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**An Act To Encourage the Purchase of Products Made in
Maine and in the United States and To Give Preference
to Maine Businesses When Awarding Contracts**

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

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

SUBCHAPTER 3

MATERIALS, SUPPLIERS AND VENDORS

§ 1777. Definitions

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

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

2. 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. An article, material or supply acquired for public use.

3. Manufactured in Maine or in the United States. "Manufactured in Maine or in the United States" means:

A. In the case of an iron or steel product, all manufacturing takes place in Maine or another state 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 or steel product:

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

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

4. 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.

5. 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 and railroad 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; building; school; hospital; station; terminal; dock; and shelter and repairs to any such public buildings and public works.

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

§ 1778. Use of materials manufactured in Maine or in the United States

1. Mandatory contract provision. Notwithstanding any other provision of law, 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 and steel, used or supplied in the performance of the contract or any subcontract to the contract must be manufactured in Maine or in the United States.

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

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

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

C. That inclusion of manufactured goods manufactured in Maine or in the United States will increase the cost of the overall project contract by an unreasonable amount, as defined in rules established by the Department of Administrative and Financial Services pursuant to section 1780; or

D. That the cost of the total contract for the construction, reconstruction, alteration, repair, improvement or maintenance of a public building or public work is below a minimum project cost, as established by rules of the Department of Administrative and Financial Services pursuant to section 1780.

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

4. Intentional violations. The Department of Administrative and Financial Services shall, after a hearing, debar a person, business or other entity from participation in contracts and subcontracts with the State for 2 years if the department has reason to believe that person, business or other entity has intentionally:

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

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

C. Violated any provision of this subchapter.

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

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

§ 1779. Preference for businesses located in the State

Notwithstanding any provision of law to the contrary, the Director of the Bureau of General Services shall apply a preference percentage of 5% for a business submitting a bid for a contract under this subchapter whose principal place of business is located in the State and that pays a majority of its payroll to residents of the State as long as:

1. Quality. The product or service offered by the business is comparable in quality to the product or service offered by the best-value bidder; and

2. Price. The bid submitted by the business is no more than 5% over the bid submitted by the best-value bidder.

§ 1780. Rules

The Department of Administrative and Financial Services shall adopt routine technical rules as described in chapter 375, subchapter 2-A to implement this subchapter.

Sec. 2. Effective date. This Act takes effect September 1, 2016.

SUMMARY

This bill requires that all contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of a public building or public work made by a state department, agency, board, commission or institution contain a provision that the manufactured goods, including iron and steel, used or supplied in the performance of the contract or any subcontract under the contract must be manufactured in Maine or in the United States. This requirement does not apply to counties, municipalities or school administrative units.

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

The bill provides that a public agency may apply to the Governor or the Governor's designee for a waiver of the requirement if the executive head of the public agency finds that the application of the requirement would be inconsistent with the public interest, that the necessary manufactured goods are not produced in Maine or in the United States in sufficient and reasonably available quantities and of a satisfactory quality or that inclusion of manufactured goods made in Maine or in the United States will increase the cost of the overall project contract by an unreasonable amount. The Department of Administrative and Financial Services is directed to develop rules regarding this legislation, including rules to guide the waiver process and the process for public review and comment regarding requests for a waiver.

The bill requires that if the Department of Administrative and Financial Services has reason to believe that any person, business or other entity has intentionally made fraudulent representations about the domestic content of a manufactured good or has intentionally violated any provision of this legislation, the department must, after a hearing, debar that person, business or other entity from contracts or subcontracts with the State for 2 years.

The bill gives preference in the awarding of contracts to businesses located in the State.

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