



Testimony of Matt Marks Against LD 1411

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

May 5, 2021 1:00 PM

Joint Standing Committee on State and Local Government

Senator Baldacci, Representative Matlack, and Members of the Joint Standing Committee on State and Local Government. My name is Matt Marks; I am a Scarborough resident representing the Associated General Contractors of Maine today and here to testify on specific items concerning LD 1411.

AGC Maine respectfully believes this bill is in search of a problem that doesn't exist right now. Maine contractors compete within a regional competitive process. Maine's construction market is fickle, and when the economy slows, many Maine contractors increase their work out-of-state. Adopting a policy that provides even greater preference to companies operating here will likely trigger a response by neighboring states who may implore the same treatment for their residential businesses. Fundamentally we believe that Maine's construction industry should compete throughout the United States on a level playing field.

We have specific questions about the process for compliance with Buy America;

- Will agencies hire clerks to confirm the material sources and process requests for waivers when materials cannot be sourced?
- Will rules be developed to determine the allowed context of foreign materials where multiple components might be assembled to produce a final product? A good example can be windows, where the metal components might be sourced internationally, and the glass and frame built here.
- Does this impact any current trade or the future trade with Canada?

For the Build Maine section of the bill, we have several questions about the management of bids. Under section 2409, preference for in-state contractors changes the procurement process. We are opposed to the sentiment a bid would be awarded after the opening to a contractor who can "match" the winning bid. If that same requirement were adopted in other states, Maine contractors would be locked out of the bidding. It's also critical to consider the costs of assembling a bid, as it's costly. It's not clear how a winner will be determined when multiple Maine contractors are provided an opportunity to meet the non-compliant bid from an out-of-state firm. That process should be determined in advance of a bid solicitation.

In my time with AGC Maine, we've recognized the value of contractors who bid in this market but are located in another state. Sometimes that results in a permanent place of business here, and that adds capacity for the entire market.

In some divisions, agencies are still faced with limited bidders, even as few as one. In a recent school project, only one company submitted a final bid. In this case, they were an out-of-state firm and, in our estimates, wouldn't qualify with section 2047 Subsection 3, In-state contractor. If you read it is correct, they could still be awarded the project. However, if they had a competitive bid against a Maine contractor, it is unclear how the Department would determine the term "substantially similar". There is also a challenge if the contract is reversed and the apparent winner is rejected, where they might not bid here again.

We completely understand the sentiment of this bill, but believe the procurement process is confusing and will provide an open door for legal challenges.

Respectfully submitted by,



Matt Marks, AGC Maine