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ALLIANCE FOR american manufacturing

Frequently Asked Questions about Texas Buy America Preferences

Q: Is Manufacturing Important to the Texas Economy?

A: Yes

Explanation: Manufacturing employment is important to the Texas economy. While Texas currently has 893,000 manufacturing jobs, the state lost more than 179,000 manufacturing jobs since 2001. Currently manufacturing jobs make up more than 6% of Texas's total employment and manufacturing makes up over 14% of Gross State Product. In order to make a full recovery from the recent recession, Texas needs to create 72,800 manufacturing jobs. Assuring tax dollars are invested in domestic manufacturing will support firms in the state, across the United States, and encourage manufacturers to consider Texas as a site of a future facility.

Q: What Are Buy American Preferences?

A: Many states and the federal government give a preference for the goods and services of their state or the nation in their procurements. In a typical example, whereas a state procuring agency typically seeks the lowest bidder when awarding a contract, state preference laws operate to accept a bid that is marginally higher than the lowest bid, if the products supplied or materials incorporated in a project are produced within the United States.

Explanation: This longstanding practice by the federal government, and many state governments, is well-understood by contracting officers and bidders on public projects. Dozens of states have similar laws that create a procurement preference for American-made goods when they are available in a sufficient quality and quantity and are competitively priced in the global marketplace. If goods are unavailable from domestic sources or the cost of the goods from domestic sources is unreasonable, the preference may be waived.

Q: Will Enforcement of the Buy America Preferences in Texas Increase Costs to Tax Payers?

A: No.

Explanation: On a national level, the U.S government has found that domestic procurement preferences do not increase costs. In 2010 testimony to Congress, the U.S. Government Accountability Office reported that the 2009 American Recovery and Reinvestment Act project materials costs were less than anticipated, contrary to claims that the Buy America requirements have the opposite effect.

Q: Will Enforcement of the Buy America Preferences in Texas Help Texan Businesses and Citizens?

A: Yes.

Explanation: When domestic content requirements are applied, they ensure that U.S. materials get a preference in U.S. taxpayer-financed public works procurements. By doing so, Texas would ensure that U.S. environmental and labor standards are not just a burden to U.S business looking to compete in a global economy, but rather a standard for doing business with the globe's biggest customer.

Texas tax and toll dollars should not be used to reward companies who have moved their operations, investment dollars, and jobs to foreign countries, or to reward foreign producers that completely disregard environmental standards, as well as worker and workplace safety standards.

Texas residents believe that U.S. taxpayer dollars should not be used to reward those companies who have moved their operations, investment dollars, and jobs to foreign countries that lack or simply do not enforce regulatory regimes like that affecting U.S. manufacturers.

Rather, taxpayer-financed government spending should give a commonsense preference for American companies and workers who continue to manufacture in the United States under U.S. and Texas laws and regulations and continue to invest in their U.S. operations, modernizing plants to make them safe and efficient, and creating jobs in the process.

When Texas choses to regulate the manner in which its manufacturers do business but chose to spend taxpayer dollars on goods produced abroad, it discourages U.S. production and investment, encourages outsourcing and kills American jobs. This is fractured government policy: Public policies are divorced from procurement policies, further impairing the competitiveness of U.S. manufacturers on the global market.

Q: Are Texas Buy America Preferences Consistent with the U.S. International Trade Agreements?

A: Yes.

Explanation: The general rule under international law is that the United States and other members of the World Trade Organization ("WTO") can favor their respective domestic suppliers over foreign suppliers of goods and services in government procurements. Indeed, the United States has entered into a series of international agreements to commit itself to treat foreign suppliers no less favorably than it treats its own domestic suppliers (called "national treatment"), especially over the last twenty years. These international agreements principally include the WTO's Agreement on Government Procurement ("GPA") and a series of bilateral and regional trade agreements that also address government procurement – such as NAFTA. Despite these agreements, U.S. courts have recognized that states are nonetheless permitted to impose domestic preferences where they are acting as market participants in government contracting.

Q: Will Enforcing Buy America Preferences in Texas Threaten Texan Businesses from operating in a Global Marketplace?

A: Absolutely not

Explanation: Buy America is an important and legitimate lever for opening foreign procurement markets for U.S. products and the businesses that manufacture them. Indeed, because of the Buy America preference included in the 2009 American Recovery and Reinvestment Act, Canada quickly came to the table for bilateral negotiations with the United States that resulted in the 2010 bilateral on procurement. That achieved greater access to Canadian procurement markets for U.S. business than had previously been negotiated under the WTO's GPA and the North American Free Trade Agreement. (This is when Canada granted U.S. access to Canadian provincial procurement markets.)

Q: Will Enforcement of Buy America Preferences in Texas Discourage Direct Foreign Investment?

A: No.

Explanation: It was thanks only to a Congressional "Buy America" requirement that foreign companies such as Canada's Bombardier, Germany's Siemens, Japan's Kawasaki, France's Alstom, and Spain's CAF subsequently set up assembly plants in the United States, to serve the large U.S. rail and transit market. The Recovery Act attached a Buy America Preference to the $8.4 billion dollars it authorized to develop U.S. High Speed Rail and as of December 2009 more than 30 rail manufacturers, domestic- and foreign-owned, had committed to establish or expand their U.S. operations if they were chosen by states receiving the new high-speed rail grants.

Q: Will Enforcement of Buy America Preferences in Texas Invite Retaliatory Legislation from U.S Trading partners?

A: No.

Explanation: Criticism of state Buy America laws falsely portrays other nations' markets as completely unfettered while they are not. The EU and Canada – as well as all other parties to the General Procurement Agreement (GPA) – have broadly excluded many of their procurement markets from the GPA. Indeed, these exclusions go substantially further than the exclusions claimed by the United States. Accordingly, the EU, Canada and other nations already have no obligation to provide U.S. firms with access to a wide array of their government contracts.

Q: What kind of access do U.S. Businesses have to Canada's Procurement Market?

A: Not as much as Canada claims.

Explanation: Under our current trade agreements with Canada the U.S. suppliers have access to procurement of only seven of Canada's more than 40 Crown Corporations. Crown Corporations are government organizations that operate following a private sector model, but generally have both commercial and public policy objectives.

Q: How Do Buy America Preferences in Texas Level the Playing Field for U.S. Manufacturers?

A: They assure that U.S. manufacturers can compete fairly with overseas state-owned manufacturers who are able to undercut the market prices U.S. private businesses are able to offer.

Explanation: As a basic principle of fairness, all companies should play by the same set of market rules and none should be allowed to benefit due to the backing of a foreign government. Governments who own industries view them as strategic (i.e., important to grow regardless of profit), provide a wide array of subsidies, including grants, tax breaks, subsidized loans and debt forgiveness, the provision of inputs at below market rates, and more. Consequently, these state-owned manufacturers are able to undercut the market prices that U.S. private businesses are able to offer. It is cheating, plain and simple.

In 2011, half of the world's 46 top steel companies were state-owned, and these state-owned companies accounted for 38 percent of global production. U.S. steel production supported 583,600 jobs in 2012. These jobs are at risk if surging imports of unfairly traded steel are allowed to displace domestic steel production. When Texas's procurement market is not governed by these domestic preferences and require awards to go to the lowest bidder, most often U.S manufacturers lose bids.