

Follow-up report 14-04F
July 2014

Strengthening Contract Management in Idaho

Office of Performance Evaluations
Idaho Legislature





**Rakesh Mohan
Director**

Office of Performance Evaluations

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Follow-up report

Strengthening Contract Management

Executive summary

We released the report “[Strengthening Contract Management in Idaho](#)” in January 2013 to address concerns that current practices left future state contracts vulnerable to cost and performance issues. Our report found a lack of clear language describing the contracting process and no requirements for contract monitoring in statute or administrative rule. Idaho could use best practices, as established by several national professional associations, to help develop checklists that would strengthen the state’s framework for planning, developing, awarding, monitoring, and closing contracts. While checklists are practical tools, we found their usefulness to improve the contracting process is limited by the number of agencies required or willing to adhere to the checklists and by the capacity of agencies to implement them.

We provided recommendations to strengthen contract management:

- Best practice checklists be developed and incorporated into training materials and practices for all agencies including exempt agencies, which are not required by statute to adhere to rules developed by the Division of Purchasing.
- The Division of Purchasing require relevant training for agency staff involved with various aspects of the contracting process and dedicate a full-time position to provide statewide training.
- The Division of Purchasing formalize its monitoring role and create positions to perform contract monitoring.
- The Legislature consider amending Idaho Code to require all state agencies, including exempt agencies, be subject to statewide monitoring for high-risk or high-dollar contracts.



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After our report release, the Legislature passed [House Resolution 18](#) in the 2013 session and called upon the Department of Administration, which houses the division, to develop a plan to address our findings and recommendations.

In this follow-up review, we found the Division of Purchasing has made progress to implement these recommendations. The division conducted an internal review of its practices and developed a work plan for providing general enhancements to the state's contracting process, which increases training requirements of agency staff and improves the planning and management of high-dollar service contracts. The division has not dedicated a full-time employee for training. The Legislature has made no changes to state policy that would require exempt agencies to incorporate best practice checklists into their process or be subject to statewide monitoring for high-risk or high-dollar contracts.

Overview

We designed our 2013 evaluation to better understand how agencies develop, monitor, and close out contracts and then determine how, if at all, the division and agencies could further improve the contracting process. We outlined several sets of best practices and described how those practices applied to each stage of a contract. The scope of our evaluation was limited to purchases that fell into three categories: (1) greater than \$100,000, (2) awarded using a request for proposal process, and (3) made by agencies that are subject to division rules. We excluded the Department of Lands because it does not use the division to conduct its solicitations. We also excluded the Division of Public Works, which is a separate entity and responsible for a wide range of facility projects that include new buildings, improvements, and renovations.

Through the course of our 2013 evaluation, we concluded that Idaho has much of the best practices framework in place for the development and award of contracts; however, Idaho does not have a framework for statewide contract monitoring. Several key findings highlighted areas where improvements could be made to contract management at the state level:

- Agencies found it difficult to properly develop, award, and monitor their contracts using a standardized, statewide framework because there was a lack of clear, comprehensive language that outlined the entire contracting process.
- Officials in the Office of the Attorney General agreed that a restructuring of Idaho Code and Administrative Code could provide agencies with clear information about the procurement process.
- The use of best practices to strengthen statewide contract management was limited by the number of agencies required or willing to consider best practice elements when making contracting decisions.
- The use of best practices was limited by the knowledge, skills, and abilities of the individuals who play a role in the contracting process. Agencies were not consistently trained to make contracting decisions.
- Idaho Code and Administrative Code were silent on contract monitoring. Division guidelines on contract monitoring were limited.

Our office made six recommendations to the division and two to the Legislature. This follow-up review addresses the implementation status of those recommendations.

Idaho does not have a framework for statewide contract monitoring.

Not all agencies are required to follow division rules.

House Concurrent Resolution 18 called upon the Department of Administration to develop a plan to address findings and recommendations in our evaluation.

The Division of Purchasing developed a work plan in response to the OPE report and HCR 18.

Legislative response

Four pieces of legislation affecting contract management have been enacted during the 2013 and 2014 sessions. Passed in 2013, House Concurrent Resolution 18 called upon the Department of Administration to develop a plan to address the findings and recommendations in our evaluation. The department conducted an internal review and prepared a plan, which we discuss in subsequent sections of this report.

[House Bill 81](#), effective July 2013, removed the sunset clause on [Idaho Code § 67-5728](#). This change allowed institutions of higher education to continue to have sole discretion, under the direction of the State Board of Education, for all procured items not relating to statewide purchasing contracts. To date, Boise State University is the only institution to take advantage of this rule and has its own policies and procedures for procuring property.

Two additional pieces of legislation were passed during the 2014 session. [The appropriation bill for the Department of Administration](#) included legislative intent directing the department to develop best practices for contract management, to develop a statewide contract monitoring system, and to notify the Legislature prior to the award of contract extensions and renewals. [House Bill 408](#) clarified that the Division of Purchasing “is authorized and empowered to formulate rules in the conduct of purchasing” that would be broadly applied to anyone operating under the authority of the division and to any agency staff involved in purchasing activities.

Agency response

The Department of Administration’s Division of Purchasing conducted an internal review of state contract development and management processes in response to our report and [House Concurrent Resolution 18](#). The division incorporated the findings of the review into a plan for improvement in three areas:

1. General enhancements to rules and resources
2. Training and certifications of agency employees involved in contract processes
3. Planning and management of high-value service contracts

General enhancements

To implement this plan, the division identified a need to revise administrative rule. On June 4, 2014, the division published a [notice of intent](#) to promulgate changes to Administrative Code

through the negotiated rulemaking process. The proposed changes are intended to provide for more clarity, avoid conflict between statute and rules, better define roles and responsibilities, and modify requirements to enhance the state's overall ability to plan for and manage contracts, specifically high-dollar service contracts. In [appendix A](#), we have included a summary table that describes the proposed changes for high-dollar service contracts.

The division has made several enhancements to procurement and contracting resources. Over the past year, the division has updated over 40 commonly used forms and templates as part of an enhanced online toolkit. The division has also published a revised "[Procurement Desk Manual](#)" and a "[Contract Administration and Management Guide](#)." These two references describe the life cycle of contracts, define the roles and responsibilities of the agencies and the division, and provide guidance for contract planning, management, and administration. The division has incorporated best practice checklists into both manuals, which are available to all state agencies on the division's website.

The division purchased a new e-procurement system with plans to begin implementation on July 1, 2014. The division proposed rules to require that agencies under its purview issue all solicitations through the new system. Consistent statewide use of this system will improve tracking and reporting mechanisms for the state.

As a result of internal analysis, the division categorized several agencies as high-impact agencies—those having the highest dollar-value contracts. These agencies include the Department of Correction, the Department of Health and Welfare, the Information Technology Leadership Council, the Department of Labor, the Office of the Chief Information Officer, and the Idaho Transportation Department. The division has held regular meetings with most of these agencies since fall of 2013 and has obtained consent to begin meeting with the Department of Correction. The division tailors the meeting agendas to the needs of each agency and covers topics that include project management for high-dollar or high-risk contracts, roles and responsibilities, amendments, insurance, and other contract and procurement policy matters.

Training

The division has expanded its training program to offer agency-wide purchasing courses designed to provide staff at all levels with an understanding of the state procurement process. To date, agencies participating in these courses include the Department of Administration executive staff, the Idaho Historical Society, the Department of Insurance, the Military

The division published proposed changes to Administrative Code on June 4, 2014.

831 contracts were active in June 2014.

\$3.2 billion in total authorized expenditures through active contracts.

The division has expanded its training program.

The division's work plan focuses on high-dollar service contracts with a value of \$5 million or more.

5.4%
of active contracts are high-dollar service contracts.

Division, the Division of Veterans Services, and statewide information technology staff. The division reported that over 100 state employees have attended these training sessions.

In response to our evaluation finding that agency contracting staff were not consistently trained and may not have the requisite knowledge or experience to make contracting decisions, the division **proposed several changes** to administrative rules requiring the completion of a state-sponsored training program for specific agency staff involved in the contract process. Under the proposed rules, agencies must identify a procurement contact for each requisition and a contract manager for each service contract. Agencies with service contracts of more than \$5 million must have procurement staff and project managers with specific professional certifications and additional training.

High-dollar service contracts

In our report, we discussed the need for increased capacity to manage contracts because a wide range of issues could affect successful implementation. Contracts of all types are at risk for problems. Of particular concern are contracts where failure would cause significant physical, emotional, or political harm to the state and its citizens or contracts with significantly high project costs. These high-risk and high-dollar contracts tend to be for services or software and carry a higher failure rate than product contracts.

The division's plan originally highlighted opportunities for change surrounding the acquisition of high-risk and high-dollar service contracts solicited through requests for proposal. According to division officials, they later narrowed the scope to only high-dollar service contracts because the evaluation of risk is subjective and could be a potential source of disagreement between the division and an agency. **The division proposed** changes to Administrative Code that defines high-dollar service contracts as those "with a total estimated cost during the initial term and renewals or extensions of \$5 million...or more."

The division proposed that high-dollar service contracts have additional requirements with the intent to provide better planning and contract management. Requirements include the following:

- Involvement of a third party, subject matter expert in the project planning process to ensure compliance with best practices and to provide recommendations.
- Board oversight before solicitation and during implementation of the contract. The board is to have a minimum of two subject matter experts without a connection to the project.

- Inclusion of a reporting process within the solicitation.
- Inclusion of terms for negotiation and proposal discussions within the solicitation.
- Approval of the solicitation’s release by a procurement professional with specified professional certification and minimum training.
- Engagement of a project manager with specific qualifications and training.
- Establishment of an agreement governing the roles and responsibilities of the division and the requisitioning agency.

A flow chart illustrating the points in the contract process impacted by the proposed rule changes for high-dollar service contracts can be found in [appendix B](#).

Implementation of recommendations

We assessed the status of recommendations within four categories:

- **Implemented:** The agency has measurably met the recommendation’s intent.
- **Addressed:** The agency has taken an approach that diverged from the recommendation but has still met the recommendation’s intent.
- **In process:** The agency has begun to measurably address the recommendation’s intent.
- **Not implemented:** The agency has not begun to measurably address the recommendation’s intent.

Our review of implementation actions found that the Division of Purchasing has begun to address our recommendations:

- Five recommendations are in process.
- One recommendation has not been implemented.

Two recommendations for legislative consideration have resulted in **no change** to policy.

81%
of total
authorized
expenditures are
tied to a small
number of high-
dollar service
contracts.



Status of recommendations

Best practices framework

Recommendation 1.1: The Division of Purchasing should develop and then formally incorporate a best practices checklist and a closeout checklist into its training materials. The division should distribute its checklists to all agencies as a reference tool when making contracting decisions and as a tool to ensure contracts are properly closed. The development of the checklists should happen in conjunction with the training and monitoring recommendations outlined in chapters 2 and 3.

The division has published updated versions of the “[Procurement Desk Manual](#)” and the “[Contract Administration Guide](#).” These materials incorporate best practice checklists from the National Contract Management Association, the National State Auditors Association, and NIGP: The Institute for Public Procurement. The desk manual and guide are available to all agencies from the division’s website. The division incorporated these materials into proposed mandatory training programs for agency procurement contacts and project managers of high-value service contracts. Although the resources are available at this time, the division will not finalize the training materials until the negotiated rulemaking process is complete. The Legislature will likely vote on the proposed rule changes during the 2015 session. If approved, these rules would be effective July 1, 2015.

Status: This recommendation is **in process**.

Recommendation 1.2: The Legislature should consider whether to require all agencies, including agencies that are exempt from complying with Division of Purchasing procurement requirements, to incorporate a best practices checklist into their contracting process.

As outlined in our 2013 report, we found that not all agencies are subject to division requirements. [Idaho Code § 67-5716](#) exempts the legislative and judicial branches, the Attorney General, the Controller, the Governor, the Lieutenant Governor, the Secretary of State, the Treasurer, and the Superintendent of Public Instruction. [Idaho Code § 67-5728](#) exempts state institutions of higher education that have developed policies and procedures approved by the State Board of Education. At this time, Boise State University is the only institution to take advantage of this rule.

No legislation was proposed during the 2013 or 2014 legislative sessions to address this recommendation. Additionally, any actions taken by the division to revise administrative rules and provide checklists do not apply to exempt agencies.

Status: No policy change

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The division incorporated best practice checklists into updated reference material available online.

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The legislative and judicial branches, statewide elected offices, and Boise State University are exempt from following division requirements.

Recommendation 1.3: The Division of Purchasing should work with the Office of the Attorney General to review sections of Idaho Code and Administrative Code related to the procurement process. The review should identify any opportunities to reorganize and clarify existing language that will make it more accessible and user-friendly to agencies. The division should then consider whether any updates should be incorporated into its contracting guidelines.

Approved during the 2014 legislative session, [House Bill 408](#) clarifies the division's authority to develop and administer rules for the procurement process. As a result, the division has submitted a set of proposed rule changes as discussed in a previous section of this report. The proposed rules add requirements for contract management and enhance training requirements for purchasing staff across state agencies. The Legislature will likely vote on the proposed rule changes during the 2015 session. Should these rules be approved, the division will update its contracting guidelines and references.

Status: This recommendation is **In process**.

Contract development and award

Recommendation 2.1: To ensure all staff who are involved with the purchasing process be adequately prepared before making contracting decisions, the Division of Purchasing should require relevant training for agency staff involved with various aspects of the contracting process. The basic training structure should be developed by the division and then modified according to agency need. Training could take place online, at the Division of Purchasing, or a combination of both, depending on the needs and capacity of the individual agency.

The division has proposed rules to require all agencies under its purview to identify procurement contacts and contract managers. These agency employees would be required to complete a state-sponsored training program. By meeting this requirement, every agency would have at least one employee with a basic level of training.

Our 2013 report included the [survey results](#) of 220 state employees involved in at least some aspect of contract management. Only 27 percent of survey respondents had received training through the division and 14 percent had received no training. If these rules are approved and implemented, we would expect to see a significant increase in the number of agency employees who have received division training.

In addition to this required training, the division has implemented agency-wide trainings and regular meetings with high-impact agencies. We anticipate this effort will improve the capacity of those agencies.

Status: This recommendation is **In process**.

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Under proposed rule changes, every agency would have at least one employee with a basic level of training in contract management.

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The division reports it will request one or more full-time training positions in its FY 2016 budget request.

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Service contracts were targeted for oversight because they are more prone to failure.

Recommendation 2.2: To increase agencies' capacity in making contracting decisions, the Division of Purchasing should create a full-time position dedicated to providing statewide training. This position will work directly with agencies to increase their procurement capacity. The creation of an additional position will also help to better balance the existing workload of division staff, as discussed in chapter 3.

The division has not created a full-time position dedicated to providing training. The division stated in its response to our 2013 evaluation that any expansion in the training program currently offered by the division would require adding more than one full-time position to the division's current staff. The need for a position to coordinate training will only increase if the proposed administrative rule changes take effect. While the division recognizes the need for a training position, the Department of Administration did not submit a request for this position in its 2015 budget. The division has reported that it will be requesting one or two full-time positions for the development and delivery of training materials in the fiscal year 2016 budget request.

Status: This recommendation is **not implemented**.

Contract monitoring

Recommendation 3.1: In light of the concerns agencies expressed about providing adequate contract monitoring, the Division of Purchasing should consider creating positions to perform statewide contract monitoring for high-risk or high-dollar contracts. Staff in these positions would provide support and guidance to agencies throughout the life of a contract. As part of the monitoring process, division staff should require agencies to submit regular risk reports for contracts that have been identified as high risk or high dollar.

[As previously discussed](#), the division has proposed changes to administrative rule by [adding monitoring requirements](#) to high-dollar service contracts. These requirements include establishing an agreement between an agency and the division defining roles, reporting responsibilities, and the frequency of contract reviews and status reports. Agencies must include a reporting requirement within solicitations. An oversight board and an independent third party subject matter expert will provide regular status reports throughout the implementation of the contract. Even though new positions were not created, the [proposed rules](#) require the division and agencies to identify a project manager within the agency and define the division's role in contract administration during the planning process.

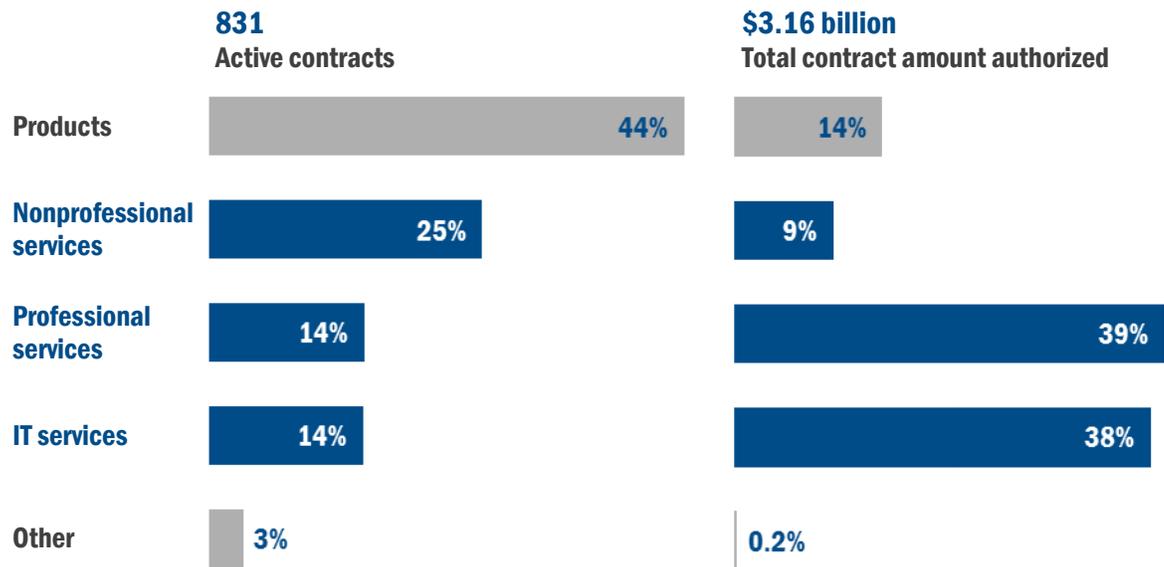
The division chose to focus on service contracts because they have found these contracts are more prone to failure. This focus aligns with findings from NIGP: The Institute for Public Procurement that describe service contracts as being subject to a wide array of problems. The division set a threshold of \$5 million

as a way to limit the scope of the proposed requirements to a manageable number of contracts.

To analyze the impact of these requirements, we looked at all active contracts within the division’s contract management system as of June 2014. Exhibit 1 describes the number of active contracts by contract type. Contracts for nonprofessional services, professional services, and IT services make up 53 percent of active contracts but account for 86 percent of the total contract amount authorized.

Exhibit 1

Service contracts were 53% of all active contracts and accounted for 86% of the total dollar amount authorized over the life all contracts.



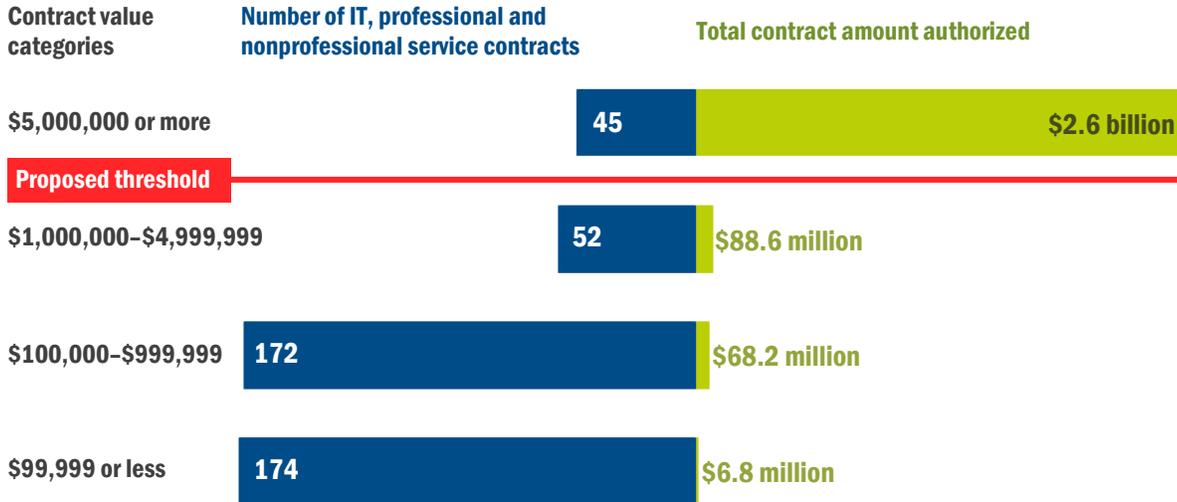
Source: Division of Purchasing contract database Sicomm; queried June 2014.

Exhibit 2 illustrates the number of service contracts above and below the \$5 million threshold. Forty-five service contracts are valued over \$5 million dollars and account for 94 percent of the value of service contracts and 84 percent of the total value of all active contracts. If the division were to decrease the threshold amount from \$5 million to \$100,000, the proposed high-dollar requirements would apply to 224 more contracts worth \$157 million. Thus, lowering the threshold would nearly quadruple the number of contracts falling under the proposed rules while providing enhanced oversight for an additional 6 percent of the value of all active contracts.

The division set a threshold of \$5 million to limit proposed requirements to a manageable number of contracts.

Exhibit 2

The proposed \$5 million threshold targets a small number of service contracts that have a large fiscal impact.



Source: Division of Purchasing contract database Sicomm; queried June 2014.

We consider the proposed rules to be an adequate and practical framework for contract monitoring.



Based on this analysis, we consider the proposed rules for high-dollar service contracts to be an adequate and practical framework for contract monitoring that will enhance the state’s ability to mitigate risks for most of the authorized contract spending. As with the best practice checklists, this framework’s success will be limited to the degree that it is consistently and thoroughly implemented. The Legislature will likely vote on the proposed rule changes during the 2015 session. If approved, these rules would be effective July 1, 2015.

Status: This recommendation is in process.

Recommendation 3.2: The Division of Purchasing should formalize its contract monitoring role in Administrative Code and its purchasing reference guide.

Through a number of proposed administrative rule changes, the division will enhance contract monitoring. Agencies would be required to assign a contract manager to all services contracts, and all agencies would be required to use the e-procurement system for all requisitions. If an agency wishes to renew a contract more than six months before the end of the contract, the agency would be required to justify its decision and describe how the best interest of the state is being served.

Proposed requirements for high-dollar service contracts include multiple levels of oversight within the agency and from the division, a third party subject matter expert, and an oversight board. Regular reports would be required from the vendor and the agency to discuss and address the status of the project and any problems that may arise. The division's contract monitoring role would be formalized through an administrative agreement or MOU that is signed before the contract is awarded. The Legislature will likely vote on the proposed rule changes during the 2015 session. If approved, these rules would be effective July 1, 2015.

Status: This recommendation is **In process**.

Recommendation 3.3: The Legislature should consider amending Idaho Code to require all state agencies, regardless of whether they are subject to Division of Purchasing requirements, be subject to statewide monitoring for high-risk or high-dollar contracts.

In our 2013 evaluation, we discussed that when exempt agencies have an issue with a contract or vendor, they are solely responsible for resolving the issue. If these issues involve a high-value or high-risk contract, the issue is likely to receive public attention through the media. Proper monitoring practices would prevent some issues from occurring and help to ensure that, when issues arise, they are promptly and constructively resolved.

Though the division has **proposed increased requirements** for contract monitoring, the requirements will not apply to exempt agencies. No legislation was proposed during the 2013 or 2014 legislative sessions to address this recommendation.

Status: No policy change

The division proposes to formalize its monitoring role for high-dollar service contracts through MOUs with agencies.



Proposed contract monitoring requirements would not apply to exempt agencies.



Appendix A

Proposed revisions of rules for high-dollar service contracts

Life-cycle stage of contract	Proposed rule change
<p>Project plan and decision to contract</p>	<p>Third Party Validation. The agency requisitioning... shall engage an independent third party subject matter expert to validate that the project planning process is conducted in accordance with best practices. The engagement of a third party subject matter expert shall comply with these rules. (IDAPA 38.05.01.041.01)</p>
	<p>Oversight Board. The agency...shall establish an oversight board for the solicitation process. The oversight board's duties shall include review of the third party validation received.... The oversight board shall issue a report to the administrator concerning the conclusions of the third party validation and recommendations concerning modifications to the solicitation arising from third party validation. The oversight board shall include no less than two (2) subject matter experts without a potential conflict of interest. (IDAPA 38.05.01.041.02)</p>
	<p>Certified Procurement Professional. Solicitations... shall be approved for release by a procurement professional who: (a) possesses, at a minimum, certification as a certified professional public buyer (CPPB) by the Universal Public Procurement Certification Council (UPPCC) or an equivalent certification by a public procurement purchasing certification institution approved by the administrator; and (b) has completed a training program established by the administrator. (IDAPA 38.05.01.041.05)</p>

Life-cycle stage of contract	Proposed rule change
Solicitation and award	<p>Pre-award Clarification Planning. Solicitations... shall provide for proposal discussions with individual offerors pursuant to Section 083 of these rules and negotiations pursuant to Section 084 of these rules. (IDAPA 38.05.01.041.04)</p> <p>MOU between Agency and Division of Purchasing. Prior to the award of a high-dollar services contract, the requisitioning agency and the division shall enter into an agreement setting forth the roles and responsibilities of each party, the reports to be provided by each party, and the schedule for such reports. This section applies to all high-dollar services contracts regardless of the purchasing authority managing the procurement. (IDAPA 38.05.01.041.06)</p> <p>Reporting Requirement. Solicitations...shall provide for contractor reporting. The schedule and content of contract reporting shall be reviewed in the third party validation process and the oversight board established under these rules. (IDAPA 38.05.01.041.03)</p>
Implementation and monitoring	<p>Project Manager. Contract performance...shall be managed by a project manager engaged by the requisitioning agency. Project managers shall, at a minimum, be certified as a project management professional (PMP) through the Project Management Institute or other project management certification institution approved by the administrator. If the project manager is not an agency employee, the engagement of a project manager shall comply with these rules. (IDAPA 38.05.01.125.03a)</p> <p>Training. The project manager for a high-dollar services contract shall complete a training program established by the administrator. (IDAPA 38.05.01.125.03c)</p> <p>Oversight Board. The requisitioning agency shall establish an oversight board for management of the contract. The oversight board's duties shall include supervision of the project manager, review of the reports of third party project monitors, and review of reporting provided to the division. The oversight board shall include no less than two (2) subject matter experts without a potential conflict of interest. (IDAPA 38.05.01.125.03b)</p>

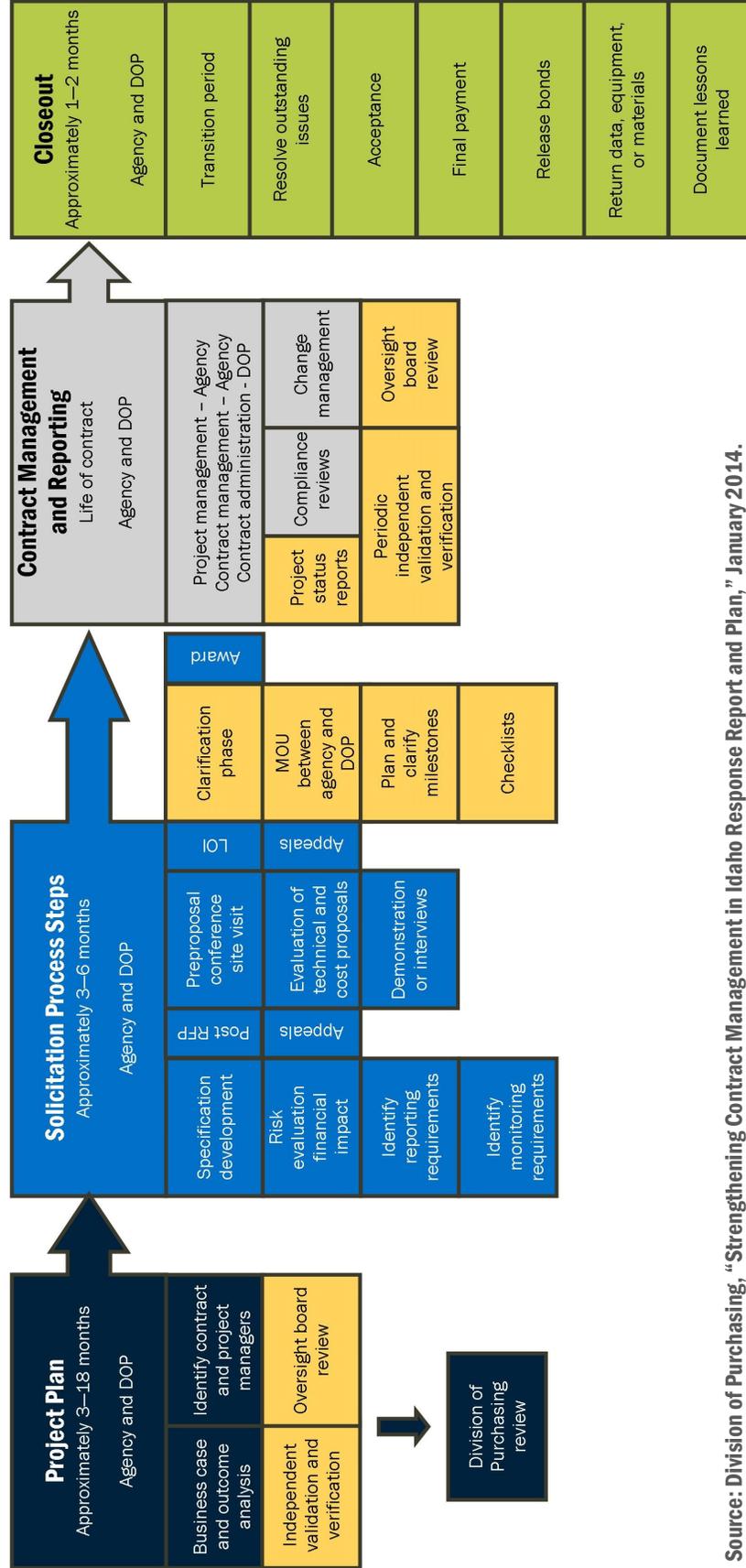
Life-cycle stage of contract	Proposed rule change
<p>Implementation and monitoring (cont.)</p>	<p>Reporting: The project manager for a high-dollar services contract shall ensure the division’s buyer designated to monitor the contract receives the reports, best practice checklists, and other information on the schedule set forth in the project administration agreement executed pursuant to Section 041 of these rules. (IDAPA 38.05.01.125.03d)</p> <p>Third Party Project Monitoring: High-dollar services contracts shall be monitored by an independent third party subject matter expert overseen by the project oversight board. The engagement of a third party subject matter expert shall comply with these rules. (IDAPA 38.05.01.125.03e)</p>
<p>Closeout</p>	<p>No changes recommended.</p>

Appendix B

**Life cycle of
high-dollar contracts**



Yellow blocks are a process change recommendation.



Source: Division of Purchasing, “Strengthening Contract Management in Idaho Response Report and Plan,” January 2014.

Reports of the Office of Performance Evaluations, 2012–present

Publication numbers ending with “F” are follow-up reports from previous evaluations.

Pub. #	Report title	Date released
12-01	Reducing Barriers to Postsecondary Education	January 2012
12-02F	Delays in Medicaid Claims Processing	January 2012
12-03	Lottery Operations and Charitable Gaming	February 2012
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12-05F	Coordination and Delivery of Senior Services in Idaho	February 2012
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12-08F	Idaho Transportation Department Performance Audit	March 2012
12-09F	Delays in Medicaid Claims Processing	November 2012
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13-02	Strengthening Contract Management in Idaho	January 2013
13-03	State Employee Compensation and Turnover	January 2013
13-04	Policy Differences Between Charter and Traditional Schools	March 2013
13-05F	Coordination and Delivery of Senior Services in Idaho	March 2013
13-06	Guide to Comparing Business Tax Policies	June 2013
13-07F	Lottery Operations and Charitable Gaming	June 2013
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13-10F	Reducing Barriers to Postsecondary Education	June 2013
13-11	Assessing the Need for Taxpayer Advocacy	December 2013
13-12	The Department of Health and Welfare’s Management of Appropriated	December 2013
14-01	Confinement of Juvenile Offenders	February 2014
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