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Scrutinized Companies and Other Restrictions in Florida's Public Procurement Space

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In a [recent post](#), we examined the practical impact of SB 264 (Chapter No. 2023-33, Laws of Florida) on foreign investment in Florida. The new law, which took effect on July 1, 2023, among other things, restricts certain individuals and entities associated with China, Russia, Iran, North Korea, Cuba, Venezuela, and Syria from owning real property in Florida. While the ambiguities in the law and uncertainties as to its application may have far-reaching implications on private real estate investment in Florida, companies, investors and other stake-holders doing business in Florida in the government procurement space must routinely navigate restrictions similar to those contained in SB 264.

On June 8, 2007, the Florida legislature enacted the Protecting Florida's Investments Act ("PFIA"). Under PFIA, the State Board of Administration ("SBA"), whose mission is to invest, manage and safeguard assets of the Florida Retirement System and other funds of state and local governments, is required to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran.¹ In determining which companies are included on the list, PFIA focuses on the foreign companies' active involvement in the petroleum or energy sector, oil or mineral extraction, power production or military support activities in Sudan and Iran. More recently, the SBA was directed to create a list of scrutinized companies that participate in the boycott of Israel, including actions that limit commercial relations with Israel or Israel-controlled territories.² If a company is placed on the Scrutinized Companies list, the SBA may not acquire those companies' securities, and may, in the case of PFIA, be required to divest those securities if the companies do not cease the prohibited activities or take certain compensating actions.³

The SBA is further prohibited from "investing in any institution or company domiciled in the United States, or foreign subsidiary of a company domiciled in the United States, doing business in or with Cuba, or with agencies or instrumentalities thereof, in violation of federal law; and any institution or company domiciled outside of the United States if the President of the United States has applied sanctions

against the foreign country in which the institution or company is domiciled” or “being a fiduciary with respect to voting on, and may not have the right to vote in favor of, any proxy resolution advocating expanded U.S. trade with Cuba or Syria.”⁴

While seemingly unrelated, the mandates of the SBA impact a significant number of private transactions with local governments. In concert with these mandates, Section 287.135, Florida Statutes prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract with any agency or local governmental entity (including any county, municipality, special district, or other political subdivision of the state) for goods or services of (a) any amount if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel; or (b) \$1 million dollars or more if the company (1) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Section List, created pursuant to Section 215.473, Florida Statutes; or (2) is engaged in business operations in Cuba or Syria.

Companies involved in government procurement work falling under the parameters outlined above must typically certify to the local governmental entity prior to the procurement that neither it nor its affiliates are a scrutinized company or engaged in business in Cuba or Syria. If such certification proves to be false, the local governmental entity has the right to terminate the relevant contract. As such, principals and practitioners should closely examine the restrictions prior to any procurement with a local governmental entity to confirm that they are in and maintain compliance with such restrictions.

[1] [Section 215.473, Florida Statutes](#)

[2] [Section 215.4725, Florida Statutes](#)

[3] [Protecting Florida's Investments Act \("PFIA"\)](#)

[4] [215.4725, Florida Statutes](#)

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