

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12-0607.01 Bob Lackner x4350

SENATE BILL 12-004

SENATE SPONSORSHIP

Foster, Shaffer B.

HOUSE SPONSORSHIP

Miklosi,

Senate Committees

Local Government
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF A PROCUREMENT PREFERENCE TO BE**
102 **GRANTED FOR MATERIALS MANUFACTURED IN THE UNITED**
103 **STATES, AND, IN CONNECTION THEREWITH, MAKING AN**
104 **APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Any state agency (agency) that issues an invitation for bids or a request for proposals on or after July 1, 2012, for the purchase of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

materials, supplies, products, provisions, or equipment for which an appropriation or expenditure of moneys is reasonably expected to exceed \$1 million in the aggregate is required to provide to a bidder or offeror (contractor) that responds to the invitation for bids or request for proposals a preference in an amount equal to 1% of the bid price, which is to be subtracted from the bid of each contractor that certifies that it has undertaken best efforts to ensure that such materials, supplies, products, provisions, or equipment are manufactured in the United States.

The preference allowed pursuant to the bill may not be awarded to a contractor that fails to meet the requirements of the bill, and the preference may not be used to satisfy any applicable minimum requirements of the contract. The preference is only allowed if:

- ! The materials, supplies, products, provisions, or equipment that are manufactured in the United States are equal in quality to any such items that are manufactured outside the United States;
- ! The materials, supplies, products, provisions, or equipment that are manufactured in the United States are able to be manufactured in sufficient quantities to satisfy the requirements of the invitation for bids or request for proposals; and
- ! The cost of the materials, supplies, products, provisions, or equipment that are manufactured in the United States does not exceed the cost of such items manufactured outside the United States by more than 5%.

Any contractor that seeks allowance of a preference made available under the bill must certify to the agency that issued the invitation for bids or request for proposals that the contractor is eligible for the preference. The agency may rely on certification provided by the contractor but may also require the contractor to submit additional information to verify the contractor's eligibility for the preference. The agency is responsible for verifying that the contractor has satisfied all applicable requirements and is, therefore, eligible for the preference.

The bill requires the executive director of the department of personnel or the executive director's designee to promulgate rules for the administration of the preference, including a process for a contractor to certify that it satisfies all requirements necessary for allowance of the preference and for an agency to verify that the contractor satisfies such requirements.

The bill specifies that nothing in its terms is intended to contravene any existing treaty, law, agreement, or rule of the United States. No preference shall be granted under the bill if the preference would contravene any treaty, law, agreement, or rule of the United States.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-103-101, **amend**
3 (3) as follows:

4 **24-103-101. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (3) "Low responsible bidder" means any person who has bid in
7 compliance with the invitation to bid and within the requirements of the
8 plans and specifications for a public contract who is the low bidder AFTER
9 ANY RELEVANT PREFERENCES ALLOWED PURSUANT TO THIS ARTICLE HAVE
10 BEEN APPLIED and who has furnished bonds or their equivalent if required
11 by law.

12 **SECTION 2.** In Colorado Revised Statutes, **add** 24-103-210 as
13 follows:

14 **24-103-210. Preference - adequate efforts to ensure domestic**
15 **content - definition.** (1) EXCEPT AS OTHERWISE PROVIDED IN THIS
16 SECTION, ANY GOVERNMENTAL BODY THAT ISSUES AN INVITATION FOR
17 BIDS FOR A CONTRACT FOR THE PURCHASE OF MATERIALS, SUPPLIES,
18 PRODUCTS, PROVISIONS, OR EQUIPMENT ON OR AFTER JULY 1, 2012, FOR
19 WHICH APPROPRIATION OR EXPENDITURE OF MONEYS IS REASONABLY
20 EXPECTED TO EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS IN THE
21 AGGREGATE SHALL PROVIDE TO A PERSON THAT RESPONDS TO SUCH
22 INVITATION A PREFERENCE IN AN AMOUNT EQUAL TO ONE PERCENT OF THE
23 BID PRICE, WHICH AMOUNT SHALL BE SUBTRACTED FROM THE BID OF EACH
24 PERSON THAT CERTIFIES THAT IT HAS UNDERTAKEN BEST EFFORTS TO
25 ENSURE THAT SUCH MATERIALS, SUPPLIES, PRODUCTS, PROVISIONS, OR
26 EQUIPMENT ARE MANUFACTURED IN THE UNITED STATES.

27 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ANY

1 GOVERNMENTAL BODY THAT ISSUES A REQUEST FOR PROPOSALS FOR A
2 CONTRACT FOR THE PURCHASE OF MATERIALS, SUPPLIES, PRODUCTS,
3 PROVISIONS, OR EQUIPMENT ON OR AFTER JULY 1, 2012, FOR WHICH
4 APPROPRIATION OR EXPENDITURE OF MONEYS IS REASONABLY EXPECTED
5 TO EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS IN THE AGGREGATE
6 SHALL PROVIDE TO A PERSON THAT RESPONDS TO SUCH REQUEST A
7 PREFERENCE IN AN AMOUNT EQUAL TO ONE PERCENT OF THE BID PRICE,
8 WHICH AMOUNT SHALL BE SUBTRACTED FROM THE BID OF EACH PERSON
9 THAT CERTIFIES THAT IT HAS UNDERTAKEN BEST EFFORTS TO ENSURE THAT
10 SUCH MATERIALS, SUPPLIES, PRODUCTS, PROVISIONS, OR EQUIPMENT ARE
11 MANUFACTURED IN THE UNITED STATES.

12 (3) (a) NO PREFERENCE ALLOWED PURSUANT TO SUBSECTION (1)
13 OR (2) OF THIS SECTION MAY BE AWARDED TO A PERSON THAT FAILS TO
14 MEET THE REQUIREMENTS OF THIS SECTION, AND NO SUCH PREFERENCE
15 MAY BE USED TO SATISFY ANY APPLICABLE MINIMUM REQUIREMENTS OF
16 THE CONTRACT.

17 (b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
18 THE PREFERENCE ALLOWED PURSUANT TO SUBSECTION (1) OR (2) OF THIS
19 SECTION MAY ONLY BE PROVIDED IF:

20 (I) THE MATERIALS, SUPPLIES, PRODUCTS, PROVISIONS, OR
21 EQUIPMENT THAT ARE MANUFACTURED IN THE UNITED STATES ARE EQUAL
22 IN QUALITY TO ANY SUCH ITEMS THAT ARE MANUFACTURED OUTSIDE THE
23 UNITED STATES;

24 (II) THE MATERIALS, SUPPLIES, PRODUCTS, PROVISIONS, OR
25 EQUIPMENT THAT ARE MANUFACTURED IN THE UNITED STATES ARE ABLE
26 TO BE MANUFACTURED IN SUFFICIENT QUANTITIES TO SATISFY THE
27 REQUIREMENTS OF THE INVITATION FOR BIDS OR REQUEST FOR PROPOSALS,

1 AS APPLICABLE; AND

2 (III) THE COST OF THE MATERIALS, SUPPLIES, PRODUCTS,
3 PROVISIONS, OR EQUIPMENT THAT ARE MANUFACTURED IN THE UNITED
4 STATES DOES NOT EXCEED THE COST OF SUCH ITEMS MANUFACTURED
5 OUTSIDE THE UNITED STATES BY MORE THAN FIFTEEN PERCENT.

6 (4) ANY PERSON THAT SEEKS ALLOWANCE OF A PREFERENCE MADE
7 AVAILABLE UNDER SUBSECTION (1) OR (2) OF THIS SECTION IN
8 CONNECTION WITH AN INVITATION FOR BIDS OR A REQUEST FOR PROPOSALS
9 SHALL CERTIFY TO THE GOVERNMENTAL BODY THAT ISSUED THE
10 INVITATION FOR BIDS OR REQUEST FOR PROPOSALS THAT THE PERSON IS
11 ELIGIBLE FOR THE PREFERENCE. THE GOVERNMENTAL BODY MAY RELY ON
12 CERTIFICATION PROVIDED BY THE PERSON BUT MAY ALSO REQUIRE THAT
13 THE PERSON SUBMIT SUCH ADDITIONAL DOCUMENTATION OR OTHER
14 INFORMATION REQUESTED BY THE GOVERNMENTAL BODY TO VERIFY THE
15 PERSON'S ELIGIBILITY FOR THE PREFERENCE. THE GOVERNMENTAL BODY
16 SHALL BE RESPONSIBLE FOR VERIFYING THAT THE PERSON HAS SATISFIED
17 ALL APPLICABLE REQUIREMENTS AND IS, THEREFORE, ELIGIBLE FOR ANY
18 PREFERENCE ALLOWED BY THIS SECTION.

19 (5) THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
20 DESIGNEE SHALL PROMULGATE RULES FOR THE ADMINISTRATION OF THIS
21 SECTION, INCLUDING A PROCESS WHEREBY A PERSON BIDDING ON OR BEING
22 OFFERED A CONTRACT IS ABLE TO CERTIFY THAT IT SATISFIES THE
23 REQUIREMENTS OF THIS SECTION IN ORDER TO BE ALLOWED A PREFERENCE
24 UNDER THIS SECTION AND FOR A GOVERNMENTAL BODY TO VERIFY THAT
25 THE PERSON SATISFIES SUCH REQUIREMENTS. THE EXECUTIVE DIRECTOR
26 OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL PROMULGATE ANY SUCH
27 RULES PURSUANT TO THE "STATE ADMINISTRATIVE PROCEDURE ACT",

1 ARTICLE 4 OF THIS TITLE.

2 (6) NOTHING IN THIS SECTION IS INTENDED TO CONTRAVENE ANY
3 EXISTING TREATY, LAW, AGREEMENT, OR RULE OF THE UNITED STATES.
4 NO PREFERENCE SHALL BE GRANTED UNDER THIS SECTION IF THE
5 PREFERENCE WOULD CONTRAVENE ANY TREATY, LAW, AGREEMENT, OR
6 RULE OF THE UNITED STATES.

7 (7) FOR PURPOSES OF THIS SECTION, "MANUFACTURED IN THE
8 UNITED STATES" MEANS, IN THE CASE OF ASSEMBLED MATERIALS,
9 SUPPLIES, PRODUCTS, PROVISIONS, OR EQUIPMENT, THAT THE DESIGN,
10 FINAL ASSEMBLY, PROCESSING, PACKAGING, TESTING, OR OTHER PROCESS
11 THAT ADDS VALUE, QUALITY, OR RELIABILITY OCCURS IN THE UNITED
12 STATES.

13 **SECTION 3. Appropriation.** In addition to any other
14 appropriation, there is hereby appropriated, out of any moneys in the
15 general fund not otherwise appropriated, to the department of personnel,
16 for the fiscal year beginning July 1, 2012, the sum of \$198,830 and 2.7
17 FTE, or so much thereof as may be necessary, for allocation to the state
18 purchasing office in the division of accounts and control – controller, for
19 promulgation and management of rules and to support certification of
20 vendor eligibility related to the implementation of this act.

21 **SECTION 4. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.