



Ohio Administrative Code Rule 123:5-1-11 Model system of preference.

Effective: March 28, 2014

The department of administrative services establishes the following model system of preferences which may be used voluntarily by counties, townships, and municipalities for purchasing contracts. See the appendix to this rule which sets forth the model system of preferences in the form of a sample ordinance or resolution.

(A) System of preferences

(1) Subject to the system of preferences set forth in this rule, contracts for the purchase of all equipment, materials, supplies, or insurance (or for only those classes of contracts the jurisdiction so designates) shall be awarded to the lowest responsive and responsible bidder. (A jurisdiction whose statutory award criteria is not "lowest responsive and responsible" should use the award criteria statutorily assigned to it.)

(2) Prior to awarding such a contract, the county, township, or municipality shall evaluate the bids received to determine whether a bid response is for a domestic source end product. Information furnished in the bid response shall be relied upon but may be verified in making the determination. Any bid response that does not meet this requirement may be removed, except in those circumstances where the director of the department of administrative services or his designee determines compliance would result in the payment of an excessive price or acquiring an inferior product as described in paragraph (B) of this rule.

(B) Bid preference

(1) Following the determination at paragraph (A) of this rule, the bids shall be evaluated so as to give preference to Ohio bids for products produced or mine in Ohio or a border state.

(2) Where the preliminary analysis of bids identifies the apparent low bid as an Ohio bid or a border state bid, the county, township, or municipality shall proceed with evaluation and award procedure.



Where the preliminary analysis identifies the apparent low bid as one other than an Ohio bid or a border state bid, the county, township, or municipality shall apply the following preferences:

(a) If the apparent low bid is one other than an Ohio bid or border state bid offering a domestic source end product, apply five per cent to the price. For purposes of the Ohio preference, "excessive price" shall be construed to mean a price that exceeds by more than five per cent the lowest price submitted on a non-Ohio bid.

(b) If the apparent low bidder offers a foreign product, apply six per cent to the price. For purposes of "Buy American," a price is excessive if the price on the lowest domestic or Ohio bid exceeds the lowest foreign price by more than six per cent.

(c) If sufficient competition does not exist or if it is determined that all prices are excessive, the county, township, or municipality may cancel the bid in its entirety, may re-bid the intended purchase, or award the contract.

(3) Where the preliminary analysis of bids identifies the apparent low bid as an Ohio bid or a border state bid, the county, township, or municipality shall proceed with its standard contract award practices and procedures. Where the preliminary analysis identifies the apparent low bid as one other than an Ohio bid or border state bid, the county, township, or municipality shall consider the following factors:

(a) Whether the goods or services can be procured in-state in sufficient and reasonably available quantities and of a satisfactory quality;

(b) Whether an Ohio bid has been submitted;

(c) Whether the lowest Ohio bid, if any, offers a price to the county, township, or municipality deemed to be an excessive price;

(d) Whether the lowest Ohio bid, if any, offers a disproportionately inferior product or service.

(4) Where the county, township, or municipality determines that selection of the lowest Ohio bid, if



any, will not result in an excessive price or disproportionately inferior product or service, the county, township, or municipality shall propose a contract award to the low Ohio bid at the bid price quoted.

(5) Where the county, township, or municipality otherwise determines it is advantageous to propose the award of a contract to other than an Ohio bidder or bidder from a border state, the county, township, or municipality shall propose such an award.

(6) Prior to the final contract award, the county, township, or municipality shall conduct its evaluation procedures (e.g., product compliance with bid specifications) in addition to the Buy American Act and Buy Ohio Act analyses.

(C) Notice to bidders; bidder certifications

(1) Notice of domestic Ohio bid. The county, township, or municipality shall indicate in all its invitations to bid that it will apply a domestic Ohio bid preference as outlined in this rule in the evaluation and award of bids received.

(2) All invitations to bid and requests for proposals shall require the bidder to complete and attest to the following "Buy American Act certificate":

"The bidder or offeror hereby certifies that each end product, except the end products listed below, is a domestic source end product as defined in the Buy American Act; and that components of unknown origin have been considered to have been mined, produced or manufactured outside the United States.

Excluded end products: (show country of origin for each excluded end product)."

(3) All bidders shall submit the following information:

(a) Identify that all other products for which prices are submitted are Ohio products.

(b) Represent that all other products for which prices are submitted are Ohio products.



(c) Identify whether the bidder claims to qualify as offering an Ohio product or as having significant Ohio economic presence.