

1 Introduced by Council Member Diamond & Co-Sponsored by Council
2 Members Ferraro, Carlucci, Salem, Becton, Boylan, White, Newby,
3 Pittman, Gaffney and DeFoor and amended on the floor of Council:
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6 **ORDINANCE 2020-238-E**

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

1 procurement involving public buildings of the Federal Government
2 and those of certain U.S. territories; and

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

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

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

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

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

30 **CHAPTER 126. PROCUREMENT CODE**

PART 1. GENERAL REGULATIONS

* * *

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

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

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

Buy American preference means and shall apply to the following products that are:

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

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

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

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

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

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

- 1 1. Purchases or contracts with an estimated cost below the
2 formal thresholds described in Chapter 126.102(g),
3 Ordinance Code. The Chief and procurement staff will
4 attempt to select products manufactured, assembled or
5 produced in the United States if the quality and price are
6 comparable with other goods.
- 7 2. Professional services, which are defined, for purposes of
8 this section, as any services where the City is obtaining
9 advice, instruction, or specialized work from an
10 individual, firm, or corporation specifically qualified in
11 a particular area, and also those services procured
12 pursuant to F.S. § 287.055, the Consultants' Competitive
13 Negotiation Act.
- 14 3. Bids for the purchase of, or contract for, the
15 construction/ renovation of public buildings, facilities,
16 public works, or other public construction projects.
- 17 4. Goods provided under a cooperative purchasing agreement or
18 utilization of other agency contracts (piggyback
19 contracts).
- 20 5. Purchases made or contracts let under emergency or
21 noncompetitive situations (single source, or a special
22 procurements/bid waiver), or for legal services.
- 23 6. The business is determined to be unqualified to perform the
24 work as determined by the City.
- 25 7. The business submits a bid that exceeds the projected
26 budget.
- 27 8. Contracts awarded pursuant to Jacksonville Small Emerging
28 Business Program, as provided in Part 6B, Chapter 126,
29 Ordinance Code, including those contracts where a low
30 bidder is a prime JSEB contractor on a non-set aside bid.

1 (c) *Preference in purchase of goods.* Except where federal, state
2 or local laws, regulations or policies mandates to the
3 contrary, in the purchase of goods by means of a competitive
4 bid, a preference will be given to a responsive and
5 responsible vendor offering American manufactured, assembled
6 or produced goods, who is within five percent of the lowest
7 responsive and responsible bidder, by way of an opportunity of
8 providing said goods for the lowest responsive and responsible
9 bid amount.

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

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

26 (f) *Waiver.* The application of the buy American preference to a
27 particular purchase, contract, or category of contracts for
28 goods may be waived upon written recommendation of the Chief
29 and approval of the Chief Financial Officer of the City.

30 (g) *Administrative Policy for Implementation.* The Chief shall be

1 charged with the responsibility to promulgate an
2 administrative policy or regulations consistent with this
3 Section which establishes criteria and procedures for the
4 implementation of this policy including matters involving the
5 consideration of exemptions, comparison of qualifications, and
6 waiver of the policy as provided herein.

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

20 * * *

21 **Section 2. Severability.** If any section, sentence,
22 clause, phrase, or word of this Ordinance is, for any reason, held
23 or declared to be unconstitutional, inoperative or void, such
24 holding or invalidity shall not affect the remaining portions of
25 this Ordinance, and it shall be construed to be the legislative
26 intent to pass this Ordinance without such unconstitutional,
27 invalid or inoperative part therein.

28 **Section 3. Effective Date.** This Ordinance shall become
29 effective upon signature by the Mayor or upon becoming effective
30 without the Mayor's signature.

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Form Approved:

/s/ Margaret M. Sidman

Office of General Counsel

Legislation Prepared by: Paige H. Johnston

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