STATE OF NEW YORK

6639

2017-2018 Regular Sessions

IN SENATE

June 9, 2017

Introduced by Sens. ROBACH, AVELLA, CROCI, FUNKE, GALLIVAN, HANNON, JACOBS, LANZA, MARCHIONE, MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the state finance law and the public authorities law, in relation to enacting the "New York Buy American Act"; and providing for the repeal of certain provisions upon expiration thereof

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 and may be cited as the "New York Buy American Act".

§ 2. Section 146 of the state finance law, as added by chapter 1014 of the laws of 1981, is amended to read as follows:

§ 146. Certain construction contracts involving steel. **1.** Notwithstanding any other provisions of law, all contracts over one hundred thousand dollars in value made and awarded by any department or agency of the state for the construction, reconstruction, alteration, repair, maintenance or improvement of any public works shall require that structural steel, reinforcing steel and/or other major steel items to be incorporated in the work of the contract shall be produced or made in whole or substantial part in the United States, its territories or possessions.

2. Notwithstanding the provisions of subdivision one of this section, all contracts over one million dollars in value and made and awarded by any department or agency of the state for the construction, reconstruction, alteration, repair, maintenance or improvement of any roads or bridges, shall contain a provision that the iron, steel and concrete used or supplied in the performance of the contract or any subcontract thereto and permanently incorporated into such road or bridge, shall be produced or made in whole or substantial part in the United States, its territories or possessions. In the case of an iron or steel product all manufacturing must take place in the United States, from the initial

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

LBD13106-03-7

melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives. For the purposes of this section, "permanently incorporated" shall mean an iron, steel or concrete product that is required to remain in place at the end of the project contract, in a fixed location, affixed to the public work or public building to which it was incorporated. Iron, steel and concrete products that are capable of being moved from one location to another are not permanently incorporated into a public building or public work.

3. The provisions of this section shall not apply if the head of the department or agency constructing the public works, in his or her sole discretion, determines that such provisions would not be in the public interest, would result in unreasonable costs or that such iron or steel cannot be produced or made in the United States in sufficient and reasonably available quantities and of satisfactory quality, or would result in the loss or reduction of federal funding for the subject contract.

4. For the purposes of this section, "contractor" shall mean any person, firm, business enterprise, including a sole proprietorship, partnership, limited liability company or corporation, association, not-for-profit corporation, or any other party to a state contract with a state entity.

§ 3. Section 2603-a of the public authorities law, as added by chapter 441 of the laws of 1983, is amended to read as follows:

§ 2603-a. Letting of certain contracts involving steel products. 1. Notwithstanding any other provision of law, all public authorities shall award contracts involving steel products as follows:

a. All purchase contracts for supplies, material or equipment involving an estimated expenditure in excess of fifty thousand dollars shall require with respect to materials, supplies and equipment made of, fabricated from, or containing steel components, that such steel components be produced or made in whole or substantial part in the United States, its territories or possessions. The provisions of this paragraph shall not apply to motor vehicles and automobile equipment assembled in Canada in conformity with the United States-Canadian trade agreements known as the "Automotive Products Trade Act of 1965" or any amendments thereto.

b. All contracts in excess of one hundred thousand dollars for the construction, reconstruction, alteration, repair, maintenance or improvement of public works shall require that all structural steel, reinforcing steel or other major steel items to be incorporated in the work of the contract shall be produced or made in whole or substantial part in the United States, its territories or possessions.

2. Notwithstanding the provisions of subdivision one of this section, all contracts over one million dollars in value made and awarded by any public authority for the construction, reconstruction, alteration, repair, maintenance or improvement of any road or bridge, shall contain a provision that the iron, steel and concrete used or supplied in the performance of the contract or any subcontract thereto and permanently incorporated into the road or bridge shall be produced or made in whole or substantial part in the United States, its territories or possessions. 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. For purposes of this section, "permanently incorporated" shall mean an iron, steel or concrete product that is required to remain in place at the end of the

project contract, in a fixed location, affixed to the public work or public building to which it was incorporated. Iron and steel products that are capable of being moved from one location to another are not permanently incorporated into a public building or public work.

3. The provisions of this section shall not apply if the governing board or body of such public authority, in its discretion, determines that such provisions would result in unreasonable costs or that such **iron,** steel products or steel components cannot be produced or made in the United States in sufficient and reasonably available quantities or of satisfactory quality or design**, or would result in the loss or reduction of federal funding for the subject contract**.

§ 4. A workgroup consisting of representatives from New York state, Canada and the provinces of Ontario and Quebec, shall hold its first meeting within sixty days of the effective date of this act, and shall meet as long as necessary for the purposes of Canadian and New York reciprocal access for its manufacturers to projects that are covered by this act and which are in New York state, Ontario and Quebec. Such agreements shall be consistent and not supersede any provisions of formal trade agreements established by the governments of the United States and Canada. There shall be twelve representatives from New York state, four appointed by the governor, three appointed by the temporary president of the senate, three appointed by the speaker of the assembly, one appointed by the minority leader of the senate, and one appointed by the minority leader of the assembly.

§ 5. This act shall take effect January 1, 2018 and shall apply to any state contracts executed and entered into on or after such date and shall exclude such contracts that have been previously awarded or have pending bids or pending requests for proposals issued as of January 1, 2018, and shall not apply to projects that have completed project design and environmental studies prior to such date; provided, however, that section four of this act shall expire and be deemed repealed two years after this act shall have become a law.