



STATE PROCUREMENT PREFERENCES

Many states provide a range of preferences in state, and sometimes local, government contracting. Such preferences are not subject to NAFTA, and are often not subject to the WTO GPA. Typically, procurements seek the lowest bid, but use of preferences permits bids of certain percentages above the lowest bid

Types of preferences include:

- Domestic goods
- In-state producers
- Steel-specific, many of which apply to iron products
- “Recycled products”
- In-state labor
- Inter-state reciprocal agreements

Alabama

- a) Provides 5% preference for Alabama workers and supplies and to workers and supplies of states giving reciprocity to Alabama
- b) In contracts for personal property or services, provides preference for commodities produced in Alabama or sold by Alabama persons, firms, or corporations
 - There must be no sacrifice or loss in price or quality

California

- a) Gives preference in contracting to bidders who “agree to use or supply only such unmanufactured materials as have been produced in the United States and manufactured materials, manufactured in the U.S. substantially all from materials produced in the U.S.”
 - Does not apply to materials of class or kind not produced in the U.S.
 - Permits purchase of “office machines” and supplies without regard to place of manufacture
- b) Provides 5% preference for in-state products in contracts for public works, bridges, buildings, and other structures
- c) Preference for certain recycled products (limited scope, includes paper)



Colorado

- a) Provides preference for “resident bidders” in contracts for construction for a public project
 - Preference is equal to preference afforded non-resident bidders by their state or foreign country
 - Preference for resident bidders in low tied-bids
- b) Preference for Colorado labor in design-build contracts
- c) No preference for domestic goods
- d) Includes a preference for Recycled plastics and paper

Connecticut

- a) Provides a preference of up to 10% for goods made of recycled materials where it is determined that that the preference would promote “recycling or remanufacturing”
 - “Recyclable” means “recovered from solid waste stream for reuse”
 - “Remanufactured” means restored to “original function...by retaining the bulk of components
- b) Provides preference for motor vehicles powered by clean alternative fuel or motor vehicles and conversion equipment allowing the motor vehicle to run on clean alternative fuel or dual use of clean and other fuels
- c) Provides a preference for in-state goods and services but all other terms must be equal

Delaware

- a) No preference for domestic goods
- b) Does provide preference for Delaware labor

Illinois

- a) Applies to contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of public works
- b) Steel products used or supplied in the performance of such contracts or any subcontracts thereto must be manufactured or produced in the United States.
- c) Applies to iron products



d) Exceptions:

- Contract involves an expenditure of less than \$500
- The specified products are not manufactured or produced in the United States in sufficient quantities to meet the agency's requirements or cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the agency's requirements
- Obtaining the specified products, manufactured or produced in the United States would increase the cost of the contract by more than 10%
- Application of the preference is not in the public interest

Indiana

- a) Applies to steel or foundry products in every contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works
- b) May be waived if the cost of steel or foundry products is considered to be "unreasonable"
- c) Reasonable Bids: The bid or offered price of any steel or foundry products of domestic origin is reasonable if the price does not exceed the sum of:
 - i. the bid or offered price of like steel or foundry products of foreign origin (including any applicable duty); plus
 - ii. a differential of fifteen percent 15% of the bid or offered price of the steel or foundry products of foreign origin
- d) Fifteen percent (15%) differential may be increased to 25% if the head of the public agency determines that use of steel or foundry products of domestic origin would benefit the local or state economy

Iowa

- a) Provides a preference for resident bidders as against non-resident bidders in competitive bidding where state or foreign country of non-resident bidders provides similar preference
- b) "Resident bidders" is a person doing business in the state, with a place for doing business, and whose shares are more than 50% owned by the by residents of Iowa
- c) No preference of domestically produced goods



Maine

- a) No preferences for American materials
 - Permits a preference for commodities “produced or manufactured” in Maine
 - Requires that “price, quality, availability and other factors” be the same as non-resident bidder
- b) Maine law provides a 10% preference for paper and paper products with recycled products

Maryland

- a) Contractors or subcontractors must use or supply only American steel products:
 - In the performance of a contract for constructing or maintaining a public work; or
 - When buying or manufacturing machinery or equipment that is: (1) composed of at least 10,000 pounds of steel products; and (2) is to be installed at a public work site
- b) "American steel product" means a product that is rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more of these operations, for steel made in the United States by open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process
- c) Exceptions
 - The price of American steel products is “not reasonable.”
 - Price is reasonable if within: 20% of the bid or offered price; or 30% of the bid or offered price if produced in a "substantial labor surplus area"
 - American steel products are not produced in sufficient quantity to meet the requirements of the contract; or
 - The purchase of American steel products would be inconsistent with the public interest

Massachusetts

- a) Provides a preference in the purchase of supplies and materials first to supplies and materials manufactured and sold within Massachusetts, and then second to the supplies and materials manufactured and sold elsewhere within the United States



Missouri

- a) Provides “buy America” type preference for products of the “mines, forests, and quarries” of Missouri provided they are:
 - For state buildings must be in “marketable quantities,” “best quality”, “suitable character” and can be obtained at “reasonable market prices.”
- b) Also provides a preference for contracts and subcontracts for construction, alteration, repair, or maintenance of any public works must use “manufactured goods or commodities” that are manufactured or produced in the U.S.
- c) Exceptions include:
 - Contracts less than \$25,000
 - When only one line of a particular good or product is manufactured or produced in the United States
 - Products are not manufactured or produced in the United States in sufficient quantities or cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the agency's requirements
 - Obtaining the specified domestic products increases the cost of the contract by more than 10%
- d) Provides preference for recycled products made from solid waste:
 - Applies to “products that utilize recovered materials of a price and quality comparable to products made from virgin materials”
 - Principally applies to retread tires, compost materials, recycled oil, and recycled paper products

New Hampshire

- a) Procurement policies provide no preferences for domestic goods
- b) Recent law changes require that a contract to be awarded to an in-state firm for certain contracts if the price is the same as that offered by an out-of-state firm



New York

- a) Requires that contracts for the construction, reconstruction, alteration, repair, maintenance or improvement of public works that incorporate structural steel, reinforcing steel or other major steel items, use such materials, supplies, and equipment made in whole or substantial part in the United States, its territories or possessions
- b) Exceptions
 - Contracts valued at \$100,000 or less
 - Unreasonable costs
 - Steel products or steel components cannot be produced or made in the United States in sufficient and reasonably available quantities or of satisfactory quality or design.

North Carolina

- a) Provides a preference first for North Carolina products and then for products “made in USA”
 - Permits preference “as far as may be practical” and “to extent permitted by State and federal law, and treaty”
 - Applies to products or services “manufactured or produced in the United States”
 - May not be a sacrifice or loss in price or quality
- b) Applies to products or services manufactured or produced in North Carolina or furnished through N.C.

Ohio

- a) Includes preference for U.S. “produced” goods
- b) “Buy America/Buy Ohio” hybrid: Contracting officials will remove bids that offer products that have not been or that will not be produced or mined in the United States and will then give preference to Ohio bids, or to bidders from a border state, and chose the lowest responsive and responsible bid
- c) “Produced” for “Buy Ohio Act” means “processing, mining, developing and making of a thing into a new article, with a district character in use, through the application of input within the State of Ohio... Produced does not include the mere assembling or putting together of non-Ohio products, including materials, manufacturer’s supplies, merchandise, goods”



d) Exceptions:

- Articles, materials, and supplies not mined, produced, or manufactured in the U.S. in sufficient and reasonably available commercial quantities and of satisfactory quality

Oklahoma

a) "All agencies, boards, commissions, offices, institutions, or other governmental bodies of the State of Oklahoma, must purchase goods and equipment manufactured or produced in the United States of America as determined pursuant to federal and state law"

b) Exceptions

- A foreign-made product is substantially cheaper and of equal quality
- A foreign-made product is of substantially superior quality to competing American products and is sold at a comparable price; or
- The requirement is waived under a trade agreement

c) Permits price differential preference of 2.5% for goods and equipment manufactured or produced in the United States

- Does not apply to goods or equipment of inferior quality to those offered from outside the United States

Pennsylvania

a) Applies to every contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works

b) Requires only U.S. made "steel products" be used or supplied in the performance of the contract or any subcontract

c) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made in the U.S. by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process and includes cast iron products

d) Waived if a product is not available domestically or the product is not produced in sufficient quantities to meet the requirements of a contract

- Requires projects' prime contractors certify to "non-availability"



Rhode Island

- a) Requires that every contract document for the construction, reconstruction, alteration, repair, improvement, or maintenance of public works contain a provision that if any steel products are to be used or supplied in the performance of the contract be from steel made in the United States
- b) Exceptions:
 - Where steel products are not produced in or readily available in the United States; or
 - Where steel products shall exceed 15% of the costs of any other steel products obtainable nationally or internationally
- c) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more of these operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process
- d) May not include cast iron products

South Carolina

- a) Provides 7% preference for end products manufactured or grown in South Carolina
- b) Provides 2% preference for end products manufactured or grown in the United States
 - "Manufactured" means to make or process raw materials into an end product
 - Penalties for substitution of nonqualifying product where preference was utilized
 - Penalties include contract termination, civil penalty
- c) Provides preference for S.C. labor

Texas

- a) Offers preferences to Texas products first and U.S. products second, in mostly tied-bid situations
- b) Supplies, materials, or equipment produced in Texas are given preference over comparable goods produced outside Texas when the cost and quality of the goods are equal
 - Supplies, materials, and equipment are considered to be produced in Texas if they are manufactured in Texas; "manufactured" does not include the work of packaging or repackaging



- c) United States supplies, materials, equipment, or agricultural products are given a preference over foreign products when the cost and quality are equal, if comparable goods of equal cost and quality produced or grown in Texas

West Virginia

- a) Only domestic aluminum, glass or steel products shall be supplied in contracts or subcontracts for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works
- b) Applies to contracts of in an amount more than fifty thousand dollars
 - Also applies to projects requiring more than ten thousand pounds of steel products
- c) Exceptions:
 - Cost of domestic aluminum, glass or steel products is unreasonable
 - Inconsistent with the public interest
 - Domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements
- d) "Aluminum, glass and steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed from aluminum, glass and steel

Wisconsin

- a) Requires purchase of U.S.-manufactured materials when all other factors are "substantially equal"
 - "Manufactured" means mined, produced, manufactured, fabricated or assembled
 - "Manufactured in the United States" means that materials are manufactured in whole or in substantial part within the United States or that the majority of the component parts thereof were manufactured in whole or in substantial part in the United States
- b) Exceptions:
 - The materials are not manufactured in the United States in sufficient or reasonably available quantities, or
 - The quality of the materials is substantially less than the quality of similar available materials manufactured outside of the United States