

ENERGY SECURITY AND
CLIMATE STEWARDSHIP
P L A T F O R M
FOR THE MIDWEST



**The Midwestern Bioproduct
Procurement System Task Force Report**

Introduction

In November 2007, the Midwestern Governors Association announced the release of the Energy Security and Climate Stewardship Platform (Platform) at a summit in Milwaukee, Wisconsin. One element of the Platform is the resolution entitled “Establishing a Midwestern Bioproduct Procurement Program”. The resolution, signed by twelve Midwestern states and one Canadian province, states the following:

- The signatory states/province “jointly establish a Midwestern Bioproduct Procurement System to support growth of the region’s bioeconomy;”
- “The system should create a common approach for listing products consistent with the federal BioPreferred program (Appendix IV) with system members adopting products based on their own procurement rules;”
- “System members agree to seek authorizing legislation, where necessary, to enable participation in the System;”
- “System members agree to form a regional task force of state procurement officials and others to design the rules of a regional biobased product system and make other recommendations as necessary to establish the system,” and;
- “The Governors and Premier, through the MGA, will appoint a task force of state procurement officials that shall work with the private and public sectors to oversee and implement the System and to develop and recommend to the governors and premier, no later than June 1, 2008, model rules for the system.”

This report summarizes efforts to date to implement the elements this resolution from MGA’s Platform.

Regional Task Force

The National Association of State Procurement Officials (NASPO) organizes a monthly conference call for Midwestern procurement officials. The Platform’s bioproduct resolution was placed on the agenda for the January 23 conference call. The decision was made to hold a meeting of state procurement officials in the Spring of 2008. The meeting was planned over several other conference calls. Jeff Holden, Director of Procurement Management for the state of South Dakota and Paul Stembler, Assistant Director of the Materials Management Division of the Minnesota Department of Administration, took the lead in coordinating the meeting. Steven Devlin, Industrial Specialist for the Center for Industrial Research and Service (CIRAS) at Iowa State University (ISU), offered to host the meeting at ISU. Devlin coordinates the U.S. Department of Agriculture (USDA) Biobased Product Certification initiative. The Western States Contracting Alliance (WSCA) agreed to fund travel for state procurement officials to participate in the meeting.

The meeting – “Establishing a Midwestern Bioproduct Procurement Program:

A Midwestern Governors Association Initiative” – was held at ISU in Ames, IA on March 25-27, 2008. A list of participants (Appendix I) are included in this report.

Meeting Outcomes

Summary of Model Guidelines (see Attachment IV for full guidelines). The main outcome of the meeting in Ames was to develop a list of model guidelines for implementing biobased product preferences at the state level and integrating a regional system, as proposed in the MGA resolution. The guidelines are summarized as follows:

- The Midwestern states should adopt the definition of biobased products and USDA-designated items as used in the federal program.
- Because of differences in enabling legislation or policies in each state, the members agreed to utilize standards that meet or exceed federal rules when purchasing biobased products, as allowed by their specific legal authority.
- The states agreed that the USDA list of designated items would be used, but that each state could determine whether an offered product that is not on the USDA list was acceptable. The USDA requirements for inclusion on the list are the standard for evaluation.
- The states agreed that they could, and would, work cooperatively through the NASPO Procurement Cooperative, Midwest Regional Working Group, to conduct solicitations and establish joint contracts for the purchase of biobased products. These contracts would be available to any member of the Midwestern Biobased Product Procurement System, and to any member of the NASPO Procurement Cooperative.

Other Outcomes: Participants in the Ames meeting discussed other key issues in implementing a regional Biobased Product Procurement system. Those issues are summarized as follows:

- **State Policies:** Status of state statutes, executive orders, enabling legislation, or other state policies, and any additional steps that are needed (see appendix III)
- **Current procurement policies and procedures:** Some states have agencies that have independent purchasing authority, there may need to be policy changes related to their specific statutory authority in order to compel compliance with a biobased content initiative.
- **Environmental considerations:** States have to coordinate a biobased content initiative with other environmental purchasing requirements (some based on statutory requirements, others based on executive orders). It is also important to remember that biobased content is an important factor, but not the only factor for consideration in determining the overall environmental impact of a product. Other state preference programs also consider among the following factors:
 - Energy efficiency
 - Water conservation
 - Recycled content
 - Ability to be recycled
 - Soy-based inks

- **Interaction with other (non-environmental) procurement preference programs:** Minority-owned, women-owned, veteran-owned, disabled veteran-owned and a variety of “buy (your state’s name here)” programs also impact implementation. Some of these programs are based on comparatively detailed statutory requirements, while others may be based on executive orders.
- **Reporting and tracking requirements for many state contracting opportunities can present a challenge for companies not used to dealing with the states.** The requirements are not as complex as they might be complicated – sending a report to a state on itemized sales of products can be complicated for a small business.
- **Product cost versus life cycle cost requirements creates a potential disadvantage for biobased content products.** Again, some of this analysis criteria is based on statutory language, which is not easily changed. There is also a substantial lack of agreement on what is really meant by “life cycle cost” and what variables are or should be included.
 - This is an area where the U.S. Department of Agriculture and CIRAS could be of substantial assistance. A federally sanctioned definition of the elements in “life cycle cost” and even a simple model that could be used by procurement staff would be of great assistance.
- **Outreach** (see below)
- **Evaluation criteria from responses to solicitations vary by state.**
 - Bids: In many cases, bids (invitations for bids (IFBs) and invitations to bid (ITBs)) are limited to criteria based on lowest price from a responsible and responsive bidder. The meaning of responsible and responsive are also defined in statute.
 - Proposals: Allow more flexibility, in many cases, but still may have to be based on specific, pre-defined criteria.
 - Many of these factors have been set by court decisions and other experiences that make change a challenge.
- **Training of central procurement and agency procurement staff on any new initiative takes time and resources.** Each state has its own approach and in many cases hundreds, if not thousands, of individuals who need to get the message. Putting a contract in place is only the first step; the biggest challenge will be generating use. The smaller startups that are signed on/signing up do not have large, experienced sales forces, so marketing is going to be a challenge.
- **Involving our Canadian counterparts in cooperative purchasing may present a challenge.** Canada’s governmental entities are not able (in any case we are aware of) to “join” a cooperative in the United States (since it has never been an issue in the past and most state statutes are based on federal law, which views Canada as sovereign entity). It follows that signing contracts that might include Canadian entities would be impossible –

they are not subject to, nor can they agree to be subject to U.S. law. There may be, however, a way to include them in a cooperative process if it is done carefully.

- **Cooperative Procurement Opportunities**

- Cooperative procurement opportunities are core to the interactions of all the NASPO regions.
- Midwestern procurement officials meet on monthly conference calls that look for, define, discuss, identify and plan cooperative procurement opportunities.
- Each of the regions have annual conferences where, at a minimum, state directors and up to four procurement staff come together to address cooperative opportunities, share experiences with cooperative opportunities and plan new cooperative opportunities. The travel costs and expenses for a state director and up to four staff are paid by WSCA, as a way of encouraging the development of more cooperatives. In many cases, state travel restrictions and budget issues limit the ability of state procurement staffs to participate – even with the reimbursement.
- The biobased content initiative was on the agenda of the Midwestern meeting in Columbus, Ohio, May 12-14, 2008. It will be presented to the entire group and be the subject of several specific sessions. It is the intent of the Midwestern directors that we come away from the Columbus meeting with specific biobased opportunities to pursue.

Next Steps

- Jeff Holden presented a report on the Midwestern Bioproduct Procurement System at the 2008 Expo of the U.S. General Services Administration, held April 21-24 in Anaheim, CA.
- Midwestern procurement directors will continue to meet for monthly conference calls, with bioproduct procurement being an ongoing priority.
- The Midwestern Bioproduct Procurement System Task Force requests additional guidance and review from MGA of the model system guidelines and the rest of this report.
 - MGA should also coordinate any media activities following from this meeting, including any press releases or announcements. Options might include an announcement of the Task Force meeting in Ames, IA, or the endorsement of final recommendations by the MGA.
- NASPO will work with USDA staff to develop short background materials to market with state agencies and procurement staff. Possible resources might include training videos, website content, and other documents.
- Outreach and vendor marketing
 - There is a need to provide information on program to vendors from a state's portal (rather than referring them to the federal website), both to create the sense that it is "our" project, not the federal governments, and because we can do a better job of putting the emphasis where MGA and the Midwestern Regional directors want it, on our own link.

- The link can potentially go on NASPO website, and have states link to it. NASPO's website is being reviewed and will be modified. Paul Stembler (who is on the group reviewing the website) will ensure that space is left for both "green" and "biobased" information that can serve as direct link to state portals.
- We will send information about the status of the Midwestern Regional efforts to both MGA and some of the larger manufacturers that are already part of BioPreferred Program for feedback as we go forward.

Appendix I: MGA-NASPO Bioproducts Procurement Initiative Planning Meeting Participants

Indiana- Elisha Modisett, Legislative Liaison & Policy Analyst, Indiana Department of Agriculture

Iowa-Debbie O'Leary , Division Administrator, Iowa Department of Administrative Services

Iowa- Kenneth Paulsen, Purchasing Agent IV, Iowa Department of Administrative Services, Procurement Services

Kansas- Chris Howe, Director of Purchases, Kansas Division of Purchases

Kansas- Dennis Brown, Procurement Officer, Kansas Division of Purchases

Michigan- Christine Mitchell, Buyer Specialist, Michigan Department of Management and Budget, Purchasing Operations

Minnesota- Brenda Willard, Assistant Director, Minnesota Department of Administration, Materials Management Division

Minnesota- Jackie Finger, AMS Supervisor, Minnesota Department of Administration, Materials Management Division

North Dakota-Sherry Neas, Procurement Manager, North Dakota State Procurement Office

North Dakota-Dillys Bach, Procurement Officer, North Dakota State Procurement Office

Ohio- Gayle Blankenship, Purchasing Analyst, Ohio Department of Administrative Services, General Services, Division, Office of Procurement Services

Ohio-Tracey Shiverdecker, Administrative Assistant, Ohio Department of Administrative Services, General Services Division, Office of Procurement Services

South Dakota- Jeff Holden, Director, South Dakota Office of Procurement Management

Other NASPO Member States:

California- Bob Tetz, Purchasing Program Manager, EPP, California Department of General Services

Sponsor Participants:

Western States Contracting Alliance – WSCA-(part of NAPSO)

Paul Stembler, WSCA Cooperative Development, Coordinator and Assistant Director, Minnesota Department of Administration, Materials Management Division

US Department of Agriculture Participants-Marv Duncan, Shana Love, Irene Xiarchos

Iowa State University, CIRAS Participants- Steven Devlin, Program Manager, USDA Biobased Products, Iowa State University, University Extension

Great Plains Institute for MGA-Brendan Jordan

Appendix II: Summary of the BioPreferred Program

Section 9002 of the Farm Security and Rural Investment Act (Farm Bill) of 2002 provided for a preferred procurement program and a voluntary labeling program for biobased products. The bill provided that groupings of products (called items in the statute) were to be designated for preferred procurement by rule making and that all products falling under a designated grouping would be eligible for preferred procurement by federal agencies. Subsequently, the Energy Policy Act in 2005 extended this preferred requirement to also cover contractors for federal agencies. This program is now known as BioPreferred.

The Farm Bill defined biobased products and provided federal agencies three conditions under which they were not required to give procurement preference to biobased products. These conditions are when the biobased product is not available within a reasonable time, when it fails to meet performance standards set forth in the applicable specifications or the reasonable performance standards of the federal agency, and when the product is available only at an unreasonable price. The procurement preference applies when the federal agency purchases \$10,000 or more of the designated items or when the preceding fiscal years purchases of functionally equivalent items was \$10,000 or more.

Motor vehicle fuels and electricity are excluded from this program by statute. In cases where a biobased product competes with a recycled product, by statute the recycled product is to be purchased, unless the buyer is seeking attributes, such as environmental or performance attributes, available in the biobased product but not in the recycled product.

The program will not designate items for preferred procurement that are determined to have mature markets. An item is regarded as from a mature market if it had a significant national market penetration in 1972. Conference report language for the legislation specified this program was to support the development and adoption of new products and new markets.

USDA has included in its final guidelines rule the following steps under the item designation process, manufacturer and vendor guidance, and the procurement process.

The item designation process, under rule making, to implement this statute has the following steps:

Item designation process:

- a) USDA gathers product data and vendors may voluntarily provide information on technological and economic feasibility (functional performance, commercially available, etc.) and
- b) Samples for testing for biobased content.
- c) Information to determine environmental and public health benefits and life cycle costs is gathered using a BEES analysis (Building for Environmental and Economic Sustainability).
- d) USDA extrapolates the data developed to describe an item.
- e) USDA issues a proposed rule to designate an item.
- f) USDA takes public comments on the proposed rule.

- g) USDA takes comments into consideration in drafting a final rule.
- h) USDA issues a final rule designating an item.
- i) Designated items are posted on the BioPreferred web site.
- j) Manufacturers/vendors are invited to post on the web site their specific product information under a designated item. USDA, in most designations of items, will establish a minimum biobased content for products that fall under that item.

Manufacturer and vendor guidance includes the following:

- a) Manufacturers/vendors must certify the biobased products content of their products.
- b) Manufacturers/vendors may post products on the web site and market products with claims for:
 - (1) biobased products content
 - (a) Must meet minimum content as defined by the designated item description.
 - (b) Content must be verified upon request from a federal agency.
 - (c) Verification must be based on testing by an independent testing entity using ASTM D6866.
 - (2) life cycle cost information
 - (a) Must be verified upon request from a federal agency.
 - (b) Verification must be based on testing by an independent testing entity using BEES analysis or either a third-party analysis or an in-house analysis using the ASTM D7075 standard for evaluating and reporting on environmental performance of biobased products, including life cycle costs.
 - (c) Performance data, materials safety data sheets, etc.
 - (d) Contact information.

The procurement process:

- a) The federal agency identifies a procurement need for a biobased product that falls within a designated item.
- b) The agency conducts search for qualifying biobased products meeting this need; one tool is the informational web site.
- c) The agency issues a solicitation or uses another procurement procedure.
- d) Manufacturers/vendors respond to the solicitation.
- e) The agency gives preference to qualifying biobased products under a designated item.
- f) Agencies have three exceptions to giving preferred procurement to biobased products under a designated item. These are 1) not available within a reasonable time; 2) does not meet performance standards; and 3) is available only at an unreasonable price.
- g) The agency makes a purchase.

As of May 15, 2008, USDA has designated for preferred procurement by rulemaking 33 groupings (items) of biobased products in four rounds of designation rulemaking. These groupings account for 2,741 biobased products and 659 companies. USDA currently is working on proposed rules for rounds 5, 6, 7, and 8 of rule making. Each round will encompass about 10 items. Once those four rules are published in the Federal Register and public comments received, final rules will be drafted, placed into clearance, and published when cleared.

USDA market research has thus far identified 1,908 companies producing or marketing 10,859 biobased products. So, although critical mass has been reached in the BioPreferred Program with the first four final rules, substantial work remains to be done to further expand the numbers and range of biobased products qualified for preferred procurement under the Program.

In addition, USDA will be preparing rule making to implement the voluntary labeling program also provided for in the Farm Bill. This program will provide for manufacturer/vendor use of a label and logo for qualifying biobased products. Currently, a proposed rule has been drafted and will be published in the Federal Register upon clearance.

The following are contact persons for the BioPreferred Program.

For market research, rule making, designation of product groupings, the voluntary labeling program, and the web site, please contact:

Marvin Duncan, 202-401-0532, mduncan@oce.usda.gov
Irene Xiarchos, 202-401-0846, ixiarchos@oce.usda.gov

For market research, product testing, and web site, please contact:

Steve Devlin, 641-613-3298, sdevlin@iastate.edu

For Federal marketing and procurement, please contact:

Shana Love, 202-205-4008, Shana.Love@usda.gov

To access the BioPreferred web site, please go to:

www.USDA.gov/BioPreferred

Appendix III: Status of Midwestern State Biobased Procurement Enabling Legislation, Policies and Activity

Illinois

Illinois has a biobased preference law (30 ILCS 500/45-75) which went into effect January 1, 2008 that allows a discretionary 5% preference for the procurement of biobased products. Illinois has adopted the federal definition of “biobased product”. Nothing has been documented at this point other than the legislation. Illinois will likely put together a working group to move forward with their biobased product procurement effort.

Illinois has other legislation requiring green cleaners for schools. There is other pending legislation related to green cleaning for other state-owned facilities.

Indiana

Indiana currently has a statute on the books (IC 5-22-5-9) that was passed in 2007 that requires state government to purchase biobased products, whenever possible, based on two criteria. First, the products must be available at the time of purchase and second, it is economically feasible to purchase biobased products.

The State Department of Administration, who oversees procurement, has not fully implemented this policy due to fiscal constraints. However, a Biobased Products Advisory Commission was created within the Indiana State Department of Agriculture to further research this area. The commission is charged with creating a report that will be submitted to the General Assembly and Governor by June 1, 2008. That report will recommend short term and long term policies of promoting the development and use of biobased products in an environmentally sound manner. It will also make any recommendations of legislation needed to modify existing authority to encourage the adoption and use and biobased products in the state.

Indiana also has statutes in place related to other environmentally preferable purchases, including: IC-5-22-5-6 relating to the purchase of degradable or disposable plastic products; IC 5-22-5-7 relating to the purchase of recycled paper products; and IC 5-22-5-8 relating to the purchase of gasohol and blended biodiesel fuels.

Iowa

Biobased procurement legislation has passed the Iowa Senate (46-0), and is in committee in the House. The legislation is modeled after the Arkansas legislation.

Other relevant initiatives include improving energy efficiency of state vehicles, reducing miles driven by state vehicles, and promoting LEED certification for state buildings, etc.

Kansas

Kansas has an executive directive in place related to “greening”. Purchasing biobased products is another layer to the existing “greening” program. The State is in conversations with vendors about doing some “green” things voluntarily, for example providing recycled content paper. They have completed some initial purchases of biofuel. Kansas plans to include the procurement of biobased products through policy implementation rather than through new enabling legislation.

Manitoba

Manitoba was unable attend. Information not currently available.

Michigan

An executive directive issued in 2007 includes an environmental preference for products being purchased in the state. Michigan passed a definition of environmentally preferable products, and includes this in the scoring process for products procured through a best value purchasing process. Biobased products can be included under the Michigan definition, so new enabling legislation specific to biobased products is not required.

State buildings in Michigan are now powered by landfill gas, and the state is emphasizing the purchase of biofuels.

Minnesota

Minnesota has had recycled content language since 1998, does not have a specific biobased preference right now, either in statute or policy. Minnesota has the ability to incorporate the procurement of biobased products into their existing preference without new enabling legislation.

Missouri

Missouri was unable to attend. Information not currently available.

Nebraska

Nebraska was unable attend. Information not currently available.

North Dakota

In April 2007, North Dakota enacted legislation directing the Office of Management and Budget to develop guidelines for a biobased procurement program. North Dakota Century Code 54-44.4-07. (Effective after June 30, 2008) Procurement of environmentally preferable products.

The office of management and budget, the institutions of higher education, and any other state agency or institution that has authority to purchase products are encouraged to purchase environmentally preferable products.

Where practicable, specifications for purchasing newsprint printing services should specify the use of soybean-based ink. The North Dakota soybean council and the agriculture commissioner shall assist the office of management and budget in locating suppliers of soybean-based inks and in collecting data on the purchase of soybean-based inks.

In requesting bids for paper products, the office of management and budget must request information on the recycled content of such products.

Where practicable, biobased products should be specified.

The office of management and budget, in coordination with the state board of higher education, shall develop guidelines for a biobased procurement program.

North Dakota intends incorporate the "Model Guidelines for Creating a Midwestern Biobased Product Procurement System" into its North Dakota guidelines. Our next step is to develop the ND guidelines in coordination with the University System for publication prior to June 30, 2008. ND has also been reviewing its state term contracts to identify instances when bio-based products can be specified.

Ohio

The State of Ohio is just getting started in this area. The Governor has a desire to implement "green" procurement practices. They have a couple of green contracts right now and are gathering information to assist them to move forward.

There is currently a bond request in process for various projects, including funding for biobased products totaling \$100 - \$200 million. If this effort is approved, the Office of Procurement Services will coordinate with the Dept of Agriculture to purchase the items.

South Dakota

South Dakota's existing discretionary preference statute (SDCL 5-23-45) has been amended to allow a 5% preference for recycled or biobased products effective July 1, 2008. SDCL 5-23-37 allows the State to purchase soy based inks for state purchasing operations, or require private printers to use soy based inks for state projects, if the price is reasonable and quality is acceptable. South Dakota intends to specify biobased products where practicable.

South Dakota is also developing plans for the increased use of biofuels in the state fleet. A biomass boiler installation project has recently been completed at the State Treatment and Rehabilitation (STAR) Academy, a juvenile corrections facility in Custer, South Dakota.

Wisconsin

Wisconsin was unable to attend. Information not currently available.

Additional Information:

Through discussion of those in attendance it was determined that none of the states need new authorizing legislation to proceed with the procurement of biobased products. Most states have the legal authority to enter into contracts that contain both biobased and non-biobased products. Some states have the flexibility to pay more for biobased products while others do not.

Some of the attendees indicated that it would be good to have some guidance and resources available for creating environmentally preferable purchasing programs, in general, which would include a biobased component. It was pointed out that the National Association of State Procurement Officials (NASPO) currently has a “Green Procurement Task Force” that is working specifically toward that goal. Procurement of biobased products will likely be included in the NASPO green Procurement resource information when it is ready.

Appendix IV: Model Guidelines for Creating a Midwestern Biobased Product Procurement System

Biobased product is defined as a product composed wholly or in a significant part of biological products including renewable agricultural materials (including plant, animal, and marine materials), or forestry materials, or as modified by a system member (hereinafter “member”).

USDA-designated item means a generic grouping of products that are or can be made with biobased materials.

The members of the Midwestern Biobased Product Procurement System shall procure biobased products when feasible that meet or exceed the guidelines of the Federal BioPreferredSM Procurement Program, as authorized by the members’ enabling legislation, executive order, administrative rule or other member policy. When procuring biobased products, members may consider:

- (a) cost;
- (b) competition;
- (c) performance standards;
- (d) availability; and
- (e) percentage of biobased content.

Members should select products that qualify for preferred procurement under USDA’s list of designated items (available through the Internet at [http://www. Biopreferred.gov](http://www.Biopreferred.gov)), and such other biobased products as members may approve.

Members’ solicitations may include their own specifications or commercial product descriptions when procuring biobased products.

Members may establish contracts for the cooperative procurement of biobased products.