

SPO ALERT

Date: August 22, 2019
To: State Agencies, Boards, Commissions, and all SPO Staff
From: SPO Compliance Team
RE: Israel Boycott Divestments

Senate Bill 1167, which amends A.R.S. §35-393 Israel Boycott Divestments, was signed by the Governor on April 16, 2019. It is our understanding that the injunction in *Jordahl v. Brnovich*, 336 F.Supp.3d 1016 (D.Ariz. 2018) is still in effect; therefore, the following still apply:

1. All State Procurement Officers; if a Participation in Boycott of Israel certification is an attachment to a current solicitation, you must insert a **bolded** statement, either on a cover page or at the top of the certification, with the following language: **Unless and until the District Court's injunction in *Jordahl v. Brnovich*, 336 F.Supp.3d 1016 (D.Ariz. 2018) is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. §35-393.01 (A)) is unenforceable and the State will take no action to enforce it. This attachment (Participation in Boycott of Israel) is not a mandatory part of the offer as long as the injunction remains in place. Offers will not be evaluated based on whether this certification has been completed.**
2. If the Participation in Boycott of Israel certification is an attachment to a solicitation, but the solicitation may no longer be amended, vendors and procurement officers should be notified that the Participation in Boycott of Israel certification is no longer a required form, and that offers will not be evaluated based on whether this certification has been completed.
3. All new formal solicitations should continue to include the Participation in Boycott of Israel certification as an attachment but it must also include a footnote with the following language: Unless and until the District Court's injunction in *Jordahl* is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. §35-393.01 (A)) is unenforceable and the State will take no action to enforce it. To further emphasize this change, it is also required to include this footnote in the Instructions to Offerors of the new solicitation.
4. All pending contracts which have a contractual term regarding the Anti-Israel Boycott Provision, that have not been executed, should be revised to include the footnote as stated in the above paragraph 3.
5. No public entity should take any steps to enforce the Anti-Israel Boycott Provision in any of its existing contracts.
6. Regardless of what happens with the injunction, the law as amended affects only the following:
 - a. Solicitations or contracts with a value greater than \$100,000.
 - b. Contracts with companies that are an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited-liability company or other entity or business association, including a wholly-owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.

This announcement will be posted to the SPO website. If further changes or clarification is needed, a new SPO Alert will be sent.

Arizona State Procurement Office