



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

HB 2156: DOJ LEGAL SERVICES AND PROGRAM PROCUREMENTS

Background:

ORS Chapter 279A contains certain exemptions from the Public Contracting Code, including the procurement of certain services related to legal matters by the Department of Justice (DOJ) and other state agencies. The relevant provision in ORS 279A.025(2)(e) excludes from the Public Contracting Code, “Contracts *for professional or expert witnesses or consultants* to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested...”

The purpose of that exemption is to provide the flexibility and expediency necessary in procuring services essential to deal with legal matters. However, because of the current language in the statute, it is not clear that the exemption applies to services other than those provided by expert witnesses or consultants to handle litigation or legal matters. Because the formal public contracting process often takes weeks or even months to navigate, even with assistance from the Department of Administrative Services (DAS), the current exemption language does not adequately meet the needs of DOJ in serving its clients.

ORS Chapter 279A.050 contains the procurement authority that has been granted to each State Agency, allowing those agencies to conduct their own procurements in accordance with the Public Contracting Code. Until 2007, DOJ had procurement authority commensurate with the authority granted to the Treasurer and the Secretary of State. Circumstances then convinced department administration to relinquish that authority and to outsource most of its procurements to DAS. DOJ now has a strong procurement team in its administrative services division that can swiftly handle all but the largest and most complex solicitations, which are typically handled under DAS statewide price agreements. Procurement authority for goods and services related to the programs under the authority of the attorney general will better allow DOJ quickly and efficiently meet the needs of its client agencies.

Concept:

HB 2156 amends ORS 279A.025(2)(e) to clarify that the Public Contracting Code does not apply to the procurement of any services related to a public body’s litigation or legal matters.

The bill amends ORS 279A.025(2)(k) to provide DOJ with the added flexibility to purchase goods related to litigation or legal matters, using similar protocols already in place for contracting with private law firms, expert witnesses, or other professional consultants. This change will update the current exemption to address the procurement of goods and services that are commonly used in modern litigation, such as discovery software and servers to store data.

The bill also limits the purchase of litigation or legal-matter-related goods outside the public contracting code solely to the Department of Justice, and provides the Department of Justice with its own authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the Attorney General, using the processes required in the public contracting code. This authority does not apply to procurements related to information technology initiatives, which will still require DAS involvement.

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