

APPENDIX

BE IT ORDAINED BY THE _____ OF _____

That pursuant to Revised Code section 125.11(E) of the Ohio Revised Code, the _____ of _____ is hereby authorized to adopt the Model System of Preferences, as set forth below. By adopting such a System, the _____ of _____ hereby amends its current procurement statutes and regulations to reflect the Model System of Preferences.

I. MODEL SYSTEM OF PREFERENCES

Subject to the system of preferences set forth herein, contracts for the purchase of all equipment materials, supplies, or insurance (or for only those classes of contracts specified in Exhibit I) shall be awarded to the lowest responsive and responsible bidder.*

Prior to awarding a contract under section _____ of the Ohio Revised Code, the _____ of _____ shall evaluate the bids received according to criteria and procedures contained in Articles II and III of this Ordinance (or Resolution). The (city, county, etc.) shall first reject all bids that offer goods that have not been or that will not be produced or mined in the United States. From among the remaining bids, the (city, county, etc.) shall select the lowest responsive and responsible bid from among the bids that offer goods that have been produced or mined in Ohio where sufficient competition can be generated within Ohio to ensure that compliance with these requirements will not result in an excessive price for the product or acquiring a disproportionately inferior product.

Bidders whose manufactured products, except for mined products, are produced in other states or in North America, but the bidders have a significant Ohio economic presence in terms of the number of employees or capital investment it has in this state, shall qualify for award of a contract on the same basis as if their products were produced in this state.

II. BUY OHIO BID PREFERENCE

A. Buy American Act Compliance

1. Bids will first be evaluated to determine that a bidder's offering is for a domestic source end product as defined at 41 C.F.R. section 1-6.101(d).

Information furnished by the bidder pursuant to Article III, Section (B)(1) shall be relied upon in making this determination. Any bidder's offering that does not offer a domestic source end product shall be rejected, except where the contracting authority determines that certain articles, materials and supplies are not mined, produced or manufactured in the U.S. in sufficient and reasonably available commercial quantities and of a satisfactory quality.

* A Jurisdiction whose statutory award criteria is not "lowest responsive and responsible," should use the award criteria statutorily assigned to it.

2. Following the determination as to domestic source end products, remaining bids and proposals shall be evaluated in accordance with division (B) of this Article so as to give preference to Ohio bids or bidders who are located in a border state, provided that the border state imposes no greater restrictions than contained in this Model System of Preferences.

B. Buy Ohio Compliance

1. Where the preliminary analysis of bids identifies the apparent low bid as an Ohio bid or a bid from a border state, the (city, county, etc.) shall proceed with its standard contract award practices and procedures.
 2. Where the preliminary analysis identifies the apparent low bid as one other than an Ohio bid or bid from a border state, the (city, county, etc.) 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 (city, county, etc.) deemed to be an excessive price; An "excessive price" shall be a price that exceeds by more than 5% the lowest non-Ohio bid submitted.
 - (d) Whether the lowest Ohio bid, if any, offers a disproportionately inferior product or service.
 3. Where the (city, county, etc.) determines that selection of the lowest Ohio bid, if any, will not result in an excessive price or disproportionately inferior product or service, the (city, county, etc.) shall propose a contract award to the low Ohio bid at the bid price quoted.
- C. Prior to the final contract award, the (city, county, etc.) shall conduct its normal evaluation procedures (e.g. product compliance with bid specifications) in addition to the Buy America Act and Buy Ohio analyses.

III. NOTICE TO BIDDERS: BIDDER CERTIFICATIONS

A. Notice of domestic Ohio bid

The (city, county, etc.) shall indicate in all its invitations to bid that it will apply a domestic Ohio bid preference as outlined in this Ordinance (or Resolution) in the evaluation and award of bids received.

B. All invitations to bid and requests for proposals shall require the bidder to:

1) 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 America Act, 41 U.S.C.A. 10a-10d; 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 or origin for each excluded end product):

2) submit the following information:

a) Identify each product that is not an Ohio product.

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.

IV. PREFERENCE FOR PUBLIC IMPROVEMENT CONTRACTS

With respect to the award of any contract for the construction, reconstruction, improvement, enlargement, alteration, repair, painting or decoration of a public improvement, including any highway improvement, made by the (city, county, etc.) or in whole or in part supported by the (city, county, etc.), except for a contract for products produced or mined in Ohio or for a contract financed in whole or in part by contributions or loans from any agency of the United States government, preference shall be given to contractors having their principal place of business in Ohio over contractors having their principal place of business in a state which provides a preference in that state in favor of contracts of that state for the same type of work. Where a preference is provided by another state for contractors of that state, contractors having their principal place of business in Ohio are to be granted in the (city, county, etc.) the same preference over them in the same manner and on the same basis and to the same extent as the preference is granted in letting contracts for the same type of work by the other state. If one party of a joint venture is a contractor having its principal place of business in Ohio, the joint venture shall be considered as having its principal place of business in Ohio.

A city, county, etc. may consult with the Ohio Department of Administrative Services, Division of General Services Administration to determine the type of preference under which a jurisdiction operates.

V. DEFINITIONS

For purposes of this Ordinance (or Resolution) the following definitions shall apply:

1. "Border state" means any state that is contiguous to Ohio and that does not impose a restriction greater than Ohio imposes pursuant to Section 125.09 of the Revised Code.
2. "Lowest Responsive and Responsible Bidder" means a bidder on the contract whose proposal responds to the bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise provide the bidder with a competitive advantage, and whose financial condition, experience, conduct and performance on previous contracts, facilities, and management skills, support the bidder's ability to execute the contract properly.
3. "Ohio Bid" means a bid received from a bidder offering Ohio products or a bidder demonstrating a significant Ohio economic presence.
4. "Ohio business enterprise" means a domestic corporation, sole proprietorship, partnership, or joint venture whose principal place of business is located in Ohio. If one party to a joint venture has its principal place of business in Ohio, the joint venture shall be considered as having its principal place of business in Ohio.
5. "Ohio products" means products which are mined, excavated, produced, manufactured, raised, or grown in the state by a person where the input of Ohio products, labor, skill or other services constitutes no less than 25% of the manufactured cost. With respect to mined products, such products shall be mined or excavated in Ohio.
6. "Produced" means processing, mining, developing and making of a thing into a new article, with a distinct character in use, through the application of input within the State of Ohio or other services. Produced does not include the mere assembling or putting together of non-Ohio products, including materials, manufacturer's supplies, merchandise, goods, wares and foodstuffs.
7. "Significant Ohio economic presence" means business organizations that:
 - a) have sales offices, divisions, sales outlets or manufacturing facilities in Ohio or which facilities demonstrate capital investment to Ohio; and
 - b) pay required taxes to the State of Ohio; and
 - c) for corporations, are registered and licensed to do business in the State of Ohio with the offices of the Secretary of State.