

STATE OF NEW YORK

4386

2017-2018 Regular Sessions

IN ASSEMBLY

February 2, 2017

Introduced by M. of A. CUSICK, BRABENEC, TITONE -- 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 establishing a rating system to prioritize the selection of such products; 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:

1 Section 1. Title. This act shall be known as the "made in America
2 rating system act" or the "MARS act".

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 Section 146 of the state finance law is REPEALED and a new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

5 § 146. Made in America rating system. 1. Use of American materials.

6 (a) Notwithstanding any other provision of law, each contract for the
7 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 awarded to the bidder whose product or material has the highest
13 rating on the made in America rating system scale.

14 (b) The provisions of paragraph (a) of this subdivision shall not
15 apply in any case or category of cases in which it is found that:

16 (i) such materials and products do not meet state standards for
17 construction in the state; or

18 (ii) inclusion of domestic material will increase the cost of the
19 overall project contract by more than twenty percent.

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

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(c) The made in America rating system shall include the following ratings, listed in order from highest to lowest rating:

(i) Empire State AAA - one hundred percent of the product is assembled in the state and one hundred percent of the raw materials are American;

(ii) Empire State AA - one hundred percent of the product is assembled in the state and at least sixty percent of the raw materials are American;

(iii) Empire State A - one hundred percent of the product is assembled in the state;

(iv) USA 100 - one hundred percent of the product is assembled in the United States and one hundred percent of the raw materials are American;

(v) USA 60 - one hundred percent of the product is assembled in the United States and at least sixty percent of the raw materials are American;

(vi) USA Rating - one hundred percent of the product is assembled in the United States.

(d) 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 or suspension provisions provided under section one hundred thirty-nine-a of this article.

(e) 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) "Public agency" means a governmental entity as that term is defined in section one hundred thirty-nine-j of this article;

(b) "made in America" 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 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.

(c) "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. Made in America rating system. 1. Use of American materials.

(a) Notwithstanding any other provision of law, each contract for the construction, reconstruction, alteration or improvement of a public

1 building of public works made by a public agency shall contain a
2 provision that the iron, steel, and manufactured products used or
3 supplied in the performance of the contract or any subcontract thereto
4 and permanently incorporated into the public building or public works
5 shall be awarded to the bidder whose product or material has the highest
6 rating on the made in America rating system scale.

7 (b) The provisions of paragraph (a) of this subdivision shall not
8 apply in any case or category of cases in which it is found that:

9 (i) such materials and products do not meet state standards for
10 construction in the state; or

11 (ii) inclusion of domestic material will increase the cost of the
12 overall project contract by more than twenty percent.

13 (c) The made in America rating system shall include the following
14 ratings, listed in order from highest to lowest rating:

15 (i) Empire State AAA - one hundred percent of the product is assembled
16 in the state and one hundred percent of the raw materials are American;

17 (ii) Empire State AA - one hundred percent of the product is assembled
18 in the state and at least sixty percent of the raw materials are Ameri-
19 can;

20 (iii) Empire State A - one hundred percent of the product is assembled
21 in the state;

22 (iv) USA 100 - one hundred percent of the product is assembled in the
23 United States and one hundred percent of the raw materials are American;

24 (v) USA 60 - one hundred percent of the product is assembled in the
25 United States and at least sixty percent of the raw materials are Ameri-
26 can;

27 (vi) USA Rating - one hundred percent of the product is assembled in
28 the United States.

29 (d) If it has been determined by a court or federal or state agency
30 that any person intentionally:

31 (i) affixed a label bearing a "Made in America" inscription, or any
32 inscription with the same meaning, to any iron, steel or manufactured
33 product used in projects to which this section applies, sold in or
34 shipped to the United States that was not made in the United States; or

35 (ii) represented that any iron, steel or manufactured product used in
36 projects to which this section applies that was not produced in the
37 United States, was produced in the United States; then that person shall
38 be ineligible to receive any contract or subcontract with this state
39 pursuant to the debarment or suspension provisions provided under
40 section one hundred thirty-nine-a of the state finance law.

41 (e) This section shall be applied in a manner consistent with the
42 state's obligations under any applicable international agreements
43 pertaining to government procurement.

44 2. Definitions. For the purposes of this section, the following words
45 shall have the following meanings unless specified otherwise:

46 (a) "Public agency" means a governmental entity as that term is
47 defined in section one hundred thirty-nine-j of this the state finance
48 law;

49 (b) "made in America" means: (i) in the case of an iron or steel prod-
50 uct all manufacturing must take place in the United States, from the
51 initial melting stage through the application of coatings, except metal-
52 lurgical processes involving the refinement of steel additives; and

53 (ii) in the case of a manufactured product, a product will be consid-
54 ered manufactured in the United States if:

55 (A) all of its manufacturing processes take place in the United
56 States, and

1 (B) more than sixty percent of the components of the manufactured
2 good, by cost, are of domestic origin. If, under the terms of this
3 subparagraph, a component is determined to be of domestic origin, its
4 entire cost may be used in calculating the cost of domestic content of
5 an end product.

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

9 § 4. Section 38 of the highway law is amended by adding a new subdivi-
10 sion 10 to read as follows:

11 10. Use of American materials. (a) Notwithstanding any other provision
12 of law, each contract for the construction, reconstruction, alteration
13 or improvement of a public building of public works made by a public
14 agency shall contain a provision that the iron, steel, and manufactured
15 products used or supplied in the performance of the contract or any
16 subcontract thereto and permanently incorporated into the public build-
17 ing or public works shall be awarded to the bidder whose product or
18 material has the highest rating on the made in America rating system
19 scale.

20 (b) The provisions of paragraph (a) of this subdivision shall not
21 apply in any case or category of cases in which it is found that:

22 (i) such materials and products do not meet state standards for
23 construction in the state; or

24 (ii) inclusion of domestic material will increase the cost of the
25 overall project contract by more than twenty percent.

26 (c) The made in America rating system shall include the following
27 ratings, listed in order from highest to lowest rating:

28 (i) Empire State AAA - one hundred percent of the product is assembled
29 in the state and one hundred percent of the raw materials are American;

30 (ii) Empire State AA - one hundred percent of the product is assembled
31 in the state and at least sixty percent of the raw materials are Ameri-
32 can;

33 (iii) Empire State A - one hundred percent of the product is assembled
34 in the state;

35 (iv) USA 100 - one hundred percent of the product is assembled in the
36 United States and one hundred percent of the raw materials are American;

37 (v) USA 60 - one hundred percent of the product is assembled in the
38 United States and at least sixty percent of the raw materials are Ameri-
39 can;

40 (vi) USA Rating - one hundred percent of the product is assembled in
41 the United States.

42 (d) If it has been determined by a court or federal or state agency
43 that any person intentionally:

44 (i) affixed a label bearing a "Made in America" inscription, or any
45 inscription with the same meaning, to any iron, steel or manufactured
46 product used in projects to which this section applies, sold in or
47 shipped to the United States that was not made in the United States; or

48 (ii) represented that any iron, steel or manufactured product used in
49 projects to which this section applies that was not produced in the
50 United States, was produced in the United States; then that person shall
51 be ineligible to receive any contract or subcontract with this state
52 pursuant to the debarment or suspension provisions provided under
53 section one hundred thirty-nine-a of the state finance law.

54 (e) This section shall be applied in a manner consistent with the
55 state's obligations under any applicable international agreements
56 pertaining to government procurement.

1 2. Definitions. For the purposes of this section, the following words
2 shall have the following meanings unless specified otherwise:

3 (a) "Public agency" means a governmental entity as that term is
4 defined in section one hundred thirty-nine-j of the state finance law;

5 (b) "made in America" means: (i) in the case of an iron or steel prod-
6 uct all manufacturing must take place in the United States, from the
7 initial melting stage through the application of coatings, except metal-
8 lurgical processes involving the refinement of steel additives; and

9 (ii) in the case of a manufactured product, a product will be consid-
10 ered manufactured in the United States if:

11 (A) all of its manufacturing processes take place in the United
12 States, and

13 (B) more than sixty percent of the components of the manufactured
14 good, by cost, are of domestic origin. If, under the terms of this
15 subparagraph, a component is determined to be of domestic origin, its
16 entire cost may be used in calculating the cost of domestic content of
17 an end product.

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

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

23 17. Use of American materials. (a) Notwithstanding any other provision
24 of law, each contract for the construction, reconstruction, alteration
25 or improvement of a public building of public works made by a public
26 agency shall contain a provision that the iron, steel, and manufactured
27 products used or supplied in the performance of the contract or any
28 subcontract thereto and permanently incorporated into the public build-
29 ing or public works shall be awarded to the bidder whose product or
30 material has the highest rating on the made in America rating system
31 scale.

32 (b) The provisions of paragraph (a) of this subdivision shall not
33 apply in any case or category of cases in which it is found that:

34 (i) such materials and products do not meet state standards for
35 construction in the state; or

36 (ii) inclusion of domestic material will increase the cost of the
37 overall project contract by more than twenty percent.

38 (c) The made in America rating system shall include the following
39 ratings, listed in order from highest to lowest rating:

40 (i) Empire State AAA - one hundred percent of the product is assembled
41 in the state and one hundred percent of the raw materials are American;

42 (ii) Empire State AA - one hundred percent of the product is assembled
43 in the state and at least sixty percent of the raw materials are Ameri-
44 can;

45 (iii) Empire State A - one hundred percent of the product is assembled
46 in the state;

47 (iv) USA 100 - one hundred percent of the product is assembled in the
48 United States and one hundred percent of the raw materials are American;

49 (v) USA 60 - one hundred percent of the product is assembled in the
50 United States and at least sixty percent of the raw materials are Ameri-
51 can;

52 (vi) USA Rating - one hundred percent of the product is assembled in
53 the United States.

54 (d) If it has been determined by a court or federal or state agency
55 that any person intentionally:

1 (i) affixed a label bearing a "Made in America" inscription, or any
2 inscription with the same meaning, to any iron, steel or manufactured
3 product used in projects to which this section applies, sold in or
4 shipped to the United States that was not made in the United States; or

5 (ii) represented that any iron, steel or manufactured product used in
6 projects to which this section applies that was not produced in the
7 United States, was produced in the United States; then that person shall
8 be ineligible to receive any contract or subcontract with this state
9 pursuant to the debarment or suspension provisions provided under
10 section one hundred thirty-nine-a of the state finance law.

11 (e) This section shall be applied in a manner consistent with the
12 state's obligations under any applicable international agreements
13 pertaining to government procurement.

14 2. Definitions. For the purposes of this section, the following words
15 shall have the following meanings unless specified otherwise:

16 (a) "Public agency" means a governmental entity as that term is
17 defined in section one hundred thirty-nine-j of the state finance law;

18 (b) "made in America" means: (i) in the case of an iron or steel prod-
19 uct all manufacturing must take place in the United States, from the
20 initial melting stage through the application of coatings, except metal-
21 lurgical processes involving the refinement of steel additives; and

22 (ii) in the case of a manufactured product, a product will be consid-
23 ered manufactured in the United States if:

24 (A) all of its manufacturing processes take place in the United
25 States, and

26 (B) more than sixty percent of the components of the manufactured
27 good, by cost, are of domestic origin. If, under the terms of this
28 subparagraph, a component is determined to be of domestic origin, its
29 entire cost may be used in calculating the cost of domestic content of
30 an end product.

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

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

36 8. Use of American materials. (a) Notwithstanding any other provision
37 of law, each contract for the construction, reconstruction, alteration
38 or improvement of a public building of public works made by a public
39 agency shall contain a provision that the iron, steel, and manufactured
40 products used or supplied in the performance of the contract or any
41 subcontract thereto and permanently incorporated into the public build-
42 ing or public works shall be awarded to the bidder whose product or
43 material has the highest rating on the made in America rating system
44 scale.

45 (b) The provisions of paragraph (a) of this subdivision shall not
46 apply in any case or category of cases in which it is found that:

47 (i) such materials and products do not meet state standards for
48 construction in the state; or

49 (ii) inclusion of domestic material will increase the cost of the
50 overall project contract by more than twenty percent.

51 (c) The made in America rating system shall include the following
52 ratings, listed in order from highest to lowest rating:

53 (i) Empire State AAA - one hundred percent of the product is assembled
54 in the state and one hundred percent of the raw materials are American;

(ii) Empire State AA - one hundred percent of the product is assembled in the state and at least sixty percent of the raw materials are American;

(iii) Empire State A - one hundred percent of the product is assembled in the state;

(iv) USA 100 - one hundred percent of the product is assembled in the United States and one hundred percent of the raw materials are American;

(v) USA 60 - one hundred percent of the product is assembled in the United States and at least sixty percent of the raw materials are American;

(vi) USA Rating - one hundred percent of the product is assembled in the United States.

(d) 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 or suspension provisions provided under section one hundred thirty-nine-a of the state finance law.

(e) 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) "Public agency" means a governmental entity as that term is defined in section one hundred thirty-nine-j of the state finance law;

(b) "made in America" 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 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.

(c) "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.