



## Testimony of Matt Marks in Opposition to LD 1280

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

Monday, April 1, 2019 9:00 AM

Joint Standing Committee on State and Local Government

Good Afternoon Senator Claxton, Representative Martin and distinguished members of the Joint Standing Committee on State and Local Government. My name is Matt Marks, I am a resident of Scarborough and represent the Associated General Contractors of Maine.

The Associated General Contractors of Maine is statewide construction trade association representing general contractors, specialty contractors, subcontractors, service and supply providers. Since 1951 we've been engaged in the procurement process for state and public agencies.

I appreciate the intent of President Jackson and share his eagerness to have Maine contractors build our infrastructure with American made products whenever possible. I've personally led efforts to meet with developers in the private sector to share the skills our workers have to meet their project specifications and encourage the use of Maine businesses. However, we don't feel a complicated state preference process is needed for our firms to be competitive and win bids.

Last week I met with President Jackson's Policy and Legal Director at his suggestion. We reviewed each item in the bill, and I had the chance to share the concerns I've outlined in this testimony. I've also had a few days to weigh potential changes to this bill that could be presented.

The first major hurdle is the application of this law to agencies receiving federal funding. The federal government has protected the ability for all firms to bid on work when federal dollars are used. The following guidelines should be considered to maintain federal support:

- *You cannot prohibit, restrict or otherwise discriminate against the use of articles or materials of foreign origin.*
- *A state may not restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor; whether resident or nonresident of the State wherein the work is to be performed.*

- *Federal-aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder.*
- *Each project shall be awarded only on the basis of the lowest responsive bid.*

If the current bill language isn't modified, nearly \$200 million of MaineDOT's budget will be unfunded and countless other federal dollars at risk at other state agencies. If it is amended, and federal projects exempt, agencies will be using two very different procurement systems and must ensure that projects are genuinely funded wholly by state or federal dollars.

#### *In-State Contractor Qualifications*

We've asked our members to review the in-state qualifications in this bill and confirm their business structure would comply with one of the standards. One major concern is the ability for a Maine based firm to sell their business. As a new entity after a sale, there is a possibility they could not meet any of the requirements-depending on their business structure.

Maine has also benefited from out-of-state firms bidding on work, hiring locally, and bringing their employees here to set up a permanent place of business. To us, it seems unreasonable to require them to be here for two-years before performing public work competitively.

#### *Revised Bid Process*

Perhaps the most complicated part of the bill and even more challenging to share our concern with is the bid process. The term "substantially similar" provides an open interpretation for an agency and with that the possibility of legal challenges. How will an agency determine similarly, and what process will be used to ensure consistent decision-making?

The other challenge is allowing other bidders the chance to meet the out-of-state bid. How will the agency select the apparent low-bidder if all agree to match? The integrity of the bidding system is vital to the procurement process. It appears this would place all of the in-state bidders in a tie-bid scenario.

The grievance and mediation process will slow project delivery. There is no question under the proposed bid process the agency will need to have a transparent grievance process, and it will be used frequently in the situation illustrated.

#### *Use of American Made Products*

The requirement to use American made manufactured goods in an increasingly global marketplace is putting Maine in a silo. Maine has cherished the sale of lobster, blueberries, and potatoes worldwide. We continue to celebrate the revitalized shipping port with Icelandic destinations. The rules established on what goods must be manufactured in the United States will have to consider parts of products, how the origin will be tracked, and what agency staff levels will be required to review conformance. We too would prefer the US Made products, but we also have the enormous task of locating every widget to ensure compliance and many products have

parts made in different countries. Often parts are manufactured and shipped to a facility for assembling. The waiver process must be modified to be streamlined, or delays will be costly.

It is our strong belief that Maine firms are not only competitive in New England, but we also have a great skilled workforce and depth of knowledge that allows our firms to build infrastructure outside our border. We are concerned this bill could create a pathway for our neighboring states to respond with similar conditions.

Thank you for considering my comments.