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Legislative Document

No. 1280

S.P. 400

In Senate, March 14, 2019

An Act To Establish the Maine Buy American and Build Maine Act

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in dark ink, appearing to read "D M Grant", is positioned above the printed name of the Secretary of the Senate.

DAREK M. GRANT
Secretary of the Senate

Presented by President JACKSON of Aroostook.
Cosponsored by Representative MARTIN of Sinclair and
Senators: BELLOWS of Kennebec, CHENETTE of York, CHIPMAN of Cumberland, DILL
of Penobscot, GRATWICK of Penobscot, LUCHINI of Hancock, MIRAMANT of Knox,
Representative: MARTIN of Eagle Lake.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA c. 153, sub-c. 3** is enacted to read:

3 **SUBCHAPTER 3**

4 **MAINE BUY AMERICAN AND BUILD MAINE ACT**

5 **§1777. Short title**

6 This Act may be known and cited as "the Maine Buy American and Build Maine
7 Act."

8 **§1778. Definitions**

9 As used in this subchapter, unless the context otherwise indicates, the following
10 terms have the following meanings.

11 **1. Department.** "Department" means the Department of Administrative and
12 Financial Services.

13 **2. Emergency life safety and property safety goods.** "Emergency life safety and
14 property safety goods" means any goods that are part of or for addition to a system
15 designed to prevent, respond to, alert regarding, suppress, control or extinguish an
16 emergency or the cause of an emergency, or goods used to assist evacuation in the event
17 of an emergency, that threatens life or property. "Emergency life safety and property
18 safety goods" includes, but is not limited to, goods relating to systems or items for fire
19 alarm, fire sprinkling, fire suppression, fire extinguishing, security, gas detection,
20 intrusion detection, access control, video surveillance and recording, mass notification,
21 public address, emergency lighting, patient wandering, infant tagging and nurse call.

22 **3. In-state contractor.** "In-state contractor" means an individual residing in this
23 State or a business based in this State. "In-state contractor" includes:

24 A. If an individual, an individual who has a physical address in this State at which
25 the individual has established residency and has filed a Maine tax return for at least
26 the 2 years immediately prior to bidding on a state contract; or

27 B. If a business, a business that has a physical address in this State at which it
28 conducts business, including interviewing applicants for employment by the business
29 and hiring and employing staff, and:

30 (1) Has filed a Maine tax return or paid Maine employment taxes for at least the
31 2 years immediately prior to bidding on a state contract;

32 (2) If the business does not meet the requirements of subparagraph (1), an
33 officer, if the business is a corporation, a partner in the business or the sole
34 proprietor must meet the requirements of paragraph A; or

(3) If the business does not meet the requirements of subparagraph (1) or (2), at least 60% of the individuals employed by the business are residents of this State. For purposes of this subparagraph, an individual is a resident of this State if the individual meets the requirements of Title 21-A, section 112.

4. Manufactured good. "Manufactured good" means:

A. An article, material or supply, including any preassembled items, brought to a construction site for incorporation into a public building or public work; and

B. Articles, materials or supplies acquired for public use.

5. Manufactured in the United States. "Manufactured in the United States" means:

A. In the case of an iron, cement or steel product, all manufacturing takes place in the United States, except metallurgical processes involving the refinement of steel additives; and

B. In the case of a manufactured good other than an iron, cement or steel product:

(1) All of the manufacturing processes for the manufactured good take place in the United States; and

(2) The origin of the manufactured good's components or subcomponents meets a minimum level of domestic content, as defined in rules established by the department pursuant to section 1780-A.

6. Public agency. "Public agency" means the State and its departments, agencies, boards, commissions and institutions but does not mean a county, municipality or school administrative unit.

7. Public building or public work. "Public building or public work" means any structure, building, highway, waterway, street, bridge, transit system, airport or other betterment, work or improvement whether of a permanent or temporary nature and whether for governmental or proprietary use. "Public building or public work" includes, but is not limited to, any railway; street railway; subway; elevated and monorail passenger rolling stock; passenger rolling stock; self-propelled car; gallery car; locomotive; passenger bus; wires, poles and equipment for electrification of a transit system; rails; tracks; roadbed; guideway; elevated structure; school; hospital; station; terminal; dock; shelter; and repairs to any such public building or public work.

8. United States. "United States" means the United States of America and any territory or insular possession subject to the jurisdiction of the United States.

§1779. Use of American-made materials

1. Mandatory contract provision. Notwithstanding any other provision of law to the contrary, a contract for the construction, reconstruction, alteration, repair, improvement or maintenance of a public building or public work made by a public agency must contain a provision that the manufactured goods, including iron, cement and steel, used or supplied in the performance of the contract or any subcontract to the contract must be manufactured in the United States.

1 **2. Exceptions.** A public agency may apply to the Governor or the Governor's
2 designee for a waiver of the requirements of subsection 1 in any case or category of cases
3 in which the executive head of a public agency finds:

4 A. That the application of the requirements of subsection 1 would be inconsistent
5 with the public interest;

6 B. That the necessary manufactured goods are not produced in the United States in
7 sufficient and reasonably available quantities and of a satisfactory quality;

8 C. That inclusion of manufactured goods manufactured in the United States will
9 increase the cost of the overall project contract by an unreasonable amount, as
10 defined in rules established by the department pursuant to section 1780-A; or

11 D. The cost of the total contract for the construction, reconstruction, alteration,
12 repair, improvement or maintenance of a public building or public work is below a
13 minimum project cost as established by rules of the department pursuant to section
14 1780-A.

15 **3. Public review and comment.** The department shall implement procedures to
16 allow a reasonable amount of time for public review and comment on a requested waiver
17 under subsection 2 before making a finding based on the request and shall publish on the
18 department's publicly accessible website, or in a newspaper of general circulation in the
19 area of the proposed work, a detailed justification for any waiver granted.

20 **4. Intentional violations.** The department shall, after a hearing, debar a person,
21 business or other entity from participation in contracts or subcontracts with the State for 2
22 years if the department has reason to believe that person, business or other entity has
23 intentionally:

24 A. Affixed a label bearing a "Made in America" inscription, or any inscription with
25 the same meaning, to any manufactured good, including iron, cement and steel, used
26 in a project to which this section applies when that manufactured good was not
27 manufactured in the United States;

28 B. Represented that any manufactured good, including iron, cement and steel, used
29 in a project to which this section applies was manufactured in the United States when
30 that manufactured good was not manufactured in the United States; or

31 C. Violated any provision of this subchapter.

32 **5. International trade obligations.** This section must be applied in a manner
33 consistent with the State's obligations under any applicable international agreements
34 pertaining to government procurement.

35 **6. Exception for emergency life safety and property safety goods.** The provisions
36 of this subchapter do not apply to emergency life safety and property safety goods.

37 **§1780. Preference for in-state contractors**

38 **1. Award of substantially similar bids; opportunity to match.** In addition to the
39 requirements of Title 26, chapter 15 and notwithstanding any other provision of law to

1 the contrary, except as provided in subsection 2, the department, in awarding a bid for the
2 construction, reconstruction, alteration, repair, improvement or maintenance of a public
3 building or public work or for services provided to or on behalf of the State, shall award
4 the bid to an in-state contractor if that in-state contractor's bid is substantially similar to
5 other submitted bids. If an in-state contractor submits a bid that is substantially higher
6 than other submitted bids, the department shall give that in-state contractor the
7 opportunity to match the lowest bid submitted. If more than one in-state contractor
8 submits a bid that is substantially similar to other submitted bids, each must be given the
9 opportunity to revise and resubmit that contractor's bid.

10 **2. Exception.** If the department determines, by a preponderance of evidence, that a
11 bid submitted by an in-state contractor is frivolous or that the in-state contractor is
12 incapable of satisfactorily completing the contract, the department may refuse to award
13 the bid to that in-state contractor.

14 **3. Grievance; investigation; mediation.** An in-state contractor that is not awarded
15 a bid pursuant to subsection 1 may request, within 30 days of the award of the bid, the
16 Attorney General to investigate the bidding process and award to determine whether the
17 procedure in subsection 1 was adhered to by the department or, if the contract was not
18 awarded pursuant to subsection 2, whether the department's determination was valid. If
19 the Attorney General determines that the department has not followed the procedure
20 specified in subsection 1, the Attorney General may act as a mediator in a dispute
21 between the in-state contractor and the department.

22 **§1780-A. Rules**

23 The department shall adopt routine technical rules as described in chapter 375,
24 subchapter 2-A to implement this subchapter.

25 **Sec. 2. Effective date.** This Act takes effect September 1, 2020.

26 **SUMMARY**

27 This bill establishes the Maine Buy American and Build Maine Act and requires that
28 all contracts for the construction, reconstruction, alteration, repair, improvement or
29 maintenance of a public building or public work made by a state agency, board,
30 commission or institution contain a provision that the manufactured goods, including
31 iron, cement and steel, used or supplied in the performance of the contract or any
32 subcontract to the contract must be manufactured in the United States. This requirement
33 does not apply to counties, municipalities or school administrative units.

34 The bill requires that, in the case of a manufactured good other than an iron, cement
35 or steel product, all of the manufacturing processes take place in the United States and the
36 origin of the manufactured good's components or subcomponents meet a minimum level
37 of domestic content as established by rule.

38 Under the Act, a public agency may apply to the Governor or the Governor's designee
39 for a waiver of the requirement if the executive head of the public agency finds that the
40 application of the requirement would be inconsistent with the public interest, that the

1 necessary manufactured goods are not produced in the United States in sufficient and
2 reasonably available quantities and of a satisfactory quality or that inclusion of
3 manufactured goods made in the United States will increase the cost of the overall project
4 contract by an unreasonable amount. The Department of Administrative and Financial
5 Services is directed to develop rules to implement the Act.

6 The bill requires that, if the department has reason to believe that any person,
7 business or other entity has intentionally made fraudulent representations about the
8 domestic content of a manufactured good or has intentionally violated any provision of
9 the Act, the department must, after a hearing, debar that person, business or other entity
10 from contracts or subcontracts with the State for 2 years.

11 The bill provides that the provisions of this legislation must be applied in a manner
12 consistent with the State's obligations under any applicable international agreements
13 pertaining to government procurement.

14 The bill also requires that, in the award of a bid for the construction, reconstruction,
15 alteration, repair, improvement or maintenance of a public building or public work or for
16 services to be provided to or on behalf of the State, if 2 or more bids are submitted that
17 are substantially similar, preference must be given to the bid submitted by an in-state
18 contractor, which includes a business at which at least 60% of the employees are
19 residents of Maine. If the bid submitted by an in-state contractor is higher than the lowest
20 bid submitted by a contractor that is not an in-state contractor, the in-state contractor must
21 be given the opportunity to match the lowest bid submitted.