

Background Research

Western Juniper Commercialization Coalition Affirmative Procurement Program Recommendation

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Background

Industry members of the ad hoc Western Juniper Commercialization Steering Committee are interested in being able to compete for state contracts for wood products. One small manufacturer said he looked at contracts for ODOT highway guard rail and sign posts, and guard rail blocking, but specifications were for Douglas-fir or hem-fir. He felt he did not have the time or resources to convince ODOT to examine the suitability of western juniper for various applications.

Members of the Steering Committee believe there are other under-utilized size ranges or previously non-commercial species which are in much the same situation as western juniper - state agencies are unaware of what is available and suitable for various applications, and the process to convince state agencies to test or try something new appears insurmountable to small businesses.

Members of the Steering Committee also believe that wood products manufactured from material removed during the course of watershed and rangeland restoration projects ought to be given some kind of state purchasing preference, since the ultimate goal is not maximizing fiber production or profit, but restoration. Harvest and manufacturing costs tend to be higher for material removed for restoration projects, due to additional mitigation requirements and nature of the material removed.

Issue

The issue defined by industry members of the Steering Committee was: How to encourage state agencies and contractors to purchase products made from under-utilized species, such as western juniper, and small diameter tree thinnings (defined as less than nine-inches diameter-at-breast height [DBH])?

Proposed Action (First Draft)

Implement Affirmative Procurement Program for Under-Utilized Woody Species and Small Diameter Tree Thinnings - Direct state agencies and contractors to examine opportunities to increase purchases of products made from small diameter tree thinnings (<9-in. DBH) and under-utilized species, such as western juniper, and implement an affirmative procurement program to encourage purchase and utilization of such products.

The "proposed action" was based on the concept behind the Federal "Buy American Act" (41 U.S.C. 10), which directs that the Federal Government give preference to domestic end products (cost of components of U.S. origin must exceed 50% of cost of all components), unless there are insufficient or

reasonably available commercial quantities of satisfactory quality, that domestic preference would not be in the public interest, or for which costs are unreasonable.

Further Background Research

After review of the proposed action and rationale, Brad Harper, Administrator for the Senate Committee on Agriculture and Natural Resources, requested that examples of State of Oregon affirmative procurement programs be provided. The goal was to see if there was an existing model for legislation.

The following individuals were contacted:

Rick Evans, Director, Oregon Marketplace and Government Contract Acquisition Program (Coos Bay), 541/888-7007;

Michael Bowen, Government Contract Acquisition Program, Portland Office, 503/229-5625;

Rob Rickard, Chief Purchasing Officer, Dept. of Administrative Services (Salem), 503/378-4648;

Based on their input, Chapter 279 of the 1997 Oregon Revised Statutes was reviewed for examples of State of Oregon affirmative procurement programs. Following are major citations concerning State of Oregon preference programs in ORS 279:

Oregon Company Preference - "In all public contracts, the public contracting agency shall prefer goods and services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal." (ORS 279.021). Contracts awarded to "foreign" contractors (meaning from outside Oregon) require the "foreign" contractor to report various contract information to the Dept. of Revenue if the contract price exceeds \$10,000, and before final payment is made.

Discussion - This statute appears to offer weak support for purchase of Oregon goods and services. Definitions for price, fitness, availability, and quality are not articulated, which leaves wide decision-making latitude for procurement personnel.

Potential Preference for Emerging Small Businesses - "A public contracting agency may require a bidder to subcontract some part of the contract to, or obtain materials to be used in performing the contract from, a business enterprise that is a certified emerging small business." (ORS 279.059). ORS 279.106 supplements this direction for "economically depressed areas " by adding the wording "...certified small businesses that are, as identified by the public contracting agency, located in, or draw their workforces from within, economically depressed areas, as designated by the Economic Development Department in cooperation with the Employment Department."

Discussion - There is no "teeth" in this statute as written, since it gives the public contracting agency authority to decide whether or not to subcontract work to certified emerging small businesses. It appears that a simple request to an agency citing this statute, ought to be sufficient to require explicit consideration and documentation of rationale for a decision whether or not to require subcontracting to emerging small businesses, especially those located in or drawing their workforces from economically depressed areas (much of Eastern Oregon).

Recycling Programs - The Recycled Program procurement guidelines are the most comprehensive guidelines for an affirmative procurement program found in ORS 279 (ORS 279.550 through 279.650). Products specifically mentioned include paper, products containing recycled polyethylene, and recycled oil. Sections include:

- policy;
- mandates to eliminate discrimination;
- incentives;
- required revision of practices to encourage procurement;
- explicit contractor requirements and language;
- education program for local governments;
- required review of purchasing and utilization practices of state agencies;
- listing of companies which can supply the necessary recycled materials;
- reporting requirement to the state legislature; and
- mandated price breaks (e.g. up to 5% for recycled oil and 12% for recycled paper).

Discussion - This statute appears to have all the structural elements of a comprehensive mandatory affirmative procurement program. Industry wood product associations might generally support something which gave their members better access to state government contracts, information about state agency wood product purchases, purchasing agent education, and evaluation of results (reporting requirement). Areas of dispute might involve how "restoration is defined", how much a price break to give products made from material removed for restoration activities, and how to certify products with content from restoration projects.

Other Procurement Preference Programs - There are other state procurement preference programs. One example is "Preference for Products of Visually Impaired" (ORS 346.220).

Conclusion

State mandated affirmative procurement programs exist, especially for recycled products. If the statute was rewritten to apply to "products produced from restoration activities", it might be more palatable to various wood products industry groups and attract more sponsors.