

November 2022

MADE IN AMERICA

STATE PROCUREMENT PREFERENCES



State preferences¹ for American-made products or services are different than the requirements mandated by the recently amended **Buy American Act**,² which applies to all U.S. federal government agencies, and the **Buy America Act**,³ which usually applies to state and local procurement for mass-transit projects and is regulated by the Federal Transit Administration.

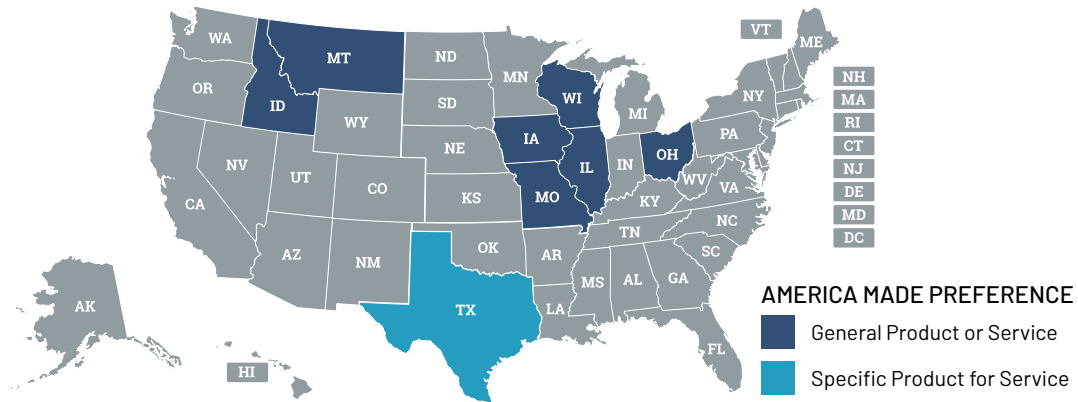
FEDERAL MANDATES

BUY AMERICAN ACT	BUY AMERICA ACT
<ul style="list-style-type: none"> • Applies to federal government procurements over \$10,000 USD • Waivers can be used based on cost, availability, and public interest 	<ul style="list-style-type: none"> • Applies to state and local governments procurements for mass-transit projects • Waivers may be granted on a project-by-project basis

The map below shows which states have a statutory preference for American-made products or services within their procurement process. How the preference is reflected in the solicitation and evaluation process varies, such as a preference being given to domestic-made products in the event of a tie during the evaluation process. Additionally, the map and table only reflect state preferences for American-made materials, rather than an in-state preference for goods or services, such as Idaho’s preference for Idaho-made products in the event of a tie bid.

For more information on state preferences, consult **NASPO’s State Preference Repository**⁴ and NASPO’s 2020 publication, **In-State Procurement Preferences**.⁵

MADE IN AMERICA: STATE PROCUREMENT PREFERENCES



**Data compiled on November 22, 2022, and the map and table only reflect state preferences for American-made materials, rather than an in-state preference for goods or services*

¹ An in-state (local) preference is an advantage given to bidders/ proposers in response to a solicitation for products or services which may be granted based on pre-established criteria. The criteria can include any one or more of the following: (1) supplier’s geographic location; (2) Residency requirements; and/or (3) Origination of the product or service. For additional information, see NASPO. “In-State Procurement Preferences,” 2020. https://www.naspo.org/wp-content/uploads/2012/08/Final_2020_StatePref_Paper_8.5X11C-1.pdf.

² “The Federal Register.” Federal Register :: Request Access. Accessed November 23, 2022. <https://www.federalregister.gov/documents/2022/03/07/2022-04173/federal-acquisition-regulation-amendments-to-the-far-buy-american-act-requirements>.

³ “Buy America.” Buy America | FTA. Accessed November 23, 2022. <https://www.transit.dot.gov/buyamerica>.

⁴ “State Preference Repository.” NASPO. Accessed November 23, 2022. <https://www.naspo.org/research-innovation/state-preference-repository/>.

⁵ NASPO. “In-State Procurement Preferences,” 2020. https://www.naspo.org/wp-content/uploads/2012/08/Final_2020_StatePref_Paper_8.5X11C-1.pdf.

AMERICAN-MADE STATE PREFERENCE, 2022 ⁶

STATE	KEY TERM	CONTEXT	STATUTORY LANGUAGE
<u>Idaho</u>	Domestic Production	Tie Bid Preference	Appendix A.
<u>Illinois</u>	North American-made	Automobiles	Appendix B.
<u>Illinois</u>	Domestic Product	Product Preference	Appendix C.
<u>Iowa</u>	American-made products; American-based businesses	Tie Bid Preference	Appendix D.
<u>Missouri</u>	American-Made	10% Preference	Appendix E.
<u>Montana</u>	American-Made	Tie Preference	Appendix F.
<u>Ohio</u>	Buy American	Up to 5% Preference	Appendix G.
<u>Texas</u>	American-Made	Eyewear	Appendix H.
<u>Wisconsin</u>	American-Made Materials	Tied Bid Preference	Appendix I.

⁶This resource is provided by NASPO and is for informational purposes only. While NASPO has worked to ensure the validity of the information provided, one should not rely solely on the information contained in this document; and NASPO does not endorse nor guarantee the accuracy of the information provided in this database. Official records, codes, etc. are maintained by the procurement office of the state in question, and NASPO encourages a review of the official copy of a state's legislative material for the most current and accurate information.

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APPENDIX A.

IDAHO

Citation:

IDAPA 38.05.01.082

TIE RESPONSES (Chapter 01. Rules of the Division of Purchasing; Subchapter A. Rules Governing Purchasing)

Statutory Language:

01. Tie Responses -- Definition. Tie responses are low responsive bids, proposals or quotes from responsible bidders or offerors (or for requests for quotes, from vendors submitting a quote) that are identical in price or score. Responsibility is determined based upon the standards of responsibility set forth in Section 081 of these rules. (3-31-22)
02. Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among tie responses. In the discretion of the buyer, award shall be made in any permissible manner that will resolve tie responses. Procedures that may be used to resolve tie responses include: (3-31-22)
 - a. If price is considered excessive or for another reason such responses are unsatisfactory, reject all responses, resolicit and seek a more favorable contract in the open market or enter into negotiations pursuant to Section 084 of these rules; (3-31-22)
 - b. Award to an Idaho resident or an Idaho domiciled vendor or for Idaho produced property where other tie response(s) are from out of state or to a vendor submitting a domestic property where other tie responses are for foreign (external to Idaho) manufactured or supplied property; (3-31-22)
 - c. Where identical low responses include the cost of delivery, award the contract to the vendor located (or shipping from a point) farthest from the point of delivery; (3-31-22)
 - d. Award to the vendor with the earliest delivery date. (3-31-22)
03. Drawing Lots. If no permissible method will be effective in resolving tie responses and a written determination is made so stating, award may be made by drawing lots or tossing a coin in the presence of witnesses if there are only two (2) tie responses. (3-31-22)

APPENDIX B.

ILLINOIS

Automobiles

Citation:

44 Ill. Adm. Code 1400.4540 (Title 44. Government Contracts, Grantmaking, Procurement and Property Management Subtitle B. Supplemental Procurement Rules Chapter XXI. Treasurer)

Statutory Language:

a) Specification

Contracts for the purchase or lease of new passenger automobiles, other than station wagons, vans and four-wheel drive vehicles, shall specify the procurement of a model that, according to the most current mileage study published by the U.S. Environmental Protection Agency, can achieve at least the minimum average fuel economy in miles per gallon imposed upon manufacturers of vehicles under Title V of the Motor Vehicle Information and Cost Savings Act (15 USC 46). [35 ILCS 500/45-40(a)] Further, all vehicles purchased must be flexible fuel, fuel efficient hybrid vehicles using electricity and gasohol (hybrids or plug-in hybrids) or fueled by electricity. For purposes of this Section, “flexible fuel vehicles” are automobiles or light trucks that operate on either gasoline or E-85 (85% ethanol, 15% gasoline) fuel and “fuel efficient hybrid vehicles” are automobiles or light trucks that use a gasoline or diesel engine and an electric motor to provide power and gain at least a 20% increase in combined USEPA city-highway fuel economy over the equivalent or most-similar conventionally-powered model. [35 ILCS 500/25-75]

b) North American-made Vehicles. All vehicles purchased by the Treasurer’s office shall have a Vehicle Identification Number that begins with the number one, the number 2, the number 4, or the number 5.

c) Exemptions

The Chief Procurement Officer may determine that certain vehicle procurements are exempt from this Section based on intended use or other reasonable considerations such as health and safety of Illinois citizens. [35 ILCS 500/25-75(c)] Nothing in this Section shall require the Treasurer’s office to stop using any vehicle that exists in the State fleet of motor vehicles.

APPENDIX C.

ILLINOIS

Domestic Product Preference

Citation:

(30 ILCS 517/) Procurement of Domestic Products Act.

Statutory Language:

Sec. 10. Domestic products.

(a) Each purchasing agency making purchases of procured products shall promote the purchase of and give preference to manufactured articles, materials, and supplies that have been manufactured in the United States. Procured products manufactured in the United States shall be specified and purchased unless the purchasing agency determines that any of the following applies:

(1) The procured products are not manufactured in the

United States in reasonably available quantities.

(2) The price of the procured products manufactured

in the United States exceeds the price of available and comparable procured products manufactured outside of the United States by 12% or more.

(3) The quality of the procured products manufactured

in the United States is substantially less than the quality of the comparably priced, available, and comparable procured products manufactured outside of the United States.

(4) The purchase of the procured products

manufactured outside of the United States better serves the public interest by helping to protect or save life, property, or the environment.

(5) The purchase of the procured products is made in

conjunction with contracts or offerings of telecommunications, fire suppression, security systems, communications services, Internet services, or information services.

(6) The purchase is of pharmaceutical products,

drugs, biologics, vaccines, medical devices used to provide medical and health care or treat disease or used in medical or research diagnostic tests, and medical nutritionals regulated by the Food and Drug Administration under the federal Food, Drug and Cosmetic Act.

(7) The purchase is an emergency purchase authorized

under Section 20-30 of the Illinois Procurement Code.

(8) The purchase is a sole source or sole

economically feasible source purchase authorized under Section 20-25 of the Illinois Procurement Code.

(b) If there is a tie between 2 bidders or offerors who have certified that they will provide products manufactured in the United States, the bidder or offeror that certifies it will provide products manufactured in Illinois shall be given preference.

(c) In determining the price of procured products for purposes of this Section, consideration shall be given to the life-cycle cost, including maintenance and repair of those procured products.

(Source: P.A. 102-721, eff. 1-1-23.)

APPENDIX D.

IOWA

Citation:

Iowa Admin. Code 11-117.6(8A) (Chapter 117. Procurement of Goods and Services of General Use)

Statutory Language:

117.6(1) Preference to Iowa products and services.

- a. All requests for proposals for materials, products, supplies, provisions and other needed articles and services to be purchased at public expense shall not knowingly be written in such a way as to exclude an Iowa-based company capable of filling the needs of the purchasing entity from submitting a responsive proposal.
- b. The department and state agencies shall make every effort to support Iowa products when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the Iowa products. Tied bids between Iowa products shall be decided in accordance with subrule 117.13(4).

117.6(2) Preference to Iowa-based businesses. The department and state agencies shall make every effort

to support Iowa-based businesses when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the Iowa-based business. Tied bids between Iowa-based businesses shall be decided in accordance with subrule 117.13(4).

117.6(3) American-made products. The department and agencies shall make every effort to support American-made products when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the American-made product. Tied bids between American-made products shall be decided in accordance with subrule 117.13(4).

117.6(4) American-based businesses. The department and agencies shall make every effort to support American-based businesses when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the American-based business. Tied bids between American-based businesses shall be decided in accordance with subrule 117.13(4).

117.6(5) Recycled product and content. The department and agencies shall make every effort to protect Iowa's environment in the procurement of goods. Recycled goods and goods that include recycled content shall be acquired when those goods are available and comparable in quality, performance, and price and there are not other mitigating factors. As required by Executive Order Number 56, the department and agencies shall whenever possible procure durable items that are readily recyclable when discarded, have minimal packaging, and are less toxic.

117.6(6) Products made by persons with disabilities. The department and agencies shall make every effort to procure those products for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental retardation, other developmental disabilities, or mental illness if the products meet the required specifications.

117.6(7) Targeted small businesses. The department and agencies may buy from a targeted small business if a targeted small business is able to provide the good or service, pursuant to Iowa Code section 73.20.

APPENDIX E.

MISSOURI

Citation:

1 Mo. Code of State Regulations 40-1.050 Procedures for Solicitation, Receipt of Bids, and Award and Administration of Contracts (Title 1. Office of Administration SuperBrowse Division 40. Purchasing and Materials Management, Chapter 1. Procurement)

Statutory Language:

(F) In accordance with section 34.353, RSMo, for bids/proposals with a value of twenty-five thousand dollars (\$25,000) or more, bidders/offerors who can certify that goods or commodities to be provided in accordance with the contract are manufactured or produced in the United States or imported in accordance with a qualifying treaty, law, agreement, or regulation are entitled to a ten percent (10%) preference as stated below over a bidder/offeror whose products do not qualify. Failure to provide a certification may result in forfeiture of any preference. All solicitation responses for the purchase of goods or commodities, except software, with an estimated value of twenty-five thousand dollars (\$25,000) or more must include proof of compliance requirements as stated in the solicitation document. If the division has any questions regarding either the information submitted on the form or the lack of a submitted form by a bidder/offeror, the division may contact the bidder/offeror for clarification before completing the cost evaluation if under consideration for award. If the division determines that an American-made product is competing against a foreign-made product, the division will multiply the cost of the foreign-made product by ten percent (10%) and add this amount to the actual cost of the bid/proposal to reflect the Buy American preference in the cost evaluation. The division will consider any applicable exceptions, including those set by statute or executive order, to the Buy American preference before awarding any contract;

APPENDIX F. MONTANA

Citation:

Mont.Admin.R. 2.5.601

ARM 2.5.601 Competitive Sealed Bids

Statutory Language:

(12) In the case of a tie bid, the discretion of the division or the head of a purchasing agency will be used to resolve such bids, except that a bidder offering American-made products or supplies must be given preference.

APPENDIX G.

OHIO

Citation:

OAC 123:5-1-06

123:5-1-06 Ohio preferences

Statutory Language:

(A) Bidders and offerors may claim preferences in a procurement solicitation response for any or all of the following: offering domestic source end products; qualification as a buy Ohio supplier; or qualification as a veteran-friendly business enterprise, all as described in this rule.

Information furnished in the solicitation response by the bidder or offeror shall be relied upon in making the determination about whether a preference applies, but the state may verify such information if necessary. Any bidder or offeror who intentionally submits false or misleading information to receive a preference will be immediately disqualified and may be subject to administrative or legal action.

Preferences shall be applied except in those circumstances where the director of the department of administrative services or the director's designee determines compliance would not be in the best interest of the state or when otherwise prohibited.

- (1) Buy American preference. Bidder and offeror responses will be evaluated to determine whether a response includes a domestic source end product for the buy American preference.
- (2) Buy Ohio preference. Bidder and offeror responses will be evaluated to give preference to all bids and offers received from a buy Ohio supplier for products raised, grown, produced, mined or manufactured in Ohio or a border state or for products and services offered by a supplier demonstrating significant economic presence in Ohio or a border state.
- (3) Veteran-friendly business enterprise preference. Bidder and offeror responses will be evaluated to give preference to all bidders and offerors who are certified veteran-friendly business enterprises. In order to qualify for this preference, a bidder or offer must have an active veteran-friendly business enterprise certification at the due date and time of bid or offer.

(B) Procedures for applying preferences

Following the initial evaluation and scoring, all bids and offers will be considered for preferences. Preferences will be calculated at a rate of five per cent for the first preference and two per cent each for the second and third preferences. The preferences shall be summed and applied as a total percentage for evaluation purposes.

Preferences will only be applied when there is at least one bidder or offeror that does not qualify for that particular preference. For purposes of qualifying for a particular preference, if a bidder or offeror fails to complete the certification for each preference, that supplier will be deemed as not qualifying for that preference.

- (1) Procedure for applying preferences to bids in response to an invitation to bid or reverse auction:
 - (a) For the buy American preference, if any bidder offers a product that is not a domestic source end product, reduce the cost of any other bidder's domestic source end products offered by the applicable percentage.

- (b) For the buy Ohio preference, for any qualifying buy Ohio supplier claiming the preference, when there is at least one other bidder that is not a buy Ohio supplier, deduct the applicable percentage from the buy Ohio supplier's cost.
 - (c) If the bid contains multiple line items or multiple products, the preferences in paragraphs (B)(1)(a) and (B)(2)(b) of this rule will be applied per line item or only for that particular product.
 - (d) For the veteran-friendly enterprise preference, if a bidder is a certified veteran-friendly business enterprise claiming the preference and there are other bidders not claiming the preference, deduct the applicable percentage from any certified veteran-friendly enterprise bidders' cost.
- (2) Procedure for applying preferences to offers in response to a request for proposals:
- (a) For the buy American preference, if any offeror offers a product that is not a domestic source end product, add the applicable percentage of the total available points to the total score of each offeror offering a domestic source end product.
 - (b) For the buy Ohio preference, if any offeror is a buy Ohio supplier claiming the preference, and there is at least one other offer that is not a buy Ohio supplier add the applicable percentage of the total available points to each buy Ohio supplier's total score.
 - (c) If claiming the preferences in paragraphs (B)(2)(a) and (B)(2)(b) of this rule based on the product(s) offered, an offeror is only eligible to receive the preference if the cost of the product(s) offered exceeds fifty per cent of the total offered cost for products and services. A buy Ohio supplier is eligible to receive the buy Ohio preference solely based on its significant economic presence in Ohio or a border state regardless of the origin of any product offered.
 - (d) For the veteran-friendly enterprise preference, if any offeror is a certified veteran-friendly business enterprise claiming the preference and there is an offeror who is not claiming the preference, add the applicable percentage of the total available points to any certified veteran-friendly enterprise offeror's total score.
- (3) After application of the preferences in this rule, the director or the director's designee shall consider for award the lowest bid or highest scoring offer as adjusted by the preferences. If the director of the department of administrative services or the director's designee determines that selection of the lowest bidder or the highest scoring offeror as adjusted by the preferences would not be in the best interests of the state, the director or the director's designee shall propose a contract award to the lowest responsible and responsive bid or to the offeror with the most advantageous offer.

The final contract award shall be made following further evaluation and award under rules 123:5-1-07 and 123:5-1-08 of the Administrative Code.

(C) Model system of preferences

This system of preferences as outlined in this rule may be used voluntarily by counties, townships, and municipalities for purchasing contracts.

APPENDIX H.

TEXAS

Citation:

1 TAC § 354.1017 (Subchapter A. Purchased Health Services Super; Division 2. Medicaid Vision Care Program) TX Admin Code

Statutory Language:

The provider must ensure that eyewear meets the following specifications.

- (1) Lenses must meet federal and state specifications and all standards of the American standard prescription requirements for first quality lenses and dress eyewear.
- (2) Standard frame sizes are dispensed at no cost to the eligible recipient.
- (3) An eyeglass supplier must show each eligible recipient a minimum selection of frame styles and colors as required by the Texas Health and Human Services Commission policy.
- (4) Frames are only those manufactured in the United States of America, unless foreign-made frames are comparable in quality to and less expensive than American made-frames. Lenses are only those manufactured in the United States of America, unless foreign-made lenses are comparable in quality to and less expensive than American-made lenses.
- (5) Frames are serviceable and meet prescription quality standards.
- (6) Lenses and frame materials are new.
- (7) Supplies are at least equivalent in quality to program eyewear provided under this division at no cost to the eligible recipients.
- (8) All repair materials billed to Texas Medicaid must be new and at least equivalent to the original item and meet the specifications for prosthetic eyewear cited in these provisions.

APPENDIX I.

WISCONSIN

Citation:

Wis. Adm. Code § Adm 7.07 (Chapter Adm 7. Solicitation of Bids and Proposals)

Statutory Language:

- (1) Requirements. Pursuant to s. 16.754 (2), Stats., when all other factors are substantially equal, the state shall purchase materials which are manufactured to the greatest extent in the United States. The state policy on the purchase of American-made materials shall be included in the requests for bids or requests for proposals. 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.
- (2) Application. To insure that preference in purchasing is given to American-made products:
 - (a) Specifications shall be as broadly written as possible so as not to exclude American-made materials from consideration; and
 - (b) Requests for bids or requests for proposals shall indicate that the state will give preference to American-made materials only when the bids are tied or the proposal scores are equal.