compliance with the Russia-Belarus law for emergency contract awards; however, if a situation is truly emergent, a contracting unit should at least notify the vendor or contractor of the certification requirement at the time of award and hold off on final payment until receiving the completed certification.

Other Russia-Belarus Prohibitions; Redevelopment and PILOT Agreements

P.L. 2022, c. 3 also prohibits a local contracting unit, board of education, or county college to bank with, have or hold stock, debt, or other equity investments of, or maintain insurance coverage through a policy issued by a financial institution that appears on the Russia-Belarus list. Therefore, contracts for insurance coverage and the designation of a bank as an official depository must also abide by the requirements of the law with respect to referencing the Russia-Belarus list and requiring the certification. This is the case even if a bank is a GUDPA-approved depository.

A person or entity appearing on the Russia-Belarus list cannot be designated as a redeveloper under the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.), enter into an agreement for a payment in-lieu of taxes (PILOT) or otherwise be awarded a municipal property tax abatement. Before beginning the application process, the applicant must provide a similar certification, and the local unit must confirm that the applicant does not appear on the Russia-Belarus list. The application process must be terminated if the applicant is on the prohibited list or is determined to have submitted a false certification. As with procurement, upon providing notice

to the person or entity and giving them the opportunity to be heard, any executed redevelopment or PILOT agreement may be terminated for false certification, and a civil penalty may be pursued.

Disclosure of Investment Activities in Iran

If a person or entity is [listed by State Treasury](#) as engaging in investment activities in Iran (Chapter 25 list), that person or entity shall be ineligible to, and shall not, bid on, submit a proposal for, or enter into or renew, a contract with a State agency, a contracting unit as defined in the Local Public Contracts Law, board of education as defined in the Public School Contracts Law, or a county college as defined in the County College Contracts Law, and a contracting unit cannot **award** or **renew** a contract for goods or services with that person or entity. This list is updated by Treasury every 180 days. The definition of a “person or entity” under the Iran Disclosure law is identical to that in the Russia-Belarus law.

As with the Russia-Belarus list, the contracting unit must 1) review the [Chapter 25 list](#) to determine whether the vendor or contractor appears on the list, and 2) receive a certification from the vendor or contractor that they are not identified on the Chapter 25 list. Notwithstanding the reference to bid or proposal in the Iran Disclosure Law, Section 1 of [P.L. 2021, c. 4](#) amended the law to require the certification to be provided prior to the contract award or a contract renewal, meaning a vendor or contractor not including the Iran certification with their bid or proposal is no longer a fatal flaw requiring the bid or proposal to be thrown out. A contracting unit need not independently confirm the veracity of a vendor’s or contractor’s certification, but if the contracting unit becomes aware of credible, publicly available information indicating a certification may be false and, based on that information, determines that a certification is false, the process is similar to that in P.L. 2022, c. 3 for Russia-Belarus. The Iran Disclosure Law does not apply to construction contracts.

For the Iran Disclosure law, contracting units shall generally follow the guidance provided above for the Russia-Belarus law. However, unlike the Russia-Belarus law, the Iran Disclosure Law does not apply to contract amendments or extensions, and does not address redevelopment or PILOT agreements.

Approved: Jacquelyn A. Suárez, Director

Document	Internet Address
P.L. 2022, c. 3	https://pub.njleg.state.nj.us/Bills/2022/PL22/3_.PDF
NJ Dept. of Treasury (Administration)	https://www.nj.gov/treasury/administration/
Russia-Belarus List (State Treasury)	https://www.nj.gov/treasury/administration/pdf/RussiaBelarusEntityList.pdf
Russia-Belarus & Iran Investment Model Certification Form (Procurement)	https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/Russia-Belarus%20and%20Iran%20Combined%20Certification.docx
Executive Order 14024 (Federal)	https://home.treasury.gov/system/files/126/14024.pdf
Iran Investment List (State Treasury)	https://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf
P.L. 2021, c. 4	https://pub.njleg.state.nj.us/Bills/2020/PL21/4_.PDF