



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: March 13, 2015

TO: Honorable Shemia Fagan, Chair
House Committee on Consumer Protection and Government Effectiveness

FROM: Mark A. Williams
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SUBJECT: HB 2375-3

This testimony is presented in support of HB 2375-3.

Summary. This contracting and procurement focused legislation contains four primary elements: It first mandates use by agencies of certain contract forms, templates and procurement documents approved by the Department of Administrative Services (“DAS”) and the Department of Justice (“DOJ”). Secondly, it requires employees who administer a contract to have sufficient verified training or professional experience, and that DAS adopt standards for education, training and experience for agency employees engaged in administering contracts. Thirdly, it requires an agency to verify that the agency has considered the procurement and contract advice that the agency has received from DAS and DOJ. Finally, it requires DAS to develop and evaluate advice and recommendations for promoting best practices in public contracting and report that advice to the Legislature.

Contract Forms. There are over 400 contract forms and templates being used variably within and across state government. The forms, which often address similar subject matters, differ from agency to agency and even within an agency. The need for greater standardization of forms is well recognized. Recently, a study commissioned (Ikaso) by the Enterprise Leadership Team recommended a number of improvements to this date’s procurement processes, including the standardization of contractual templates. The Enterprise Procurement Project, which resulted from the study, has already undertaken the standardization process. HB 2375-3 would require the use of contract forms and templates. Required use of approved forms would address at least four issues. Standardization of forms would make DOJ review of proposed contracts easier, faster and less costly. It would create a consistent environment for employees moving from one agency another. Vendors would also benefit from a more consistent procurement and contracting process. Even once established, these templates will require continuing refreshment to maintain contemporaneity with legal changes and best practices.

Training. Requiring a set level of training and expertise for personnel who engage in the contracting process will significantly reduce undesirable outcomes from contractual breach or malfunction. After contractor performance failure, the second most significant contributing factor in contract failure is agency contract administration.

Agency Accountability. HB 2375-3 requires the director or other head of an agency to verify that the contract administrator has read and understood all advice and recommendations provided by DAS and DOJ as to the practicability and wisdom of the contractual language. DOJ believes that proper recognition and allocation of agency responsibility for contracts, including responsibility for considering DAS and DOJ advice, is important to avoid contract failure.

Future Recommendations. The bill requires DAS to develop advice and recommendations for promoting best practices in public contracting and provide that advice and recommendations in a report to an interim committee of the Legislature no later than November 30, 2015. DOJ believes that the ongoing procurement improvement process initiated by the Enterprise Leadership Team is crucial to continuing to improve Oregon's experience and positive outcomes in this area. Building on recent work of Ikaso and the Enterprise Procurement Project, additional analysis and recommendations from DAS to the Legislature concerning best contracting practices including leveraging state resources and expertise will be useful in the ongoing process of promoting efficient procurement and contracting in the state.

The Department of Justice supports HB 2375-3.