STATE OF NEW YORK

2086

2017-2018 Regular Sessions

IN ASSEMBLY

January 17, 2017

Introduced by M. of A. MORELLE, BRAUNSTEIN, GOTTFRIED, ENGLEBRIGHT, BRINDISI, MOSLEY, STIRPE, SKOUFIS, ARROYO, JAFFEE, CYMBROWITZ, TITONE, MAYER, ROZIC, ZEBROWSKI, CUSICK, GALEF, GUNTHER, LUPARDO, MAGNARELLI, OTIS, PERRY, SANTABARBARA, BRONSON, MOYA, QUART, FARRELL, ABBATE, BARRETT, STECK, HOOPER, FAHY, LIFTON, KEARNS, RYAN, JOYNER, ABINANTI, ROSENTHAL -- Multi-Sponsored by -- M. of A. COOK, GRAF, LUPINACCI, MAGEE, McDONOUGH, MONTESANO, RAIA, RAMOS, RIVERA, SIMON, THIELE -- read once and referred to the Committee on Governmental Operations

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 Assembly, do enact as follows:

Section 1. Short title. This act shall be known as the "New York State Buy American Act".

§ 2. Section 146 of the state finance law is REPEALED and a new section 146 is added to read as follows:

§ 146. 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 of 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) For the purposes of section one hundred sixty-three of this chapter, 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

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

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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 Untied 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 this article.

(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 purposes 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 governmental entity as that term is defined in section one hundred thirty-nine-j of this article;

(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 coat-

ings, 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 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.

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 Section 2603-a of the public authorities law is REPEALED and a new section 2877-a is added to read as follows:

§ 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.

§ 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

(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 of 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 of 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 apples 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 coat-

ings, 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.

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

17. 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 agency of a political subdivision 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

(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 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 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 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.

§ 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.

(iv) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

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

§ 8. This act shall take effect immediately.