

STATE OF NEW YORK

4073

2017-2018 Regular Sessions

IN SENATE

February 2, 2017

Introduced by Sens. ROBACH, FUNKE, AMEDORE, CROCI, GALLIVAN, HANNON, MURPHY -- 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 Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known as the "New York State
2 Buy American 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 Section 146 of the state finance law is REPEALED and a new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. 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:

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

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1 (i) that the application of this section would be inconsistent with
2 the public interest;

3 (ii) that such materials and products are not produced in the United
4 States in sufficient and reasonably available quantities and of a satis-
5 factory quality; or

6 (iii) that inclusion of domestic material will increase the cost of
7 the overall project contract by more than twenty-five percent.

8 (d) If the executive receives a request for a waiver under paragraph
9 (c) of this subdivision, the executive shall provide notice of and an
10 opportunity for public comment on the request at least thirty days
11 before making a finding based on the request.

12 (e) A notice provided under paragraph (d) of this subdivision shall:

13 (i) summarize the information available to the executive concerning
14 the request, including whether the request is being made under subpara-
15 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

16 (ii) be posted prominently on the official public internet web site of
17 the agency; and

18 (iii) be provided by electronic means to any person, firm or corpo-
19 ration that has made a written or electronic request to the public agen-
20 cy for notice of waiver actions by the executive within five (5) years
21 prior to the date of notice.

22 (f) If the executive issues a waiver under paragraph (c) of this
23 subdivision, the executive shall publish in the same manner as the
24 original notice a detailed justification for the waiver that:

25 (i) addresses the public comments received under paragraph (d) of this
26 subdivision; and

27 (ii) is published before the waiver takes effect.

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

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

34 (ii) represented that any iron, steel or manufactured product used in
35 projects to which this section applies that was not produced in the
36 United States, was produced in the United States;

37 then that person shall be ineligible to receive any contract or subcon-
38 tract with this state pursuant to the debarment or suspension provisions
39 provided under section one hundred thirty-nine-a of this article.

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

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

45 (a) "Executive" means the executive head of a public agency subject to
46 this section;

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

49 (c) "manufactured in the United States" means: (i) in the case of an
50 iron or steel product all manufacturing must take place in the United
51 States, from the initial melting stage through the application of coat-
52 ings, except metallurgical processes involving the refinement of steel
53 additives; and

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

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

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

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

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

13 § 2877-a. The New York State Buy American Act. 1. Use of American
14 materials. (a) Notwithstanding any other provision of law, each contract
15 for the construction, reconstruction, alteration or improvement of a
16 public building or public works made by a public authority shall contain
17 a provision that the iron, steel, and manufactured products used or
18 supplied in the performance of the contract or any subcontract thereto
19 and permanently incorporated into the public building or public works
20 shall be manufactured in the United States.

21 (b) No bidder shall be deemed to be the lowest responsible and reli-
22 able bidder and no bid shall be deemed the best value unless the bid
23 offered by such bidder will comply with the contract term required by
24 paragraph (a) of this subdivision.

25 (c) The provisions of paragraph (a) of this subdivision shall not
26 apply in any case or category of cases in which the executive head of a
27 public agency finds:

28 (i) that the application of this section would be inconsistent with
29 the public interest;

30 (ii) that such materials and products are not produced in the United
31 States in sufficient and reasonably available quantities and of a satis-
32 factory quality; or

33 (iii) that inclusion of domestic material will increase the cost of
34 the overall project contract by more than twenty-five percent.

35 (d) If the executive receives a request for a waiver under paragraph
36 (c) of this subdivision, the executive shall provide notice of and an
37 opportunity for public comment on the request at least thirty days
38 before making a finding based on the request.

39 (e) A notice provided under paragraph (d) of this subdivision shall:

40 (i) summarize the information available to the executive concerning
41 the request, including whether the request is being made under subpara-
42 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

43 (ii) be posted prominently on the official public internet web site of
44 the agency; and

45 (iii) be provided by electronic means to any person, firm or corpo-
46 ration that has made a written or electronic request to the public agen-
47 cy for notice of waiver actions by the executive within five (5) years
48 prior to the date of notice.

49 (f) If the executive issues a waiver under paragraph (c) of this
50 subdivision, the executive shall publish in the same manner as the
51 original notice a detailed justification for the waiver that:

52 (i) addresses the public comments received under paragraph (d) of this
53 subdivision; and

54 (ii) is published before the waiver takes effect.

55 (g) If it has been determined by a court or federal or state agency
56 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;

8 then that person shall be ineligible to receive any contract or subcon-
9 tract with this State pursuant to the debarment and suspension
10 provisions provided under section one hundred thirty-nine-a of the state
11 finance law.

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

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

17 (a) "Executive" means the executive head of a public agency subject to
18 this section;

19 (b) "Public agency" means a state, local or interstate authority as
20 those terms are defined in section two of this chapter;

21 (c) "Manufactured in the United States" means: (i) in the case of an
22 iron or steel product all manufacturing must take place in the United
23 States, from the initial melting stage through the application of coat-
24 ings, except metallurgical processes involving the refinement of steel
25 additives; and

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

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

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

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

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

39 10. Use of American materials. (a) Notwithstanding any other provision
40 of law, each contract for the construction, reconstruction, alteration
41 or improvement of a highway or other public works made by a public agen-
42 cy shall contain a provision that the iron, steel, and manufactured
43 products used or supplied in the performance of the contract or any
44 subcontract thereto and permanently incorporated into the public build-
45 ing or public works shall be manufactured in the United States.

46 (b) No bidder shall be deemed to be the lowest responsible and reli-
47 able bidder and no bid shall be deemed the best value unless the bid
48 offered by such bidder will comply with the contract term required by
49 paragraph (a) of this subdivision.

50 (c) The provisions of paragraph (a) of this subdivision shall not
51 apply in any case or category of cases in which the executive head of a
52 public agency finds:

53 (i) that the application of this subdivision would be inconsistent
54 with the public interest;

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 of 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 of 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 subdivision 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 the state finance
38 law.

39 (h) This subdivision shall be applied in a manner consistent with the
40 state's obligations under any applicable international agreements
41 pertaining to government procurement.

42 (i) Definitions. For the purpose of this subdivision, the following
43 words shall have the following meanings unless specified otherwise:

44 (i) "Executive" means the executive head of a public agency subject to
45 this subdivision.

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

48 (iii) "Manufactured in the United States" means: (A) in the case of an
49 iron or steel product all manufacturing must take place in the United
50 States, from the initial melting stage through the application of coat-
51 ings, except metallurgical processes involving the refinement of steel
52 additives; and

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

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

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

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

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

10 17. Use of American materials. (a) Notwithstanding any other provision
11 of law, each contract for the construction, reconstruction, alteration
12 or improvement of a public building or public works made by a public
13 agency of a political subdivision shall contain a provision that the
14 iron, steel, and manufactured products used or supplied in the perform-
15 ance of the contract or any subcontract thereto and permanently incorpo-
16 rated into the public building or public works shall be manufactured in
17 the United States.

18 (b) No bidder shall be deemed to be the lowest responsible and reli-
19 able bidder and no bid shall be deemed the best value unless the bid
20 offered by such bidder will comply with the contract term required by
21 paragraph (a) of this subdivision.

22 (c) The provisions of paragraph (a) of this subdivision shall not
23 apply in any case or category of cases in which the executive head of a
24 public agency finds:

25 (i) that the application of this subdivision would be inconsistent
26 with the public interest;

27 (ii) that such materials and products are not produced in the United
28 States in sufficient and reasonably available quantities and of a satis-
29 factory quality; or

30 (iii) that inclusion of domestic material will increase the cost of
31 the overall project contract by more than twenty-five percent.

32 (d) If the executive receives a request for a waiver under paragraph
33 (c) of this subdivision, the executive shall provide notice of an oppor-
34 tunity for public comment on the request at least thirty days before
35 making a finding based on the request.

36 (e) A notice provided under paragraph (d) of this subdivision shall:

37 (i) summarize the information available to the executive concerning
38 the request, including whether the request is being made under subpara-
39 graph (i), (ii) or (iii) of paragraph (c) of this subdivision;

40 (ii) be posted prominently on the official public internet web site of
41 the agency; and

42 (iii) be provided by electronic means to any person, firm or corpo-
43 ration that has made a written or electronic request to the public agen-
44 cy for notice of waiver actions by the executive within five (5) years
45 prior to the date of notice.

46 (f) If the executive issues a waiver under paragraph (c) of this
47 subdivision, the executive shall publish in the same manner as the
48 original notice a detailed justification for the waiver that:

49 (i) addresses the public comments received under paragraph (d) of this
50 subdivision; and

51 (ii) is published before the waiver takes effect.

52 (g) If it has been determined by a court or federal or state agency
53 that any person intentionally:

54 (i) affixed a label bearing a "Made in America" inscription, or any
55 inscription with the same meaning, to any iron, steel or manufactured

1 product used in projects to which this subdivision applies, sold in or
2 shipped to the United States that was not made in the United States; or

3 (ii) represented that any iron, steel, or manufactured product used in
4 projects to which this section applies that was not produced in the
5 United States, was produced in the United States;

6 then that person shall be ineligible to receive any contract or subcon-
7 tract with this state pursuant to the debarment or suspension provisions
8 provided under section one hundred thirty-nine-a of the state finance
9 law.

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

13 (i) Definitions. For the purpose of this subdivision, the following
14 words shall have the following meanings unless specified otherwise:

15 (i) "Executive" means the executive head of a public agency subject to
16 this subdivision;

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

19 (iii) "Manufactured in the United States" means: (A) in the case of an
20 iron or steel product all manufacturing must take place in the United
21 States, from the initial melting stage through the application of coat-
22 ings, except metallurgical processes involving the refinement of steel
23 additives; and

24 (B) in the case of a manufactured product, a product will be consid-
25 ered manufactured in the United States if:

26 (1) all of its manufacturing processes take place in the United
27 States, and

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

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

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

37 8. Use of American materials. (a) Notwithstanding any other provision
38 of law, each contract for the construction, reconstruction, alteration
39 or improvement of a state building made by a public agency shall contain
40 a provision that the iron, steel, and manufactured products used or
41 supplied in the performance of the contract of any subcontract thereto
42 and permanently incorporated into the public building or public works
43 shall be manufactured in the United States.

44 (b) No bidder shall be deemed to be the lowest responsible and reli-
45 able bidder and no bid shall be deemed the best value unless the bid
46 offered by such bidder will comply with the contract term required by
47 paragraph (a) of this subdivision.

48 (c) The provisions of paragraph (a) of this subdivision shall not
49 apply in any case or category of cases in which the executive head of a
50 public agency finds:

51 (i) that the application of this subdivision would be inconsistent
52 with the public interest;

53 (ii) that such materials and products are not produced in the United
54 States in sufficient and reasonably available quantities and of a satis-
55 factory 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 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 of 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 or 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 otherwise specified:

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

11 § 8. This act shall take effect immediately.