

1 Introduced by Council Member Diamond and Co-Sponsored by Council
2 Members DeFoor, R. Gaffney, Ferraro, Carlucci, Salem, Pittman,
3 Becton, Boylan, White and Newby:

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6 **ORDINANCE 2020-238**

7 AN ORDINANCE CREATING A NEW SECTION 126.114
8 (BUY AMERICAN PREFERENCE IN CONTRACTS FOR
9 GOODS), PART 1 (GENERAL REGULATIONS), CHAPTER
10 126 (PROCUREMENT CODE), *ORDINANCE CODE*, TO
11 CREATE A PREFERENCE FOR AMERICAN-MADE GOODS IN
12 CONTRACTS; PROVIDING FOR SEVERABILITY;
13 PROVIDING AN EFFECTIVE DATE.

14
15 **WHEREAS**, the Buy American Act of 1933, 41 U.S.C. 83, requires
16 that the Federal Government in procurement and certain matters
17 involving federal financial assistance utilize U.S. products for
18 the purchase or acquisition of goods, products or materials, as
19 defined in the Buy American Act, whenever possible with some
20 exceptions; and

21 **WHEREAS**, in recent years and culminating with the issuance of
22 several Executive Orders, President Trump has issued directives on
23 July 15, 2019, Executive Order 13881 (Maximizing Use of American-
24 Made Goods, Products and Materials), Executive Order 13788 of April
25 18, 2017 (Buy American and Hire American) and Executive Order 13858
26 of January 31, 2019 (Strengthening Buy-American Preferences for
27 Infrastructure Projects), which each have reiterated the intent of
28 the Administration to enforce the Buy American Act of 1933 to the
29 greatest extent permitted by law; and

30 **WHEREAS**, while the Buy American Act of 1933 only pertains to
31 procurement involving public buildings of the Federal Government

1 and those of certain U.S. territories; and

2 **WHEREAS**, the Council desires, pursuant to its legislative
3 policy-making authority, to adopt a similar policy as it pertains
4 to City procurement and the expenditure of local public funds, as
5 permitted by federal and state regulations, to create a domestic
6 preference for City procurement purposes of goods and materials
7 that are manufactured, assembled or produced in the United States;
8 and

9 **WHEREAS**, the Council finds that establishing a City
10 procurement policy that creates a domestic preference for goods and
11 materials that are manufactured, assembled or produced in the
12 United States promotes the local economy, the economies of
13 neighboring counties and municipalities, as well as strengthens
14 state and national economic interests, and further promotes
15 security, good government and the general convenience of its
16 citizens, and declares it a valid municipal purpose; and

17 **WHEREAS**, it is the firm intent of the Council that this policy
18 not supplant other federal, state and local law to the extent that
19 this policy would be inconsistent with certain mandates in federal
20 and state law, but is adopted to allow the City to apply a domestic
21 preference for American-made goods and products when local public
22 funds are expended; now therefore

23 **BE IT ORDAINED** by the Council of the City of Jacksonville:

24 **Section 1. Creating a new Section 126.114 (Buy American**
25 **preference in contracts for goods), Ordinance Code.** A new Section
26 126.114 (Buy American preference in contracts for goods), Part 1
27 (General Regulations), Chapter 126 (Procurement Code), *Ordinance*
28 *Code*, is hereby created to read as follows:

29 **CHAPTER 126. PROCUREMENT CODE**

30 **PART 1. GENERAL REGULATIONS**

31 * * *

1 **Sec. 126.114. Buy American preference in contracts for goods.**

2 (a) *Definitions.* The following words, terms and phrases, when used
3 in this section, shall have the meanings ascribed to them in
4 this subsection, except where the context clearly indicates a
5 different meaning:

6 *Bid* means a competitive bid procedure established through the
7 issuance of an invitation for bid. The term "bid," as used herein,
8 shall not include requests for proposals (unless specified in the
9 RFP document), requests for qualifications, requests for quotes and
10 requests for information.

11 *Buy American preference* means and shall apply to the following
12 products and services that are:

13 1. *Manufactured.* The term "manufactured" is interpreted to
14 mean to make or process a raw material into a finished
15 product or to turn-out in a mechanical manner;

16 2. *Assembled.* The term "assembled" is interpreted to mean to
17 fit or to join parts together into a finished product;

18 3. *Produced.* The term "produced" is interpreted to mean to
19 create or make from raw materials.

20 To qualify for this preference, 51 percent of the components of
21 the final produce manufactured, assembled or produced to be sold to
22 the City must be made in the United States. The Director shall
23 administratively resolve any issues relating to Buy American
24 preferential status, and that decision on whether a vendor is
25 eligible for a Buy American preference shall be final.

26 *Goods* includes, but is not limited to, supplies, equipment,
27 materials, and printed matter.

28 (b) *Exemptions.* The provisions of this section do not apply to:

29 1. Purchases or contracts with an estimated cost of \$10,000.00
30 or less. The Director and procurement staff will attempt to
31 select products manufactured, assembled or produced in the

1 United States if the quality and price are comparable with
2 other goods.

3 2. Professional services, which are defined, for purposes of
4 this section, as any services where the City is obtaining
5 advice, instruction, or specialized work from an
6 individual, firm, or corporation specifically qualified in
7 a particular area, and also those services procured
8 pursuant to F.S. § 287.055, the Consultants' Competitive
9 Negotiation Act.

10 3. Bids for the purchase of, or contract for, the
11 construction/ renovation of public buildings, facilities,
12 public works, or other public construction projects where
13 federal funds are involved. The federal guidelines as to
14 use of the federal funds shall prevail as to the federal
15 funds.

16 4. Goods or services provided under a cooperative purchasing
17 agreement or utilization of other agency contracts
18 (piggyback contracts).

19 5. Purchases made or contracts let under emergency or
20 noncompetitive situations (sole source, or a special
21 procurements/bid waiver), or for legal services.

22 6. The business is determined to be unqualified to perform the
23 work as determined by the City.

24 7. The business submits a bid that exceeds the projected
25 budget.

26 (c) *Preference in purchase of goods.* Except where federal, state
27 or local laws, regulations or policies mandates to the
28 contrary, in the purchase of goods by means of a competitive
29 bid, a preference will be given to a responsive and
30 responsible vendor offering American manufactured, assembled
31 or produced goods, who is within five percent of the lowest

1 responsive and responsible bidder, by way of an opportunity of
2 providing said goods for the lowest responsive and responsible
3 bid amount.

4 (d) *Preference must be asserted.* Said five percent buy American
5 preference must be asserted by the party seeking it at the
6 time of the competitive bid with the submittal of
7 documentation supporting the assertion that a product is
8 American manufactured, assembled or produced, and shall be
9 calculated by the procurement division in rating competitive
10 bids.

11 (e) *Comparison of qualifications.* The preferences established
12 herein in no way prohibit the right of the Director to compare
13 quality of goods proposed for purchase and compare
14 qualifications, character, responsibility and fitness of all
15 person, firms or corporations submitting bids. Further, the
16 preferences established herein in no way prohibit the right of
17 the Director from determining based on criteria and standards
18 developed administratively to allow for selection by
19 preference permitted in another section of this Chapter.

20 (f) *Waiver.* The application of the buy American preference to a
21 particular purchase, contract, or category of contracts in
22 excess of \$100,000.00 for goods may be waived upon written
23 recommendation of the Director and approval of the Chief
24 Financial Officer of the City

25 (g) *Administrative Policy for Implementation.* The Director shall
26 be charged with the responsibility to promulgate an
27 administrative policy or regulations consistent with this
28 Section which establishes criteria and procedures for the
29 implementation of this policy including matters involving the
30 consideration of exemptions, comparison of qualifications, and
31 waiver of the policy as provided herein.

1 (h) *Declaration of municipal purpose.* The Council finds that the
2 economic welfare and security of its residents is of utmost
3 concern to a local government. Local and regional preferences
4 can stimulate and sustain the local economy and thereby
5 provide a public benefit. Likewise, a domestic preference
6 policy which encourages the selection and utilization of
7 American-made goods and products can similarly be a stimulus
8 to the local and regional economy by encouraging the
9 production, manufacture and assembly of products which would
10 be suitable for use in American-made products. Therefore, it
11 is hereby declared that the carrying out of the purposes of
12 this section by the City is deemed to be furthering a proper
13 municipal purpose.

14 * * *

15 **Section 2. Severability.** If any section, sentence,
16 clause, phrase, or word of this Ordinance is, for any reason, held
17 or declared to be unconstitutional, inoperative or void, such
18 holding or invalidity shall not affect the remaining portions of
19 this Ordinance, and it shall be construed to be the legislative
20 intent to pass this Ordinance without such unconstitutional,
21 invalid or inoperative part therein.

22 **Section 3. Effective Date.** This Ordinance shall become
23 effective upon signature by the Mayor or upon becoming effective
24 without the Mayor's signature.

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27 Form Approved:

28
29 /s/ Paige H. Johnston

30 Office of General Counsel

31 Legislation Prepared by: Paige H. Johnston

