

7206

I N S E N A T E

May 6, 2014

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and
when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, the public authorities law, the
highway law, the general municipal law, and the public buildings law,
in relation to requiring the use of American made iron, steel and
manufactured products in certain government contracts, and to repeal
certain provisions of the public authorities law and the state finance
law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Title. This act shall be known as the "New York State Buy
2 American Act".
3 S 2. Section 146 of the state finance law is REPEALED and a new
4 section 146 is added to read as follows:
5 S 146. THE NEW YORK STATE BUY AMERICAN ACT. 1. USE OF AMERICAN MATERI-
6 ALS. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH CONTRACT FOR
7 THE CONSTRUCTION, RECONSTRUCTION, ALTERATION OR IMPROVEMENT OF A PUBLIC
8 BUILDING OF PUBLIC WORKS MADE BY A PUBLIC AGENCY SHALL CONTAIN A
9 PROVISION THAT THE IRON, STEEL, AND MANUFACTURED PRODUCTS USED OR
10 SUPPLIED IN THE PERFORMANCE OF THE CONTRACT OR ANY SUBCONTRACT THERETO
11 AND PERMANENTLY INCORPORATED INTO THE PUBLIC BUILDING OR PUBLIC WORKS
12 SHALL BE MANUFACTURED IN THE UNITED STATES.
13 (B) FOR THE PURPOSES OF SECTION ONE HUNDRED SIXTY-THREE OF THIS CHAP-
14 TER, NO BIDDER SHALL BE DEEMED TO BE THE LOWEST RESPONSIBLE AND RELIABLE
15 BIDDER AND NO BID SHALL BE DEEMED THE BEST VALUE UNLESS THE BID OFFERED
16 BY SUCH BIDDER WILL COMPLY WITH THE CONTRACT TERM REQUIRED BY PARAGRAPH
17 (A) OF THIS SUBDIVISION.
18 (C) THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT
19 APPLY IN ANY CASE OR CATEGORY OF CASES IN WHICH THE EXECUTIVE HEAD OF A
20 PUBLIC AGENCY FINDS:
21 (I) THAT THE APPLICATION OF THIS SECTION WOULD BE INCONSISTENT WITH
22 THE PUBLIC INTEREST;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (II) THAT SUCH MATERIALS AND PRODUCTS ARE NOT PRODUCED IN THE UNITED
2 STATES IN SUFFICIENT AND REASONABLY AVAILABLE QUANTITIES AND OF A SATIS-
3 FACTORY QUALITY; OR

4 (III) THAT INCLUSION OF DOMESTIC MATERIAL WILL INCREASE THE COST OF
5 THE OVERALL PROJECT CONTRACT BY MORE THAN TWENTY-FIVE PERCENT.

6 (D) IF THE EXECUTIVE RECEIVES A REQUEST FOR A WAIVER UNDER PARAGRAPH
7 (C) OF THIS SUBDIVISION, THE EXECUTIVE SHALL PROVIDE NOTICE OF AND AN
8 OPPORTUNITY FOR PUBLIC COMMENT ON THE REQUEST AT LEAST THIRTY DAYS
9 BEFORE MAKING A FINDING BASED ON THE REQUEST.

10 (E) A NOTICE PROVIDED UNDER PARAGRAPH (D) OF THIS SUBDIVISION SHALL:

11 (I) SUMMARIZE THE INFORMATION AVAILABLE TO THE EXECUTIVE CONCERNING
12 THE REQUEST, INCLUDING WHETHER THE REQUEST IS BEING MADE UNDER SUBPARA-
13 GRAPH (I), (II) OR (III) OF PARAGRAPH (C) OF THIS SUBDIVISION;

14 (II) BE POSTED PROMINENTLY ON THE OFFICIAL PUBLIC INTERNET WEB SITE OF
15 THE AGENCY; AND

16 (III) BE PROVIDED BY ELECTRONIC MEANS TO ANY PERSON, FIRM OR CORPO-
17 RATION THAT HAS MADE A WRITTEN OR ELECTRONIC REQUEST TO THE PUBLIC AGEN-
18 CY FOR NOTICE OF WAIVER ACTIONS BY THE EXECUTIVE WITHIN FIVE (5) YEARS
19 PRIOR TO THE DATE OF NOTICE.

20 (F) IF THE EXECUTIVE ISSUES A WAIVER UNDER PARAGRAPH (C) OF THIS
21 SUBDIVISION, THE EXECUTIVE SHALL PUBLISH IN THE SAME MANNER AS THE
22 ORIGINAL NOTICE A DETAILED JUSTIFICATION FOR THE WAIVER THAT:

23 (I) ADDRESSES THE PUBLIC COMMENTS RECEIVED UNDER PARAGRAPH (D) OF THIS
24 SUBDIVISION; AND

25 (II) IS PUBLISHED BEFORE THE WAIVER TAKES EFFECT.

26 (G) IF IT HAS BEEN DETERMINED BY A COURT OR FEDERAL OR STATE AGENCY
27 THAT ANY PERSON INTENTIONALLY:

28 (I) AFFIXED A LABEL BEARING A "MADE IN AMERICA" INSCRIPTION, OR ANY
29 INSCRIPTION WITH THE SAME MEANING, TO ANY IRON, STEEL OR MANUFACTURED
30 PRODUCT USED IN PROJECTS TO WHICH THIS SECTION APPLIES, SOLD IN OR
31 SHIPPED TO THE UNITED STATES THAT WAS NOT MADE IN THE UNITED STATES; OR

32 (II) REPRESENTED THAT ANY IRON, STEEL OR MANUFACTURED PRODUCT USED IN
33 PROJECTS TO WHICH THIS SECTION APPLIES THAT WAS NOT PRODUCED IN THE
34 UNITED STATES, WAS PRODUCED IN THE UNITED STATES;

35 THEN THAT PERSON SHALL BE INELIGIBLE TO RECEIVE ANY CONTRACT OR SUBCON-
36 TRACT WITH THIS STATE PURSUANT TO THE DEBARMENT OR SUSPENSION PROVISIONS
37 PROVIDED UNDER SECTION ONE HUNDRED THIRTY-NINE-A OF THIS ARTICLE.

38 (H) THIS SECTION SHALL BE APPLIED IN A MANNER CONSISTENT WITH THE
39 STATE'S OBLIGATIONS UNDER ANY APPLICABLE INTERNATIONAL AGREEMENTS
40 PERTAINING TO GOVERNMENT PROCUREMENT.

41 2. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING WORDS
42 SHALL HAVE THE FOLLOWING MEANINGS UNLESS SPECIFIED OTHERWISE:

43 (A) "EXECUTIVE" MEANS THE EXECUTIVE HEAD OF A PUBLIC AGENCY SUBJECT TO
44 THIS SECTION;

45 (B) "PUBLIC AGENCY" MEANS A GOVERNMENTAL ENTITY AS THAT TERM IS
46 DEFINED IN SECTION ONE HUNDRED THIRTY-NINE-J OF THIS ARTICLE;

47 (C) "MANUFACTURED IN THE UNITED STATES" MEANS: (I) IN THE CASE OF AN
48 IRON OR STEEL PRODUCT ALL MANUFACTURING MUST TAKE PLACE IN THE UNITED
49 STATES, FROM THE INITIAL MELTING STAGE THROUGH THE APPLICATION OF COAT-
50 ING, EXCEPT METALLURGICAL PROCESSES INVOLVING THE REFINEMENT OF STEEL
51 ADDITIVES; AND

52 (II) IN THE CASE OF A MANUFACTURED PRODUCT, A PRODUCT WILL BE CONSID-
53 ERED MANUFACTURED IN THE UNITED STATES IF:

54 (A) ALL OF ITS MANUFACTURING PROCESSES TAKE PLACE IN THE UNITED
55 STATES, AND

(B) MORE THAN SIXTY PERCENT OF THE COMPONENTS OF THE MANUFACTURED GOOD, BY COST, ARE OF DOMESTIC ORIGIN. IF, UNDER THE TERMS OF THIS SUBPARAGRAPH, A COMPONENT IS DETERMINED TO BE OF DOMESTIC ORIGIN, ITS ENTIRE COST MAY BE USED IN CALCULATING THE COST OF DOMESTIC CONTENT OF AN END PRODUCT.

(D) "UNITED STATES" MEANS THE UNITED STATES OF AMERICA AND INCLUDES ALL TERRITORY, CONTINENTAL OR INSULAR, SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

S 3. Section 2603-a of the public authorities law is REPEALED and a new section 2877-a is added to read as follows:

S 2877-A. THE NEW YORK STATE BUY AMERICAN ACT. 1. USE OF AMERICAN MATERIALS. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH CONTRACT FOR THE CONSTRUCTION, RECONSTRUCTION, ALTERATION OR IMPROVEMENT OF A PUBLIC BUILDING OR PUBLIC WORKS MADE BY A PUBLIC AUTHORITY SHALL CONTAIN A PROVISION THAT THE IRON, STEEL, AND MANUFACTURED PRODUCTS USED OR SUPPLIED IN THE PERFORMANCE OF THE CONTRACT OR ANY SUBCONTRACT THERETO AND PERMANENTLY INCORPORATED INTO THE PUBLIC BUILDING OR PUBLIC WORKS SHALL BE MANUFACTURED IN THE UNITED STATES.

(B) NO BIDDER SHALL BE DEEMED TO BE THE LOWEST RESPONSIBLE AND RELIABLE BIDDER AND NO BID SHALL BE DEEMED THE BEST VALUE UNLESS THE BID OFFERED BY SUCH BIDDER WILL COMPLY WITH THE CONTRACT TERM REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION.

(C) THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT APPLY IN ANY CASE OR CATEGORY OF CASES IN WHICH THE EXECUTIVE HEAD OF A PUBLIC AGENCY FINDS:

(I) THAT THE APPLICATION OF THIS SECTION WOULD BE INCONSISTENT WITH THE PUBLIC INTEREST;

(II) THAT SUCH MATERIALS AND PRODUCTS ARE NOT PRODUCED IN THE UNITED STATES IN SUFFICIENT AND REASONABLY AVAILABLE QUANTITIES AND OF A SATISFACTORY QUALITY; OR

(III) THAT INCLUSION OF DOMESTIC MATERIAL WILL INCREASE THE COST OF THE OVERALL PROJECT CONTRACT BY MORE THAN TWENTY-FIVE PERCENT.

(D) IF THE EXECUTIVE RECEIVES A REQUEST FOR A WAIVER UNDER PARAGRAPH (C) OF THIS SUBDIVISION, THE EXECUTIVE SHALL PROVIDE NOTICE OF AND AN OPPORTUNITY FOR PUBLIC COMMENT ON THE REQUEST AT LEAST THIRTY DAYS BEFORE MAKING A FINDING BASED ON THE REQUEST.

(E) A NOTICE PROVIDED UNDER PARAGRAPH (D) OF THIS SUBDIVISION SHALL:

(I) SUMMARIZE THE INFORMATION AVAILABLE TO THE EXECUTIVE CONCERNING THE REQUEST, INCLUDING WHETHER THE REQUEST IS BEING MADE UNDER SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (C) OF THIS SUBDIVISION;

(II) BE POSTED PROMINENTLY ON THE OFFICIAL PUBLIC INTERNET WEB SITE OF THE AGENCY; AND

(III) BE PROVIDED BY ELECTRONIC MEANS TO ANY PERSON, FIRM OR CORPORATION THAT HAS MADE A WRITTEN OR ELECTRONIC REQUEST TO THE PUBLIC AGENCY FOR NOTICE OF WAIVER ACTIONS BY THE EXECUTIVE WITHIN FIVE (5) YEARS PRIOR TO THE DATE OF NOTICE.

(F) IF THE EXECUTIVE ISSUES A WAIVER UNDER PARAGRAPH (C) OF THIS SUBDIVISION, THE EXECUTIVE SHALL PUBLISH IN THE SAME MANNER AS THE ORIGINAL NOTICE A DETAILED JUSTIFICATION FOR THE WAIVER THAT:

(I) ADDRESSES THE PUBLIC COMMENTS RECEIVED UNDER PARAGRAPH (D) OF THIS SUBDIVISION; AND

(II) IS PUBLISHED BEFORE THE WAIVER TAKES EFFECT.

(G) IF IT HAS BEEN DETERMINED BY A COURT OR FEDERAL OR STATE AGENCY THAT ANY PERSON INTENTIONALLY:

(I) AFFIXED A LABEL BEARING A "MADE IN AMERICA" INSCRIPTION, OR ANY INSCRIPTION WITH THE SAME MEANING, TO ANY IRON, STEEL OR MANUFACTURED

PRODUCT USED IN PROJECTS TO WHICH THIS SECTION APPLIES, SOLD IN OR SHIPPED TO THE UNITED STATES THAT WAS NOT MADE IN THE UNITED STATES; OR

(II) REPRESENTED THAT ANY IRON, STEEL, OR MANUFACTURED PRODUCT USED IN PROJECTS TO WHICH THIS SECTION APPLIES THAT WAS NOT PRODUCED IN THE UNITED STATES, WAS PRODUCED IN THE UNITED STATES;

THEN THAT PERSON SHALL BE INELIGIBLE TO RECEIVE ANY CONTRACT OR SUBCONTRACT WITH THIS STATE PURSUANT TO THE DEBARMENT AND SUSPENSION PROVISIONS PROVIDED UNDER SECTION ONE HUNDRED THIRTY-NINE-A OF THE STATE FINANCE LAW.

(H) THIS SECTION SHALL BE APPLIED IN A MANNER CONSISTENT WITH THE STATE'S OBLIGATIONS UNDER ANY APPLICABLE INTERNATIONAL AGREEMENTS PERTAINING TO GOVERNMENT PROCUREMENT.

2. DEFINITIONS. FOR THE PURPOSE OF THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS UNLESS SPECIFIED OTHERWISE:

(A) "EXECUTIVE" MEANS THE EXECUTIVE HEAD OF A PUBLIC AGENCY SUBJECT TO THIS SECTION;

(B) "PUBLIC AGENCY" MEANS A STATE, LOCAL OR INTERSTATE AUTHORITY AS THOSE TERMS ARE DEFINED IN SECTION TWO OF THIS CHAPTER;

(C) "MANUFACTURED IN THE UNITED STATES" MEANS: (I) IN THE CASE OF AN IRON OR STEEL PRODUCT ALL MANUFACTURING MUST TAKE PLACE IN THE UNITED STATES, FROM THE INITIAL MELTING STAGE THROUGH THE APPLICATION OF COATINGS, EXCEPT METALLURGICAL PROCESSES INVOLVING THE REFINEMENT OF STEEL ADDITIVES; AND

(II) IN THE CASE OF A MANUFACTURED PRODUCT, A PRODUCT WILL BE CONSIDERED MANUFACTURED IN THE UNITED STATES IF:

(A) ALL OF ITS MANUFACTURING PROCESSES TAKE PLACE IN THE UNITED STATES, AND

(B) MORE THAN SIXTY PERCENT OF THE COMPONENTS OF THE MANUFACTURED GOOD, BY COST, ARE OF DOMESTIC ORIGIN. IF, UNDER THE TERMS OF THIS PART, A COMPONENT IS DETERMINED TO BE OF DOMESTIC ORIGIN, ITS ENTIRE COST MAY BE USED IN CALCULATING THE COST OF DOMESTIC CONTENT OF AN END PRODUCT.

(D) "UNITED STATES" MEANS THE UNITED STATES OF AMERICA AND INCLUDES ALL TERRITORY, CONTINENTAL OR INSULAR, SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

S 4. Section 38 of the highway law is amended by adding a new subdivision 10 to read as follows:

10. USE OF AMERICAN MATERIALS. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH CONTRACT FOR THE CONSTRUCTION, RECONSTRUCTION, ALTERATION OR IMPROVEMENT OF A HIGHWAY OR OTHER PUBLIC WORKS MADE BY A PUBLIC AGENCY SHALL CONTAIN A PROVISION THAT THE IRON, STEEL, AND MANUFACTURED PRODUCTS USED OR SUPPLIED IN THE PERFORMANCE OF THE CONTRACT OR ANY SUBCONTRACT THERETO AND PERMANENTLY INCORPORATED INTO THE PUBLIC BUILDING OR PUBLIC WORKS SHALL BE MANUFACTURED IN THE UNITED STATES.

(B) NO BIDDER SHALL BE DEEMED TO BE THE LOWEST RESPONSIBLE AND RELIABLE BIDDER AND NO BID SHALL BE DEEMED THE BEST VALUE UNLESS THE BID OFFERED BY SUCH BIDDER WILL COMPLY WITH THE CONTRACT TERM REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION.

(C) THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT APPLY IN ANY CASE OR CATEGORY OF CASES IN WHICH THE EXECUTIVE HEAD OF A PUBLIC AGENCY FINDS:

(I) THAT THE APPLICATION OF THIS SUBDIVISION WOULD BE INCONSISTENT WITH THE PUBLIC INTEREST;

(II) THAT SUCH MATERIALS AND PRODUCTS ARE NOT PRODUCED IN THE UNITED STATES IN SUFFICIENT AND REASONABLY AVAILABLE QUANTITIES AND OF A SATISFACTORY QUALITY; OR

1 (III) THAT INCLUSION OF DOMESTIC MATERIAL WILL INCREASE THE COST OF
2 THE OVERALL PROJECT CONTRACT BY MORE THAN TWENTY-FIVE PERCENT.

3 (D) IF THE EXECUTIVE RECEIVES A REQUEST FOR A WAIVER UNDER PARAGRAPH
4 (C) OF THIS SUBDIVISION, THE EXECUTIVE SHALL PROVIDE NOTICE OF AND AN
5 OPPORTUNITY FOR PUBLIC COMMENT ON THE REQUEST OF AT LEAST THIRTY DAYS
6 BEFORE MAKING A FINDING BASED ON THE REQUEST.

7 (E) A NOTICE PROVIDED UNDER PARAGRAPH (D) OF THIS SUBDIVISION SHALL:

8 (I) SUMMARIZE THE INFORMATION AVAILABLE TO THE EXECUTIVE CONCERNING
9 THE REQUEST, INCLUDING WHETHER THE REQUEST IS BEING MADE UNDER SUBPARA-
10 GRAPH (I), (II) OR (III) OF PARAGRAPH (C) OF THIS SUBDIVISION;

11 (II) BE POSTED PROMINENTLY ON THE OFFICIAL PUBLIC INTERNET WEB SITE OF
12 THE AGENCY; AND

13 (III) BE PROVIDED BY ELECTRONIC MEANS TO ANY PERSON, FIRM OR CORPO-
14 RATION THAT HAS MADE A WRITTEN OR ELECTRONIC REQUEST TO THE PUBLIC AGEN-
15 CY FOR NOTICE OF WAIVER ACTIONS BY THE EXECUTIVE WITHIN FIVE (5) YEARS
16 PRIOR TO THE DATE OF NOTICE.

17 (F) IF THE EXECUTIVE ISSUES A WAIVER UNDER PARAGRAPH (C) OF THIS
18 SUBDIVISION, THE EXECUTIVE SHALL PUBLISH IN THE SAME MANNER AS THE
19 ORIGINAL NOTICE A DETAILED JUSTIFICATION FOR THE WAIVER THAT:

20 (I) ADDRESSES THE PUBLIC COMMENTS RECEIVED UNDER PARAGRAPH (D) OF THIS
21 SUBDIVISION; AND

22 (II) IS PUBLISHED BEFORE THE WAIVER TAKES EFFECT.

23 (G) IF IT HAS BEEN DETERMINED BY A COURT OF FEDERAL OR STATE AGENCY
24 THAT ANY PERSON INTENTIONALLY:

25 (I) AFFIXED A LABEL BEARING A "MADE IN AMERICA" INSCRIPTION, OR ANY
26 INSCRIPTION WITH THE SAME MEANING, TO ANY IRON, STEEL OR MANUFACTURED
27 PRODUCT USED IN PROJECTS TO WHICH THIS SUBDIVISION APPLIES, SOLD IN OR
28 SHIPPED TO THE UNITED STATES THAT WAS NOT MADE IN THE UNITED STATES; OR

29 (II) REPRESENTED THAT ANY IRON, STEEL, OR MANUFACTURED PRODUCT USED IN
30 PROJECTS TO WHICH THIS SECTION APPLIES THAT WAS NOT PRODUCED IN THE
31 UNITED STATES, WAS PRODUCED IN THE UNITED STATES;

32 THEN THAT PERSON SHALL BE INELIGIBLE TO RECEIVE ANY CONTRACT OR SUBCON-
33 TRACT WITH THIS STATE PURSUANT TO THE DEBARMENT OR SUSPENSION PROVISIONS
34 PROVIDED UNDER SECTION ONE HUNDRED THIRTY-NINE-A OF THE STATE FINANCE
35 LAW.

36 (H) THIS SUBDIVISION SHALL BE APPLIED IN A MANNER CONSISTENT WITH THE
37 STATE'S OBLIGATIONS UNDER ANY APPLICABLE INTERNATIONAL AGREEMENTS
38 PERTAINING TO GOVERNMENT PROCUREMENT.

39 (I) DEFINITIONS. FOR THE PURPOSE OF THIS SUBDIVISION, THE FOLLOWING
40 WORDS SHALL HAVE THE FOLLOWING MEANINGS UNLESS SPECIFIED OTHERWISE:

41 (I) "EXECUTIVE" MEANS THE EXECUTIVE HEAD OF A PUBLIC AGENCY SUBJECT TO
42 THIS SUBDIVISION.

43 (II) "PUBLIC AGENCY" MEANS A GOVERNMENTAL ENTITY AS THAT TERM IS
44 DEFINED IN SECTION ONE HUNDRED THIRTY-NINE-J OF THE STATE FINANCE LAW;

45 (III) "MANUFACTURED IN THE UNITED STATES" MEANS: (A) IN THE CASE OF AN
46 IRON OR STEEL PRODUCT ALL MANUFACTURING MUST TAKE PLACE IN THE UNITED
47 STATES, FROM THE INITIAL MELTING STAGE THROUGH THE APPLICATION OF COAT-
48 INGS, EXCEPT METALLURGICAL PROCESSES INVOLVING THE REFINEMENT OF STEEL
49 ADDITIVES; AND

50 (B) IN THE CASE OF A MANUFACTURED PRODUCT, A PRODUCT WILL BE CONSID-
51 ERED MANUFACTURED IN THE UNITED STATES IF:

52 (1) ALL OF ITS MANUFACTURING PROCESSES TAKE PLACE IN THE UNITED
53 STATES, AND

54 (2) MORE THAN SIXTY PERCENT OF THE COMPONENTS OF THE MANUFACTURED
55 GOOD, BY COST, ARE OF DOMESTIC ORIGIN. IF, UNDER THE TERMS OF THIS PART,

1 A COMPONENT IS DETERMINED TO BE OF DOMESTIC ORIGIN, ITS ENTIRE COST MAY
2 BE USED IN CALCULATING THE COST OF DOMESTIC CONTENT OF AN END PRODUCT.

3 (IV) "UNITED STATES" MEANS THE UNITED STATES OF AMERICA AND INCLUDES
4 ALL TERRITORY, CONTINENTAL OR INSULAR, SUBJECT TO THE JURISDICTION OF
5 THE UNITED STATES.

6 S 5. Section 103 of the general municipal law is amended by adding a
7 new subdivision 17 to read as follows:

8 17. USE OF AMERICAN MATERIALS. (A) NOTWITHSTANDING ANY OTHER PROVISION
9 OF LAW, EACH CONTRACT FOR THE CONSTRUCTION, RECONSTRUCTION, ALTERATION
10 OR IMPROVEMENT OF A PUBLIC BUILDING OR PUBLIC WORKS MADE BY A PUBLIC
11 AGENCY OF A POLITICAL SUBDIVISION SHALL CONTAIN A PROVISION THAT THE
12 IRON, STEEL, AND MANUFACTURED PRODUCTS USED OR SUPPLIED IN THE PERFORM-
13 ANCE OF THE CONTRACT OR ANY SUBCONTRACT THERETO AND PERMENANTLY INCORPO-
14 RATED INTO THE PUBLIC BUILDING OR PUBLIC WORKS SHALL BE MANUFACTURED IN
15 THE UNITED STATES.

16 (B) NO BIDDER SHALL BE DEEMED TO BE THE LOWEST RESPONSIBLE AND RELI-
17 ABLE BIDDER AND NO BID SHALL BE DEEMED THE BEST VALUE UNLESS THE BID
18 OFFERED BY SUCH BIDDER WILL COMPLY WITH THE CONTRACT TERM REQUIRED BY
19 PARAGRAPH (A) OF THIS SUBDIVISION.

20 (C) THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT
21 APPLY IN ANY CASE OR CATEGORY OF CASES IN WHICH THE EXECUTIVE HEAD OF A
22 PUBLIC AGENCY FINDS:

23 (I) THAT THE APPLICATION OF THIS SUBDIVISION WOULD BE INCONSISTENT
24 WITH THE PUBLIC INTEREST;

25 (II) THAT SUCH MATERIALS AND PRODUCTS ARE NOT PRODUCED IN THE UNITED
26 STATES IN SUFFICIENT AND REASONABLY AVAILABLE QUANTITIES AND OF A SATIS-
27 FACTORY QUALITY; OR

28 (III) THAT INCLUSION OF DOMESTIC MATERIAL WILL INCREASE THE COST OF
29 THE OVERALL PROJECT CONTRACT BY MORE THAN TWENTY-FIVE PERCENT.

30 (D) IF THE EXECUTIVE RECEIVES A REQUEST FOR A WAIVER UNDER PARAGRAPH
31 (C) OF THIS SUBDIVISION, THE EXECUTIVE SHALL PROVIDE NOTICE OF AN OPPOR-
32 TUNITY FOR PUBLIC COMMENT ON THE REQUEST AT LEAST THIRTY DAYS BEFORE
33 MAKING A FINDING BASED ON THE REQUEST.

34 (E) A NOTICE PROVIDED UNDER PARAGRAPH (D) OF THIS SUBDIVISION SHALL:

35 (I) SUMMARIZE THE INFORMATION AVAILABLE TO THE EXECUTIVE CONCERNING
36 THE REQUEST, INCLUDING WHETHER THE REQUEST IS BEING MADE UNDER SUBPARA-
37 GRAPH (I), (II) OR (III) OF PARAGRAPH (C) OF THIS SUBDIVISION;

38 (II) BE POSTED PROMINENTLY ON THE OFFICIAL PUBLIC INTERNET WEB SITE OF
39 THE AGENCY; AND

40 (III) BE PROVIDED BY ELECTRONIC MEANS TO ANY PERSON, FIRM OR CORPO-
41 RATION THAT HAS MADE A WRITTEN OR ELECTRONIC REQUEST TO THE PUBLIC AGEN-
42 CY FOR NOTICE OF WAIVER ACTIONS BY THE EXECUTIVE WITHIN FIVE (5) YEARS
43 PRIOR TO THE DATE OF NOTICE.

44 (F) IF THE EXECUTIVE ISSUES A WAIVER UNDER PARAGRAPH (C) OF THIS
45 SUBDIVISION, THE EXECUTIVE SHALL PUBLISH IN THE SAME MANNER AS THE
46 ORIGINAL NOTICE A DETAILED JUSTIFICATION FOR THE WAIVER THAT:

47 (I) ADDRESSES THE PUBLIC COMMENTS RECEIVED UNDER PARAGRAPH (D) OF THIS
48 SUBDIVISION; AND

49 (II) IS PUBLISHED BEFORE THE WAIVER TAKES EFFECT.

50 (G) IF IT HAS BEEN DETERMINED BY A COURT OR FEDERAL OR STATE AGENCY
51 THAT ANY PERSON INTENTIONALLY:

52 (I) AFFIXED A LABEL BEARING A "MADE IN AMERICA" INSCRIPTION, OR ANY
53 INSCRIPTION WITH THE SAME MEANING, TO ANY IRON, STEEL OR MANUFACTURED
54 PRODUCT USED IN PROJECTS TO WHICH THIS SUBDIVISION APPLIES, SOLD IN OR
55 SHIPPED TO THE UNITED STATES THAT WAS NOT MADE IN THE UNITED STATES; OR

(II) REPRESENTED THAT ANY IRON, STEEL, OR MANUFACTURED PRODUCT USED IN PROJECTS TO WHICH THIS SECTION APPLIES THAT WAS NOT PRODUCED IN THE UNITED STATES, WAS PRODUCED IN THE UNITED STATES; THEN THAT PERSON SHALL BE INELIGIBLE TO RECEIVE ANY CONTRACT OR SUBCONTRACT WITH THIS STATE PURSUANT TO THE DEBARMENT OR SUSPENSION PROVISIONS PROVIDED UNDER SECTION ONE HUNDRED THIRTY-NINE-A OF THE STATE FINANCE LAW.

(H) THIS SUBDIVISION SHALL BE APPLIED IN A MANNER CONSISTENT WITH THE STATE'S OBLIGATIONS UNDER ANY APPLICABLE INTERNATIONAL AGREEMENTS PERTAINING TO GOVERNMENT PROCUREMENT.

(I) DEFINITIONS. FOR THE PURPOSE OF THIS SUBDIVISION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS UNLESS SPECIFIED OTHERWISE:

(I) "EXECUTIVE" MEANS THE EXECUTIVE HEAD OF A PUBLIC AGENCY SUBJECT TO THIS SUBDIVISION;

(II) "PUBLIC AGENCY" MEANS A GOVERNMENTAL ENTITY AS THAT TERM IS DEFINED IN SECTION ONE HUNDRED THIRTY-NINE-J OF THE STATE FINANCE LAW;

(III) "MANUFACTURED IN THE UNITED STATES" MEANS: (A) IN THE CASE OF AN IRON OR STEEL PRODUCT ALL MANUFACTURING MUST TAKE PLACE IN THE UNITED STATES, FROM THE INITIAL MELTING STAGE THROUGH THE APPLICATION OF COATINGS, EXCEPT METALLURGICAL PROCESSES INVOLVING THE REFINEMENT OF STEEL ADDITIVES; AND

(B) IN THE CASE OF A MANUFACTURED PRODUCT, A PRODUCT WILL BE CONSIDERED MANUFACTURED IN THE UNITED STATES IF:

(1) ALL OF ITS MANUFACTURING PROCESSES TAKE PLACE IN THE UNITED STATES, AND

(2) MORE THAN SIXTY PERCENT OF THE COMPONENTS OF THE MANUFACTURED GOOD, BY COST, ARE OF DOMESTIC ORIGIN. IF, UNDER THE TERMS OF THIS PART, A COMPONENT IS DETERMINED TO BE OF DOMESTIC ORIGIN, ITS ENTIRE COST MAY BE USED IN CALCULATING THE COST OF DOMESTIC CONTENT OF AN END PRODUCT.

(IV) "UNITED STATES" MEANS THE UNITED STATES OF AMERICA AND INCLUDES ALL TERRITORY, CONTINENTAL OR INSULAR, SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

S 6. Section 8 of the public buildings law is amended by adding a new subdivision 8 to read as follows:

8. USE OF AMERICAN MATERIALS. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH CONTRACT FOR THE CONSTRUCTION, RECONSTRUCTION, ALTERATION OR IMPROVEMENT OF A STATE BUILDING MADE BY A PUBLIC AGENCY SHALL CONTAIN A PROVISION THAT THE IRON, STEEL, AND MANUFACTURED PRODUCTS USED OR SUPPLIED IN THE PERFORMANCE OF THE CONTRACT OF ANY SUBCONTRACT THERETO AND PERMANENTLY INCORPORATED INTO THE PUBLIC BUILDING OR PUBLIC WORKS SHALL BE MANUFACTURED IN THE UNITED STATES.

(B) NO BIDDER SHALL BE DEEMED TO BE THE LOWEST RESPONSIBLE AND RELIABLE BIDDER AND NO BID SHALL BE DEEMED THE BEST VALUE UNLESS THE BID OFFERED BY SUCH BIDDER WILL COMPLY WITH THE CONTRACT TERM REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION.

(C) THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT APPLY IN ANY CASE OR CATEGORY OF CASES IN WHICH THE EXECUTIVE HEAD OF A PUBLIC AGENCY FINDS:

(I) THAT THE APPLICATION OF THIS SUBDIVISION WOULD BE INCONSISTENT WITH THE PUBLIC INTEREST;

(II) THAT SUCH MATERIALS AND PRODUCTS ARE NOT PRODUCED IN THE UNITED STATES IN SUFFICIENT AND REASONABLY AVAILABLE QUANTITIES AND OF A SATISFACTORY QUALITY; OR

(III) THAT INCLUSION OF DOMESTIC MATERIAL WILL INCREASE THE COST OF THE OVERALL PROJECT CONTRACT BY MORE THAN TWENTY-FIVE PERCENT.

(D) IF THE EXECUTIVE RECEIVES A REQUEST FOR A WAIVER UNDER PARAGRAPH (C) OF THIS SUBDIVISION, THE EXECUTIVE SHALL PROVIDE NOTICE OF AND AN OPPORTUNITY FOR PUBLIC COMMENT ON THE REQUEST AT LEAST THIRTY DAYS BEFORE MAKING A FINDING BASED ON THE REQUEST.

(E) A NOTICE PROVIDED UNDER PARAGRAPH (D) OF THIS SUBDIVISION SHALL:

(I) SUMMARIZE THE INFORMATION AVAILABLE TO THE EXECUTIVE CONCERNING THE REQUEST, INCLUDING WHETHER THE REQUEST IS BEING MADE UNDER SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (C) OF THIS SUBDIVISION;

(II) BE POSTED PROMINENTLY ON THE OFFICIAL PUBLIC INTERNET WEB SITE OF THE AGENCY; AND

(III) BE PROVIDED BY ELECTRONIC MEANS TO ANY PERSON, FIRM OR CORPORATION THAT HAS MADE A WRITTEN OR ELECTRONIC REQUEST TO THE PUBLIC AGENCY FOR NOTICE OF WAIVER ACTIONS BY THE EXECUTIVE WITHIN FIVE (5) YEARS PRIOR TO THE DATE OF NOTICE.

(F) IF THE EXECUTIVE ISSUES A WAIVER UNDER PARAGRAPH (C) OF THIS SUBDIVISION, THE EXECUTIVE SHALL PUBLISH IN THE SAME MANNER AS THE ORIGINAL NOTICE A DETAILED JUSTIFICATION OF THE WAIVER THAT:

(I) ADDRESSES THE PUBLIC COMMENTS RECEIVED UNDER PARAGRAPH (D) OF THIS SUBDIVISION; AND

(II) IS PUBLISHED BEFORE THE WAIVER TAKES EFFECT.

(G) IF IT HAS BEEN DETERMINED BY A COURT OR FEDERAL OR STATE AGENCY THAT ANY PERSON INTENTIONALLY:

(I) AFFIXED A LABEL BEARING A "MADE IN AMERICA" INSCRIPTION, OR ANY INSCRIPTION WITH THE SAME MEANING, TO ANY IRON, STEEL OR MANUFACTURED PRODUCT USED IN PROJECTS TO WHICH THIS SUBDIVISION APPLIES, SOLD IN OR SHIPPED TO THE UNITED STATES THAT WAS NOT MADE IN THE UNITED STATES; OR

(II) REPRESENTED THAT ANY IRON, STEEL, OR MANUFACTURED PRODUCT USED IN PROJECTS TO WHICH THIS SECTION APPLIES THAT WAS NOT PRODUCED IN THE UNITED STATES, WAS PRODUCED IN THE UNITED STATES;

THEN THAT PERSON SHALL BE INELIGIBLE TO RECEIVE ANY CONTRACT OR SUBCONTRACT WITH THIS STATE PURSUANT TO THE DEBARMENT OR SUSPENSION PROVISIONS PROVIDED UNDER SECTION ONE HUNDRED THIRTY-NINE-A OF THE STATE FINANCE LAW.

(H) THIS SUBDIVISION SHALL BE APPLIED IN A MANNER CONSISTENT WITH THE STATE'S OBLIGATIONS UNDER ANY APPLICABLE INTERNATIONAL AGREEMENTS PERTAINING TO GOVERNMENT PROCUREMENT.

(I) DEFINITIONS. FOR THE PURPOSE OF THIS SUBDIVISION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS UNLESS OTHERWISE SPECIFIED:

(I) "EXECUTIVE" MEANS THE EXECUTIVE HEAD OF A PUBLIC AGENCY SUBJECT TO THIS SUBDIVISION;

(II) "PUBLIC AGENCY" MEANS A GOVERNMENTAL ENTITY AS THAT TERM IS DEFINED IN SECTION ONE HUNDRED THIRTY-NINE-J OF THE STATE FINANCE LAW;

(III) "MANUFACTURED IN THE UNITED STATES" MEANS: (A) IN THE CASE OF AN IRON OR STEEL PRODUCT ALL MANUFACTURING MUST TAKE PLACE IN THE UNITED STATES, FROM THE INITIAL MELTING STAGE THROUGH THE APPLICATION OF COATINGS, EXCEPT METALLURGICAL PROCESSES INVOLVING THE REFINEMENT OF STEEL ADDITIVES; AND

(B) IN THE CASE OF A MANUFACTURED PRODUCT, A PRODUCT WILL BE CONSIDERED MANUFACTURED IN THE UNITED STATES IF:

(1) ALL OF ITS MANUFACTURING PROCESSES TAKE PLACE IN THE UNITED STATES, AND

(2) MORE THAN SIXTY PERCENT OF THE COMPONENTS OF THE MANUFACTURED GOOD, BY COST, ARE OF DOMESTIC ORIGIN. IF, UNDER THE TERMS OF THIS PART, A COMPONENT IS DETERMINED TO BE OF DOMESTIC ORIGIN, ITS ENTIRE COST MAY BE USED IN CALCULATING THE COST OF DOMESTIC CONTENT OF AN END PRODUCT.

1 (IV) "UNITED STATES" MEANS THE UNITES STATES OF AMERICA AND INCLUDES
2 ALL TERRITORY, CONTINENTAL OR INSULAR, SUBJECT TO THE JURISDICTION OF
3 THE UNITED STATES.

4 S 7. Severability. If any provisions of this act, or the application
5 thereof to any person or circumstance, is held invalid, such invalidity
6 shall not affect other provisions or applications of this act which can
7 be given effect without the invalid provisions or application, and to
8 that extent, the provisions of this act are declared to be severable.

9 S 8. This act shall take effect immediately.