ORGANIZATION for INTERNATIONAL INVESTMENT
Global Investment Grows America's Economy

March 8, 2017

Governor Cuomo, Majority Leader Flanagan, and Speaker Heastie:

On behalf of the Organization for International Investment (OFII), which represents more than 100 major employers in New York, I urge the legislature to reject the inclusion of forced localization requirements (so-called Buy American provisions) in the final FY 2018 Budget. This policy, as outlined in the Governor's FY 2018 Executive Budget, would undermine the very outcomes the budget hopes to achieve in spurring economic development. This letter summarizes OFII's concerns, which include how:

- **The proposal would be treated as a requirement instead of a preference;**
- **Procurement officials, including dozens of regional and local authorities, SUNYs, and CUNYs, would be impacted and face fiscal and administrative challenges;**
- **Many exempted products would not be entirely exempted;**
- **The trade agreement exemption would not prevent product discrimination from trade agreement partners**;
- **Businesses (especially small businesses) with global supply chains would be undermined;**
- **Hundreds of thousands of New York workers would be disadvantaged;**
- **Taxpayers would be harmed;**
- **New York exporters would be less competitive;**
- **Business compliance would be difficult (if not impossible).**

OFII is a trade association that represents the U.S. subsidiaries of foreign-headquartered companies. Our membership list is enclosed. Companies like those in our membership employ millions of U.S. workers and are vital to the health of New York's economy. For instance, many of our member companies are some of the most prominent employers in New York, including Panasonic, Siemens, Bombardier, Volvo Trucks, Philips Healthcare, BASF, and HSBC.

While proponents claim "Buy American" is a job growth strategy, economic developers will tell you that banning thousands of employers from government contracting will not support the kind of economic growth New Yorkers desire. Policies that discriminate against globally-oriented businesses hurt the sectors most important to the health of New York's most promising industries, which the state has spent billions of dollars to help grow, like nanotechnology, biotechnology, life sciences, photonics, and semiconductors.

The Governor's proposal has alarmed many New York employers and taxpayers. These concerns include how:

- **The proposal would be treated as a requirement instead of a preference:** While proponents portray the domestic content requirements as a purchasing preference, our legal experts' review of the text leads them to believe it will be treated as a requirement. The language clearly outlines how no bidder "shall be deemed to be the lowest responsive and responsible bidder" unless the bidder complies with this proposal.

- **Procurement officials, including dozens of regional and local authorities, SUNYs, and CUNYs, would be impacted and face fiscal and administrative challenges:** No state has ever sought to cast such a wide web when adopting forced localization policies. The proposal would affect all "state entities," as defined by Section 310 of the Executive Law, including SUNY universities, colleges, and specialized doctoral granting units (e.g. the NY Downstate Medical Center and the NY Upstate Medical University), and CUNY colleges and graduate schools. Further, the Albany and Syracuse Airport Authorities, the Long Island Rail Road, the Cayuga County Water and Sewer Authority, the New York City Transit Authority, the Upper Mohawk Valley Regional Water Board, and dozens of other state and regional purchasing authorities would also be impacted.

  With no specificity on how much more agencies will be forced to pay to comply with this proposal, proponents are forcing a huge unfunded mandate onto already budget-stressed purchasing authorities. Without additional resources, agencies – especially regional and local entities – would face challenges in enforcing and administering these new requirements from ensuring company compliance to granting and approving waivers.

- **Many exempted products would not be entirely exempted:** While steel, energy, electricity, fuel, software, microprocessors, and microcomputers are exempt as "end products," they are not exempt if utilized as components. For instance, a microprocessor is a component of many technology products. Further, the mere fact that certain products are exempt highlights how the policy arbitrarily picks winners and losers. For instance, why attempt to exempt software products, but not lighting products? Why try to exempt fuel, but not medical devices? Why try to exempt microprocessors, but not municipal trucks and vehicles?

- **The trade agreement exemption would not prevent product discrimination from trade agreement partners**: Even though New York is subject to the World Trade Organization's Government Procurement Agreement (GPA), thousands of projects would not be covered under the agreement. For instance:
    - The GPA only covers contracts above approximately $520,000 for goods and services or $7.4 million for construction projects. On the other hand, this proposal would bind any contract over $100,000.[1]
    - It is unclear whether the exemption for trade agreements would apply where a company sources its products or components of its products from both trade agreement countries and non-trade agreement countries.
    - Under the GPA, New York covers state agencies, the state university system, public authorities and public benefit corporations, but is unclear whether the dozens of regional and local purchasing authorities as outlined by Section 310 of the Executive Law and the Public Authorities Law would also be covered.

[1] More information on the WTO GPA available here: https://www.wto.org/english/tratop_e/gproc_e/gpa_overview_e.htm

- **Hundreds of thousands of New York workers would be disadvantaged:** Global investment provides the jobs that New York needs – especially in Upstate and Central New York. More than 40,000 New York businesses export, supporting nearly 390,000 local jobs.[2] What is more, 1,530 U.S. subsidiaries of foreign-based firms have invested and created nearly 430,000 jobs in the state, including more than 64,000 jobs in manufacturing.[3] All New York communities are hungry for these globally-dependent jobs, but these jobs are also the most likely to be harmed by protectionist procurement policies. Restricting access to procurement sends a negative signal to globally-connected firms evaluating where to invest and create jobs because their global roots would be held against them, denying them opportunities to bid post-investment in New York. This policy approach undermines laudable efforts like Global NY to attract global firms.

- **Businesses (especially small businesses) with global suppliers would be undermined:** New York companies that rely on cross-border supply chains could face challenges in meeting the domestic content requirements. Employers have supply chains to compete in today's global economy and provide goods at competitive prices for customers. These companies would face the daunting decision of reinventing their supply chain networks to service New York's market at the risk of becoming uncompetitive in retaining business with all other customers. This would place the highest burden on small businesses that lack the resources or capability to reinvent supply chains.

- **Taxpayers would be harmed:** Many employers would forego New York's market because they cannot afford to reinvent their supply chains; therefore, marketplace competition would decrease, and taxpayer costs would increase. In addition, the quality of the delivered service may diminish by potentially excluding qualified bidders from competing. Thousands of commonly purchased goods that help taxpayers would be ineligible under this proposal because their production relies on global supply chains. To name a few: HVAC, sprinkler, and fire alarm systems; lighting products and their control systems; snow-removal trucks and other municipal vehicles; chemicals that make goods sustainable; and criminal screening equipment.

- **New York exporters would be less competitive**: New York exporters compete against global rivals to sell their goods to overseas customers. If they reinvent supply chains to meet New York's domestic content requirements, they risk losing out on export opportunities if their goods become uncompetitively priced.

- **Business compliance would be difficult (if not impossible)**: The waiver process articulated in the proposal will invite discrepant and inconsistent application. Many exemptions lack detail, (*e.g.,* the definitions of "unreasonable amount" and "public interest" are undefined and unresolved). Further, many companies lack the expertise to track and certify the domestic content of their supply chain down to the subcomponent level. That level of added

[2] Statistics are the latest available data from the United States Trade Representative.
[3] Statistics are the latest data from the U.S. Department of Commerce's Bureau of Economic Analysis (BEA) released October 2016 regarding the U.S. subsidiaries of internationally-headquartered companies.

compliance, combined with the uncertainty of interpretation from agency to agency, makes procurement planning untenable for many companies.

In the end, taxpayers deserve answers to three key questions:

1. Does the governor have any empirical evidence to back up the assertion that this proposal will actually create more jobs in New York?

2. How much more will state, regional, and local agencies, and ultimately New York taxpayers, pay to comply with these rules, if implemented?

3. How does this proposal advance the governor's Global NY and the regional economic development councils' efforts to attract prospective global employers and grow globally competitive industries?

For these reasons, we urge the removal of so-called Buy American provisions from New York's final FY 2018 Budget.

Thank you for your consideration. Please contact Evan Hoffman, OFII's director of state government affairs at ehoffman@ofii.org or (202) 659-1903, with any questions or comments.

Sincerely,

Nancy McLernon
President and CEO
Organization for International Investment

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