

BAD COMPANY

The battleground for state contracts may turn nuclear

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April 23, 2014 | 8 a.m. – 4 p.m.

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A trade symposium sponsored in part by the MIDJersey Chamber



To apply some advice from George Washington to the businesses of New Jersey, “Tis better to be alone than to be in bad company.” This recommendation, taken in light of newly minted state and federal laws, may in fact save companies, large and small, from significant risk and potential downfall.

Last year lawmakers passed the Iran Threat Reduction and Syria Human Rights Act, which went into effect on Feb. 6, 2013.

The act is a proactive response to Iran’s developing nuclear program, and its text includes a mandate for businesses to report any ties they may have to Iran to the Securities and Exchange Commission (SEC).

These reports must include relations company board members have to the country, among other detailed information. While such affiliations are not illegal, they are deemed “highly unethical,” given the danger that Iran can potentially pose to the United States. Therefore, after the SEC forwards this information to both the president and Congress, the government has the authority to impose sanctions on such companies—and indeed it already has.

UNINTENDED CONSEQUENCES

While such enforcement may be generally beneficial to the country’s foreign policy, this act has led to some perhaps unintended consequences. For example, the BP oil company recently stalled its sponsorship of a Canadian university research program when it found out that several of the research participants were Iranian, a risk it deemed not worth potential sanctions.

But the effects of the act have not been limited to either the federal government or to larger corporations. Following the law’s passage, several states, including New Jersey, have enacted laws to enforce a similar initiative. In particular, NJ lawmakers have banned companies with financial interests in Iran’s energy sector from receiving public contracts.

While many businesses may quickly disregard this ban, perhaps having no known connections to even the Middle East in general, a recent case supports the position that businesses should be careful not to avert their eyes from this issue.

Recently, New Jersey awarded a \$123 million contract to rebuild part of the Pulaski Skyway. The unsuccessful bidder has challenged the bid under the new state law, claiming that the

company is disqualified under it. The argument? The company is owned by China, and China's support of Iran violates the ban.

The contract was awarded to a subsidiary of CCA Civil, a Jersey City-based construction firm. While CCA contends that it is not directly owned by China, the contesting bidder, Conti Enterprises, maintains that CCA has several ties to the country. CCA is alleged to be a partner with China National Petroleum, one of the companies banned from receiving government contracts in New Jersey under the new state law. Additionally, the allegation continues that CCA is owned by China Construction America, the American branch of a company owned by China called China State Construction Engineering.

Conti Enterprises lost its protest at the agency level but is currently asking for an expedited decision on the case from a state appellate court. Even if Conti loses such a challenge, however, the issues raised in the Pulaski Skyway case may become a source of contention with future bids. When the state does award large contracts, challenges are not uncommon, and within the context of the modern, globally interrelated business world, connections to big players like China and Iran may be found.

FINANCIAL IMPLICATIONS

The ultimate determination in this case may have significant financial implications for contractors in the New Jersey and New York area as well as in Florida and California, the four states where such a law has been enacted. With the State Department of Treasury vested with the power to add companies to the "black list," remaining contractors may find some significant rivals knocked out of the race before it even starts. The Pulaski case serves as an example.

CCA Civil argues that a denial of the award would be unconstitutional and points to the U.S. Constitution's foreign-commerce clause, which says that states may not interfere with an area of the law in which the federal government has already taken over.

Despite any possible merits to this argument, New Jersey will likely be joined by other states enacting similar laws. Based on the reasoning of those who enacted the Iran Threat Reduction Act, such connections, even by way of other countries or entities, may not be tolerated while Iran grows as a threat to the country's security. This is reminiscent of the stance that the United States has taken on previous threats—tenuous connections may be sufficient. While the case is being decided, contractors are wise to evaluate their affiliations with both Iran and China. It would also be prudent for businesses to check with the State's Department of Treasury to review a list of banned companies.

While the issue is being litigated and it is yet unclear how much involvement is needed to disqualify a company, it may be best to be cautious—or else the harm to a business can be, shall we say, nuclear. **MB**

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