



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: May 18, 2015

TO: Honorable Lee Beyer, Chair
House Committee on Business and Transportation

FROM: Mark A. Williams
Attorney-in-Charge Business Transactions Section

SUBJECT: HB 2375A

This testimony is presented in support of HB 2375A.

Summary. This contracting and procurement focused legislation as four primary elements. The first element is that it 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”). The second element of the Bill is that it requires employees that administer a contract have sufficient training or professional experience and that DAS adopt standards for education, training and experience for agency employees engaged in administering contracts. The third element is that 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. The fourth element 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 a large number of contract forms and templates being used in state government. A recent survey indicated there were over 400 such forms. The forms, which often address similar subject matters, differ from agency to agency and even within an agency. It has long been recognized among the state procurement community including DOJ the need for more standardization of forms. Recently, a study commissioned (Ikaso) by the Enterprise Leadership Team recommended a number of improvements to this date’s procurement processes. One major recommendation was standardization of contract forms and templates. The Enterprise Procurement Project that resulted from the study has already developed several forms and templates with others yet to be developed. This legislation 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. Additionally, establishing approved required from forms will necessitate and create a process for the continued development and refreshing of the forms to keep them evergreen with

May 18, 2015

Page 2

current law, agency needs and lessons learned. Another significant result would be that the vendor community will see consistent procurement and contracts form.

Training. DOJ supports the requirement there be standards for training and experience required for persons that administer procurements and contracts and that such persons receive the training or have the necessary experience. After contractor performance failure, the second most significant contributing factor in contract failure is agency contract administration.

Agency Accountability. The Bill requires the director or other head of an agency to verify that the person that will administer the public contract has read and understood all advice and recommendations of DAS and DOJ. It further requires the director or other head of an agency to record a statement that acknowledges the director or other head of agency has reviewed the advice and recommendations. 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 not later than November 30, 2015. DOJ believes that the ongoing procurement improvement process initiated by the Enterprise Leadership Team is important to improving and maximizing utility of the procurement process. 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.

CONTACT: Please contact Legislative Director Aaron Knott with any questions or concerns at aaron.d.knott@doj.state.or.us or 503-798-0987.