

## **Part I Chapter 47 Reciprocal Limitations Act**

- A. General Requirement.** Pennsylvania has reacted to the in-state preference laws and practices of other states by reenacting the *Reciprocal Limitations Act*, 62 P.S. §107 through the Commonwealth Procurement Code. Under this Act, Pennsylvania responds in a like manner against those states that apply preferences or prohibitions by giving similar preferences to Pennsylvania resident bidders and offerors and bidders and offerors offering supplies manufactured in Pennsylvania.
- B. Requirements.**
- 1. Product Preference.** In all procurements of supplies exceeding \$10,000, preference is to be given to those bidders and offerors offering supplies produced, manufactured, mined, grown, or performed in this Commonwealth as against those bidders and offerors offering supplies produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in that state. The amount of the preferences is equal to the amount of the preference applied by the other state for that particular supply. See: <http://www.dgsweb.state.pa.us/comod/AgencyDashboard/ReciprocalLimitationsActPreferencesList.doc>.
  - 2. Bidder Preference.** In the award of contracts for the procurement of supplies and construction exceeding \$10,000, preference shall be given to Pennsylvania resident bidders and offerors against a nonresident bidder and offeror from any state that gives or requires a preference to bidders and offerors from that state. The amount of preference shall be equal to the amount of the preference applied by the state of the nonresident bidder or offeror. A resident bidder or offeror is a person, partnership or corporation, or other business entity authorized to transact business in this Commonwealth and having a bona fide establishment for transacting business within this Commonwealth at which it was transacting business on the day when bids or proposals for the public contract were first solicited. See: <http://www.dgsweb.state.pa.us/comod/AgencyDashboard/ReciprocalLimitationsActPreferencesList.doc>.
  - 3. Prohibition.** For construction and for all purchases of supplies, the purchasing agency shall not specify, use, or purchase any supplies which are produced, manufactured, mined, grown, or performed in any state that prohibits the specification for, use or purchase of such items in or on its public buildings or other works, when such items are not produced, manufactured, mined, grown, or performed in such state. See: <http://www.dgsweb.state.pa.us/comod/AgencyDashboard/ReciprocalLimitationsActPreferencesList.doc>.
- C. Department of General Services Responsibilities.**
- 1. List of Discriminating States.** DGS is required to prepare a list of the states which apply a preference or prohibition and the amount of the preference. The

list has been published, amended, and republished in the *Pennsylvania Bulletin*. The list also appears on the DGS website

2. **Invitation for Bids and Request for Proposals.** The list of discriminating states and the amount of the preference must appear in all IFBs and RFPs for supplies and construction where the amount exceeds \$10,000.

**D. Bid and Proposal Requirements.**

1. **Lists.** IFBs and RFPs for supplies and construction, where the amount exceeds \$10,000, must include the list of states which have laws prohibiting the use of out-of-state supplies, bidders, or offerors.
2. **State of Manufacture.** Bidders and offerors must complete the State of Manufacture chart included in the BOP standard form (GSPUR-89) IFBs and RFPs by listing the name of the manufacturer and the state or foreign country of manufacture for each item. If the item is produced in the United States, the bidder or offeror must identify the state. Failure to complete the chart may result in the rejection of the bid or proposal.
3. **Bidder and Offeror Residency.**
  - a. **Determining Nonresidency.** In determining whether a bidder or offeror is a nonresident bidder or offeror from a discriminating state, the address label on the IFB or RFP may be used unless the bidder or offeror corrects that address in its bid or proposal.
  - b. **Determining Residency.** In order to claim the preference for Pennsylvania resident bidders or offerors, bidders or offerors must have a bona fide establishment for transacting business within Pennsylvania at which it was transacting business on the date when bids or proposals were first solicited. The bidder or offeror must also be authorized to transact business in Pennsylvania. Therefore, if the bidder or offeror is a corporation, it must be incorporated in Pennsylvania or have a certificate of authority to do business in Pennsylvania.

- E. Rejection of Bid or Proposal – Prohibited Item or Bidder and Offeror.** If the State of Manufacture chart discloses that the item will be manufactured in a state which prohibits the purchase of such an item which isn't manufactured in such state, then the bid or proposal must be rejected.

- F. Calculation of Preference.** In calculating the preference, the dollar amount of the bid submitted by a Pennsylvania bidder or offeror shall be reduced by the percentage preference which would be given to a nonresident bidder or offeror by its state of residency. Similarly, the amount of a bid or proposal offering Pennsylvania supplies shall be reduced by the percentage preference which would be given to another bidder or offeror by the state where the supplies are produced, manufactured, mined, or grown.

- G. Waiver.** The provisions of this section may be waived when the head of the purchasing agency determines in writing that it is in the best interests of the Commonwealth.

## **H. Procedures for IFBs.**

- 1.** Tab bids by dollar amount.
  - 2.** Start with low responsive bid and determine if:
    - a.** There is a bidder or product prohibition.
    - b.** The supplies offered are manufactured in a discriminating state.
    - c.** The supplies are offered by a nonresident from a discriminating state.
  - 3.** If there is a product prohibition involving the low bid, reject the low bid.
  - 4.** If the low bidder is offering supplies produced, manufactured, mined, or grown in a discriminating state, and the next low bidder is offering supplies produced, manufactured, mined, or grown in Pennsylvania, reduce the next low bidder's bid by the percentage preference which would be given to the low bidder by the state where the supplies are produced, manufactured, mined, or grown.
  - 5.** If the low bidder is a resident bidder of a discriminating state, and the next low bidder is a Pennsylvania resident bidder, reduce the Pennsylvania resident bidder's bid by the percentage preference which would be given to the nonresident bidder by its state of residency.
- 

## **References:**

- 1.** <http://www.dgsweb.state.pa.us/comod/AgencyDashboard/ReciprocalLimitationsActPreferencesList.doc>.