In-State Procurement Preferences
INTRODUCTION

As formal legislation, procurement preferences have existed at the federal level since the 1860’s. Government procurement laws and policies exist for the purpose of providing a legal, ethical and predictable framework; balancing the government’s desire to get the best value for its dollars while ensuring that the process is fair and open to the maximum number of participants. Every state and the District of Columbia has at least one procurement preference and Indiana alone has twenty-seven different preference laws.

Government administrations often prioritize support of local suppliers and businesses. This can include giving local suppliers special consideration in the procurement process. Given the importance of transparency, fairness, and competition in public procurement coupled with the volume of purchases public agencies make, the issue of in-state preferences is important.

Procurement preferences are a rightfully, highly scrutinized topic, while also embraced as a form of aid to local suppliers.

Preferences can:

- Reflect the status of the vendor as a veteran-, woman-, or minority-owned or small business
- Prioritize in-state products and businesses
- Emphasize specific products such as those containing recycled content
- Represent reciprocal preferences between states, among others

The first need that arises when implementing a local preference law is defining what an in-state or local business is. How will the entity determine the origin of the product or service? There are many definitions for these terms throughout the states, but no common definition or best practice.

Considerations may include:

- Where the principal place of business is located
- Where a company pays its taxes
- Where the employees of a company reside
- The effects of buying through cooperative contracts

WHAT IS AN IN-STATE PREFERENCE?

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:

- Supplier’s geographic location
- Residency requirements
- Origination of the product or service

TIE BID PREFERENCE

Another type of in-state preference is the tie bid preference. Tie bid preferences legally permit a state to preferentially select an in-state or local bidder for a contract if the bid matches that of an out-of-state source.

After settling on the specific terms or definitions of the preference, caution must be exercised in implementation. Applying in-state preferences can lead to unintended consequences, adverse results, and other unexpected impacts on the governmental entity’s procurement process and the state’s vendor community.4

**IMPLICATIONS**

Local preference laws invite reciprocity. Reciprocity is the practice of exchanging purchases or sales between states where both states benefit from the exchange.5 However, in many states, the purchasing authority is prohibited from doing business with any firm located in a state that has local-preference laws or policies.

The tenet of increased competition is one of the hallmarks of state procurement. There are scenarios in which competition is officially limited, such as in emergencies. However, the transparency and ethics of the profession demand that competition should be encouraged to gain the best products/services/price through equal opportunity processes.6 While preferences are aimed at increasing the engagement of target businesses, and competition does increase between targeted status businesses, the overall effect is a diminishing of competition for an award.7

A percentage preference is a set percent applied to the amount of the bid from specific entities as defined by legislature.8 The costs of goods or services may be increased for taxpayers when a percentage preference is allowed. This potentially increases the percentage of the entity’s budget spent on procurement. Businesses and services which do not gain from participating in the procurement process may choose to withhold a bid or proposal, which ends up creating a smaller market competing for the state’s business. Experience has shown that when restricting a market, or implementing a preference, prices increase.9

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CURRENT STATISTICS

A 2020 survey by the National Association of State Procurement Officials (NASPO) found that all responding states have one or more procurement preferences or reciprocal preference language in their statutes or Procurement Codes. Out of the 38 states responding to the survey, 17 states have reciprocal preferences laws as shown on the map below:

Data from the 2020 survey of state preferences revealed that of the respondents, 29 states provide a legal preference for in-state bidders or products, separate and apart from preferences for MWBEs, sheltered workshops, and correctional industries. Service-disabled veteran-owned business enterprise is the most common type of preference or set-aside for all responding states.

DISCUSSION

It is a common practice in some states to provide a preference for in-state vendors and products; however, many procurement officials oppose preference legislation and policies. The NASPO Practical Guide stresses the commitment of state procurement professionals to demonstrate stewardship with public funds and remarks that programs such as preferences adopted by state and federal legislatures, some for decades, will increasingly come under review.10

Yet, while there are valid arguments against preference legislation, specific groups and types of products benefit.11 For example, preferences for locally-owned businesses and products may result in higher earnings for workers, thus recycling public funds, back into the local economy.12

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Between 1953 and 1992, NASPO passed 16 resolutions in opposition to preference purchasing policies including in-state, “Buy American”, or similar state laws. The National Institute of Governmental Purchasing, Inc. (NIGP) also opposes all types of preference law and has passed two resolutions asserting that decreased competition and increased prices stem from procurement preference legislation.13

In summary, there are both benefits and drawbacks to procurement preference laws. Overall, competition is reduced when preferences are applied to procurement. This briefing paper is intended to make procurement decision makers and legislators aware of the need to weigh both arguments when planning.