



Oregon

Kate Brown, Governor

Enterprise Leadership Team

Improving Government Steering Team

MEMORANDUM OF UNDERSTANDING

Regarding streamlining and simplifying State procurement efforts through the targeted use of templates

Background

Benchmarking shows that Oregon is a leader in some areas of procurement, but in some other areas, the state still has room for improvement. The Improving Government Steering Team (IGST), with the support of Enterprise Leadership Team (ELT) – including Department of Justice (DOJ) – has embarked on a significant procurement improvement project. One sub-project of this effort is focused on standardizing up to eighteen of the most commonly used forms by creating templates. These templates are the focus of this Memorandum of Understanding (MOU).

Problem Statement: The state doesn't have a standard set of procurement templates. From one procurement to the next, documents like RFPs often differ greatly in form, content, and language between agencies or even individual users. This lack of uniformity decreases the efficiency and timeliness of the procurement process, creates confusion for users and suppliers, requires extra training for staff, increases the risk of errors or omissions in documents, and leads to duplication of work. During legal review, DOJ attorneys often have to scrutinize procurement documents individually line by line to ensure they meet the required standards, and that level of detailed review can lengthen turnaround times and increase costs for agencies.

Solution Statement: the Enterprise Standard Set of Procurement Templates, Forms, and Checklists Project will create a standardized set of procurement documents to help streamline and enhance the efficiency of the procurement process. Agencies will have access to documents already vetted by agency experts and DOJ, and the uniformity of the documents should make it easier to move procurements through the process, including DOJ review, ultimately helping decrease turnaround times and administrative costs for agencies.

Purpose

Memorandum Purpose:

DOJ and IGST have a shared interest in creating the most effective, easy-to-use templates and maximizing the potential of those templates. This MOU memorializes an agreement between DOJ and IGST regarding the development, use, and maintenance of procurement templates. The state can only reap the full benefit of these templates if it develops and adheres to standard guidelines regarding their use. For each template it produces, the project team will create guidelines for users, and this memorandum provides further clarification and helps set expectations for both agencies and DOJ about template use. The terms and conditions below have been developed and agreed upon by members of the state's IGST and DOJ and may be amended as needed with the mutual agreement of both organizations.

Terms of Use of Templates

IGST and DOJ agree that:

1. For the purposes of this MOU the term "template" means the documents that are procurement documents or become a public contract as described in OAR 137-04-0010(20) and OAR 137-045-0010(21), respectively.


2. IGST, the ELT, and DOJ will encourage agencies to adopt and actively use the templates as well as adhere to these and other guidelines regarding their use.
3. IGST and ELT will develop a funding source to pay for DOJ's contribution to the development and ongoing maintenance of the templates.
4. The Designated Procurement Officer (DPO) Council, Department of Administrative Services (DAS), and DOJ will work together to provide standardized user training and communication about the templates on a regular basis.
5. IGST will solicit feedback about template drafts from a wide range of enterprise representatives to help ensure the usefulness of the templates, and DOJ will ensure that the appropriate attorneys have the opportunity to vet templates before their completion.
6. To ensure expedited review by DOJ, agencies will need to use these templates as the starting point for developing procurement documents.
 - a. For each procurement, users need to work off the template and not prior procurement documents, even if the template was used for the prior procurement. This will avoid carrying over deal-specific changes that may not apply to the new procurement, and incorporate template updates that may have been made since the last procurement.
 - b. Changes to the templates need to be done in tracked changes and include an explanation. This will assist DOJ in understanding the need for removal/modification as well as document potential changes for the next template update.
7. DOJ and the DAS will share responsibility for the timely development and ongoing maintenance of the templates. See Attachment A, Procurement Template Maintenance.
 - a. DAS will ensure that users have easy access to the most current versions, such as through its website or the procurement manual currently in development.
 - b. Templates will be opened up for revision periodically or whenever legally necessary.
 - i. Either DAS or DOJ may open up templates for revision. DAS and DOJ will work together to ensure changes receive proper review before adoption. For example, if DAS intends to revise a template, DAS will coordinate an Enterprise workgroup, including DOJ, to review feedback and draft a new version. DOJ will approve the revisions before adopting the new version of the template. If DOJ intends to revise a template, DOJ will notify DAS, and if timing allows, DAS will coordinate an Enterprise workgroup; however, for time-critical changes DOJ will coordinate with DAS to consider additional minor updates. DOJ will approve any revisions before adopting a new version of the template.
 - ii. DOJ and DAS will develop a process to collect and review user feedback about the templates, and they will work together to implement changes to the documents based on that feedback.
 - iii. DAS will make provision for project management services for any changes to templates that require project management skillsets, such as the facilitation of Enterprise work groups.
 - iv. DAS will publish and notify users when a new version of the template is issued and ensure that the revised template is distributed appropriately.
 - v. DOJ will communicate with users when users submit requests without using the approved template or with outdated template versions.
 - vi. Templates will include an imbedded version number to allow both agencies and DOJ to easily identify latest versions.
 - vii. Agencies may work with DOJ to develop agency-specific versions of an approved template, but any changes from the master template must be for legal reasons that must be reviewed and approved by DOJ on a case-by-case basis. Agencies will be responsible for covering the cost of developing any agency

specific versions of these templates. Agencies may not make and DOJ will not approve agency-specific changes to structure, design, or formatting of the templates. Whenever a new master version of a template is released, agencies will need to work with DOJ to update their agency-specific versions.


8. Use of the templates may affect when and what DOJ will review during the procurement process:

- a. Exemptions from legal sufficiency review may be granted for certain uses of specific templates according to DOJ legal sufficiency rules. (For example, an exemption may be granted for the RFP template for low-risk, common goods and services even if they exceed the current dollar threshold for legal sufficiency review).
 - i. DOJ has identified in rule the circumstances when exemptions may be granted and DOJ will consider granting exemptions for transactions using approved templates.
- b. DOJ may modify the current rule that sets the dollar threshold for legal sufficiency review, and a new “thresholds” for legal sufficiency review may take into account the use of templates to determine when review is necessary.
- c. When legal sufficiency review is required, DOJ will:
 - i. Ensure the contract is minimally legally sufficient, as described in statute and rule including:
 - 1. Review changes made to boilerplate language.
 - 2. Ensure the appropriate deal specific elements, options, alternative clauses, etc. were chosen.
 - 3. Review will not include grammar or language preference of the approved template.
 - 4. Review the Statement of Work, requirements or similar provisions for adequacy and compliance with the legal sufficiency rules.
- d. During legal sufficiency review, DOJ may also offer general counsel advice and legal recommendations if 1) specifically requested by the agency 2) if potential issues present a significant risk to the enterprise, the agency or the public 3) to meet applicable professional standards and 4) or if such advice can add value to the transaction. DOJ attorneys will inform agencies if there are unique or significant issues that require an atypical amount of analysis or research.
- e. DOJ rule defines specific areas not included in legal sufficiency review; however, confusion still exists between the business function, procurement function, and DOJ legal sufficiency review process regarding who makes what type of decisions in the procurement process which causes delays of contract approvals. To expedite this DAS and DOJ will work together to create a decision making matrix which will be presented during the review in number 9 below.

9. Six months after the signing of this MOU, IGST and DOJ will meet to review how agency and DOJ staff have used the templates and determine if further action is needed to ensure that the templates are used as intended and to maximum benefit.



George Naughton on behalf of IGST Date 5/19/15



Fred Boss on behalf of DOJ Date _____