



**Summary of Discretionary Preferences  
In Public Contracting Study  
(House Bill 2374)**

**Report to Interim Committee of the Legislative Assembly**

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September 30, 2022

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# Summary of Discretionary Preferences in Public Contracting Study

## Executive Summary

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House Bill 2374 (2021) directed the Oregon Department of Administrative Services (DAS) to gather data and study the usage of discretionary preferences in public contracting for procurements awarded under ORS 279B.055, 279B.060 and 279B.070. The designated study period of June 31, 2021, through July 31, 2022, required the collection of the following data:

- The number of affected procurements solicited during the period;
- The nature of the procurements, including an estimate of contract price;
- Which preferences were applied, if any;
- Why a preference was or was not applied.

The bill also directed DAS to:

- Develop, and make available, training materials that state agencies can use to determine which contract preferences must or should be applied.

This document outlines contracting agency usage of discretionary preferences during the given period along with recommendations on possible ways to increase usage moving forward. It also includes details about the new discretionary preferences training established as part of the bill.

## Background

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This study was based on data gathered about the usage of the following four discretionary preferences which could be applied to solicitations under ORS 279B.055, 279B.060, and 279B.070:

1. Affirmative action; limited competition and disabled veteran<sup>1</sup>
2. Emerging small business or service-disabled veteran owned (COBID)<sup>2</sup>
3. Oregon goods and services<sup>3</sup>
4. Safer products through green chemistry<sup>4</sup>

The procurements that fit the given study criteria were identified through data obtained from the state's eProcurement system. Contracts valued at less than \$10,000 and those issued for architecture and engineering and public improvement construction were excluded from the study.

To meet the reporting requirements of the House Bill, contracting agencies submitted their discretionary preference information to DAS using an online reporting tool. The online reporting tool was distributed directly to the affected procurement contract administrators by email. This email provided information about the affected procurement, outlined the House Bill reporting requirements, and gave the hyperlink to the online reporting tool.

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<sup>1</sup> ORS 279A.100, OAR 125-246-0200 and 125-246-0210; OAR 125-246-0314

<sup>2</sup> ORS 279A.105; OAR 125-246-0210

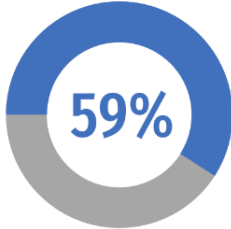
<sup>3</sup> ORS 279A.128 (2011), OAR 125-246-0300

<sup>4</sup> ORS 279A.128 (2011), OAR 125-246-0300

## Study Findings

A total of 153 solicitations were subject to the discretionary preferences study in the given period. Of those 153 solicitations, DAS received 91 reports from the following contracting agencies:

- Oregon Department of Transportation
  - Department of State Police
  - Department of Forestry
  - Department of Administrative Services
  - Oregon Parks and Recreation Department
  - Department of Justice
- Response Rate**

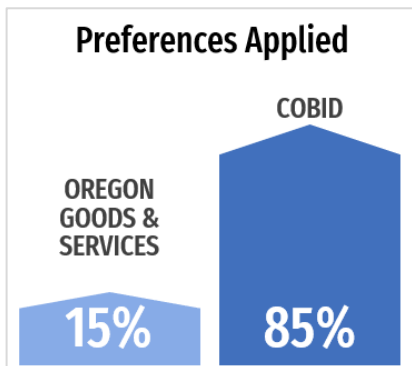


59%

  - Department of Consumer and Business Services
  - Department of Corrections
  - Department of Education
  - Department of Revenue
  - Department of Corrections
  - Oregon Watershed Enhancement Board

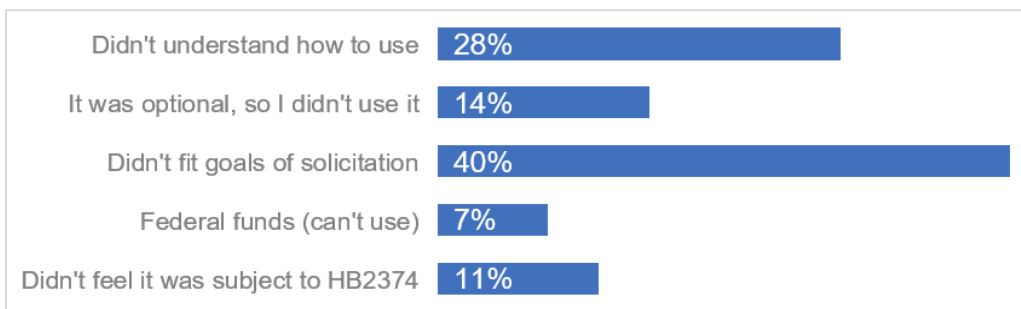
Of the 91 reports received from contracting agencies, the table to the right demonstrates the nature of the solicitation types, the number of those types reported, and the combined values for the contracts awarded. The data showed that although trade services had the greatest number of reported solicitations, the supplies category had the highest combined value for contract awards.

Type	Number Reported	Combined Value
Personal Services	21	\$3,179,372.82
Supplies	20	\$139,310,795.49
Trade Services	32	\$16,033,792.94
Ordinary Construction	2	\$1,349,240.50



Further data received on the 91 reports from contracting agencies showed a preference was applied to 13 solicitations. The preference most used was emerging small business or service-disabled veteran owned (COBID). Affirmative action; limited competition & disabled veteran, and safer products through green chemistry preferences were not used by contracting agencies during the study period.

Lastly, contracting agencies gave one of the five following reasons for not applying a preference to their solicitation:

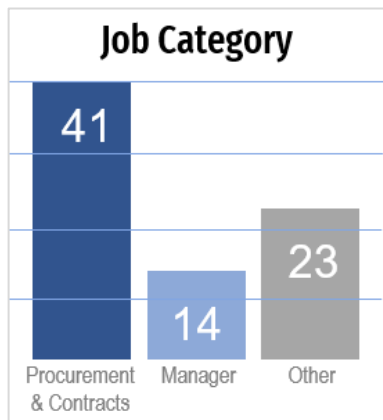


As the graph explains, although many reported not understanding how to use a preference, the majority believed that using a preference didn't fit the goals of their solicitation.

## Training Program

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In November 2021, DAS established a new online discretionary preferences training course and made it available through the state's Workday Learning system. The course describes the preferences to be used when procuring goods and services for the state of Oregon. Topics include mandatory preferences, discretionary preferences, the buy decision, and applicable statutes and rules.



During the study period, 88 students completed the new online course. Of those 88 students, 78 identified themselves as state contracting agency employees, and 10 as members of the Oregon Cooperative Procurement Program (local government partners).

Further data showed that most of the state contracting agency participants identified as being in a procurement and contracts job category.

23 identified their job classification as "other" which included a variety of roles such as corrections officer, legal secretary, occupational safety specialist, operations and policy analyst, park ranger, and more.

Employees from the following state contracting agencies completed the online discretionary preferences training:

- Department of Administrative Services
- Department of Consumer and Business Services
- Department of Corrections
- Department of Human Services
- Department of Justice
- Employment Department
- Housing and Community Services
- Military Department
- Department of Fish and Wildlife
- Department of Transportation
- Veterans' Affairs
- Public Defense Services Commission
- Oregon Health Authority
- Oregon Youth Authority
- Parks and Recreation Department
- Department of Revenue
- Water Resources Division

## Conclusion and recommendations

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According to the study's findings, additional instruction and motivation are needed to increase the usage of discretionary preferences. Updates to the current statewide policy and potential revisions to administrative rulemaking will help achieve this. The statistics do not indicate that new legislation is needed to create more preferences or to make the current preferences mandatory.

DAS recommends the following actions to improve widespread understanding and usage of discretionary preferences:

- Update Statewide Procurement Training Procedure 107-009-0060\_PR to make discretionary preferences training a mandatory component of the Oregon Procurement Basic Certification (OPBC).
- Develop tools, such as a decision-tree, to help procurement professionals decide which preference to apply.
- Review and update content in the Oregon Procurement Manual relative to discretionary preferences and their application
- Review OAR 125-246-0140 (related to implementing ORS. 279A.159) to determine if revisions should be made to emphasize or mandate training on discretionary preferences.

**Enrolled  
House Bill 2374**

Sponsored by Representative NATHANSON (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to preferences in public contracting; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

**SECTION 1.** Section 2 of this 2021 Act is added to and made a part of ORS chapter 279B.

**SECTION 2.** (1)(a) After the effective date of this 2021 Act and before July 31, 2022, a state contracting agency that awards a public contract under ORS 279B.055, 279B.060 or 279B.070 shall use forms or electronic systems the Director of the Oregon Department of Administrative Services specifies to report to the director not later than August 15, 2022:

(A) How many procurements the state contracting agency solicited during the period described in this subsection;

(B) The general nature of each procurement, including an estimate of the contract price; and

(C) Which contract preferences set forth in statute or administrative rule, if any, the state contracting agency applied in evaluating bids or proposals in the course of awarding the public contracts.

(b) In the report described in paragraph (a) of this subsection, each state contracting agency shall also:

(A) State why the state contracting agency applied or did not apply any applicable discretionary preferences; and

(B) Provide any other information or content the director requires for the report described in paragraph (a) of this subsection.

(2)(a) During the period described in subsection (1) of this section, the Oregon Department of Administrative Services shall develop training materials and specify procedures and best practices that state contracting agencies can use to determine which contract preferences must or should apply to a procurement, which contract preferences the state contracting agency may apply at the state contracting agency's discretion and how to properly apply appropriate preferences while evaluating bids and proposals for, and awarding, public contracts.

(b) Upon completing the training materials, procedures and practices described in paragraph (a) of this subsection, the department shall immediately make the training materials, procedures and practices available to state contracting agencies and provide any needed guidance on implementation.

(3)(a) Not later than September 30, 2022, the department shall submit to an interim committee of the Legislative Assembly related to public procurement a report that summarizes the information described in subsection (1) of this section. In the summary, the de-

Appendix A: House Bill 2374

partment shall identify which contract preferences state contracting agencies used in procurements during the period described in subsection (1) of this section, which potentially applicable contract preferences were not used and reasons that state contracting agencies gave for using or not using discretionary contract preferences.

(b) In the report described in paragraph (a) of this subsection, the department shall recommend any changes in statute, administrative rule, policy or procedure the department determines are necessary to ensure that state contracting agencies apply contract preferences in accordance with the intent of the Legislative Assembly.

SECTION 3. Section 2 of this 2021 Act is repealed on January 2, 2023.

SECTION 4. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House April 15, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 20, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....  
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....  
Shemia Fagan, Secretary of State



## Oregon Procurement Preferences

### Department of Administrative Services – Procurement Services

Government has always used its purchasing power as a tool to achieve multiple purposes. A “Preference” means an advantage given to offerors in a competition for contract award which may be granted based on pre-established criteria.<sup>1</sup> Oregon laws and policies contain both mandatory and discretionary preferences.

**Mandatory Preferences** - Oregon laws require certain preferences, such as:

- **In-State Printing:** All public printing, including license plates, shall be performed within the state. (est. 1959)<sup>2</sup>
- **Qualified Rehabilitation Facilities (QRFs):** All state & local contracting agencies shall purchase goods and services of Disabled Individuals from eligible QRFs (1977)<sup>3</sup>
- **In-State Tie-Bid Awards:** All state & local contracting agencies shall give preference to in-state offerors if their offers are the same as nonresident offerors (2003)<sup>4</sup>
- **Interstate Reciprocal Preference:** All state & local contracting agencies shall add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in its state of residence. (2003)<sup>5</sup>
- **Goods Made From Recycled Materials:** All state & local contracting agencies shall prefer goods certified to be manufactured from recycled materials. (2003)<sup>6</sup>
- **Recyclable Food Service Products:** State contracting agencies are required to purchase recyclable or biodegradable food service supplies and food packaging products. (2004)<sup>7</sup>
- **Goods Bought to be Recyclable or Reusable:** All state & local contracting agencies shall ensure goods purchased are recyclable or reusable to maximum extent economically feasible. (2003)<sup>8</sup>
- **Outsourced Services:** All state & local contracting agencies must demonstrate that procurement of service will cost less than performing service or that performing service is not feasible. (2010)<sup>9</sup>

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<sup>1</sup> National Institute of Governmental Purchasing, Inc. (NIGP), Public Procurement Dictionary of Terms, 2008.

<sup>2</sup> ORS 282.210 (1952)

<sup>3</sup> ORS 279.835-279.855, ORS 279A.025(4); OAR 125-55-0005-0045, State Purchasing

<sup>4</sup> ORS 279A.120, OAR 125-246-0300, Preference for Oregon Supplies and Services; Tie-Offers

<sup>5</sup> ORS 279A.120(2)(a), OAR 125-246-0310, Reciprocal Preferences

<sup>6</sup> ORS 279A.125, OAR 125-246-0322, Preference for Recycled Materials

<sup>7</sup> ORS 279A.125 and 270A.155; OAR 125-246-0324, Recycling: Food Service and Food Packaging

<sup>8</sup> ORS 279B.025

<sup>9</sup> ORS 279B.030, ORS 279B.033, ORS 279B.036, OAR 125-247-0110, Feasibility Determination, Cost Analysis ....

## Appendix B: Oregon Procurement Preferences

**Discretionary Preferences** - Oregon law and policies provide discretionary preferences in public procurement:

- **Intergovernmental Cooperation:** All state and local units of government are encouraged to cooperate to procure supplies and services from other governments. Such agreements are exempt from public procurement requirements. (1953)<sup>1</sup>
- **State Surplus Property:** All state & local units of government are encouraged to procure from state surplus property for efficiency and the environment. Such procurements are exempt from competitive requirements. (2003)<sup>2</sup>
- **Inmate Labor:** All state & local units of government are encouraged to procure supplies and services from inmate labor. Prison work products or services are available without restriction or competitive requirement. (2000)<sup>3</sup>
- **Affirmative Action; Limited Competition & Disabled Veteran Preference:** State & local contracting agencies may support affirmative action goals by limiting competition for public contracts to cost \$50,000 or less to disadvantaged or minority groups (2003) or may give a preference in awarding public contracts to business owned by disabled veterans. (2010)<sup>4</sup>
- **Oregon Goods and Services:** All state & local contracting agencies may prefer goods fabricated or processed entirely in Oregon and all services performed entirely in Oregon by 10% (or more if the agency finds good cause). The preference does not apply to emergency work, ordinary repairs or maintenance, minor alterations or other construction contracts. (2011)<sup>5</sup>
- **Safer Products Through Green Chemistry:** State contracting agencies may give priority to safer products without chemicals of concern to health and environment<sup>6</sup>
- **Emerging Small Business or Service-Disabled Veteran Owned Business:** State and local contracting agencies may require a contractor to subcontract to or obtain materials from emerging small businesses or a business that a service-disabled veteran owns. (2015)<sup>7</sup>

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<sup>1</sup> ORS 190, 1953. ORS 279A.025.

<sup>2</sup> ORS 279A.250-290, OAR 125-050-0100 through 125-050-0400, State Surplus

<sup>3</sup> Oregon Constitution, Article I, Section 41; OAR 291-201-0100 et seq., 2000

<sup>4</sup> ORS 279A.100, OAR 125-246-0200 and 125-246-0210; OAR 125-246-0314

<sup>5</sup> ORS 279A.128 (2011), OAR 125-246-0300. Preference for Oregon Goods and Services

<sup>6</sup> DAS Policy no. 107-009-0080, Green Chemistry Procurement Guidelines.

<sup>7</sup> ORS 279A.105; OAR 125-246-0210 Subcontracting to and Contracting with Emerging Small Businesses or Business that Service Disabled Veterans Own.



## Procurement Services

### Discretionary Services Reporting

Did you use a discretionary preference in this solicitation and contract award?

Yes  
 No

Please report which discretionary preferences were used in this solicitation. Select all that apply:

- Affirmative action; limited competition & disabled veteran preference
- Oregon goods and services
- Safer products through green chemistry
- Emerging small business or service-disabled veteran owned business



## Procurement Services

### Discretionary Services Reporting

What impact did the use of the discretionary preference have on the solicitation or contract award?  
Please include any other comments about discretionary preferences.

Would you like to be contacted to discuss further?

Yes  
 No

**DAS**  
DEPARTMENT OF  
ADMINISTRATIVE  
SERVICES

**Procurement Services**  
**Discretionary Services Reporting**

Did you use a discretionary preference in this solicitation and contract award?

Yes

No

Please report why a discretionary preference was not used. Select all that apply:

Federal funds used – couldn't apply preferences

Did not fit the goal of the solicitation

It was optional, so I decided not to use

Did not understand how to use

Never heard of discretionary preferences

Other

**DAS**  
DEPARTMENT OF  
ADMINISTRATIVE  
SERVICES

**Procurement Services**  
**Discretionary Services Reporting**

Thank you for taking the time to complete this reporting form.  
We'll include your information in the HB 2374 report to the Legislature.