

**MINUTES**  
**Approved by the Committee**  
**Purchasing Laws Interim Committee**  
**Wednesday, August 05, 2015**  
**9:00 A.M. to 4:15 P.M.**  
**State Capitol Building**  
**Room EW42**  
**Boise, Idaho**

**Co-chair Senator Martin** called the meeting to order at 9:00 a.m. and requested a silent roll call. Members present were: Senators Bart Davis, Lori Den Hartog, Abby Lee, and Maryanne Jordan; **Co-chair Representative Anderson**; and Representatives Maxine Bell, Brent Crane, John Vander Woude, Mark Nye and nonlegislative member Dru Nakaya. Legislative Services Office staff members present were Robyn Lockett, Ryan Bush and Jackie Gunn.

Others in attendance included: John Riggins; Skip Smyser and Brody Aston, Lobby Idaho; Todd Sorensen and Michelle Doane, Idaho Transportation Department; Tony Pirc, State Department of Education; Robert Geddes, Department of Administration; Marilyn Whitney, Governor's Office; Tyler Mallard, Risch Pisca; Martin Bilbao, Gallatin; Kate Haas, Kestrel West; Kim Kwesi, AP; Jo Ellen DiNucci, Boise State University; Dan Goicoechea, State Controller's Office; Jane Wittmeyer, Wittmeyer and Associates; Kent Kunz, Idaho State University; Bill Burns and Sarah Hilderbrand, Division of Purchasing; Brian Kane, Office of the Attorney General; Amanda Bartlett, Office of Performance Evaluations; and Kristin Ford, Legislative Librarian, Legislative Services Office.

Note: Copies of the presentations, reference materials and handouts are on file at the Legislative Services Office. PowerPoint presentations and handouts are posted on the Idaho Legislature website: <http://www.legislature.idaho.gov/sessioninfo/2015/interim/purchasing.htm>.

**Co-chair Senator Martin** welcomed the presenters and the committee members. He reviewed House Concurrent Resolution 23, which enunciates the marching orders for the interim committee - to engage in a thorough and complete study of Idaho purchasing laws, including a comprehensive review of best practices and report findings and proposed legislation.

**Co-chair Representative Anderson** recognized **Mr. Dru Nakaya**, staff attorney for the J.R. Simplot Company, for agreeing to serve on the committee and for his practical insights on purchasing from the private sector. **Co-chair Representative Anderson** reminded the committee that the next meeting will be held September 30th in Pocatello, Idaho. Every effort will be made to survey all the stakeholders, he continued, and to review bids and talk with the winners and the losers. Another committee meeting will follow in October, when there will be more public testimony presented. The committee will focus first on determining the questions and then the answers. He stated that their goal is to determine if Idaho has a good and fair purchasing system, as well as to address the system's public perception. **Representatives Crane and Nye**, pursuant to House Rule 38, disclosed to the committee that their companies do some contracting with the state of Idaho.

**Co-chair Senator Martin** introduced **Ms. Robyn Lockett**, Principal Budget & Policy Analyst. **Ms. Lockett's** presentation titled "State Contracts: A Fiscal Overview" is available at: <http://www.legislature.idaho.gov/sessioninfo/2015/interim/fiscaloverview.pdf>. She also referred to handouts entitled "Contract Values All Funds Statewide," "Personnel Cost Projections Related to Contracts for FY 2016," and "Delegated Authority (data on the 17 agencies

with varying amounts of contract purchasing authority)." These handouts are available at: <http://www.legislature.idaho.gov/sessioninfo/2015/interim/purchasingvalues.pdf>.

**Ms. Lockett** stated her presentation is designed to provide perspective as the committee moves forward, to put context into the scope and the depth of the quantity of the contracts in the state of Idaho, as well as the value of those contracts generally. The data were collected throughout state government and divided up into six different entities. Each of these groups provided her data based on the questions posed to them, and compiled everything into a single handout in order to glean a statewide perspective. She explained that there are some agencies that have delegated purchasing authority, those that have statutory exemptions that allow them to engage in purchasing outside of the division process. This delegated authority is granted to 17 state agencies. **Ms. Lockett** emphasized the data collected is self-reported, so the numbers are estimates, designed to provide general context to what is happening in Idaho. Before briefly reviewing the data she collected, **Ms. Lockett** discussed the definitions of "contract" and "property" she adopted for her work with the agencies. By rule, "contracts" means any written agreement, including a solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of property. "Property" means goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such property.

**Ms. Lockett** discussed in more detail the status of each of the six entities, as they fit within or outside of the definition of "delegated authority." She discussed their contract value limits of the authority and all exceptions in place. After a review of the state expenditures across all funds in fiscal year 2014, including nonappropriated funds, she stated that a rough estimate of the scope of purchases related to a contract for the six entities total \$1,542,571,573 from 41,434 contracts issued. This number represented 19 percent of the state expenditures in fiscal year 2014. She observed that looking at the totals over the past several years, the value of the contracts has been relatively stable.

**Co-chair Representative Anderson** observed that the data indicates roughly 41,000 contracts worth a billion and a half dollars and he expressed interest in the various large and small sizes of the contracts between the entities. **Ms. Lockett** stated they can drill down inside the data as the committee wishes. She then highlighted the full-time equivalent positions that will be devoted to contract-related efforts in fiscal year 2016, totalling 75.67:

- Division of Purchasing: 12.52 FTP
- Health & Welfare: 10.75 FTP
- Dept. of Lands: 4.00 FTP
- ITD: 18.5 FTP
- Division of Public Works: 9.90 FTP
- College & Universities: 18.6 FTP
- State Department of Education: 1.4 FTP

The breakdown for personnel costs related to contracts in fiscal year 2016, totalling \$5,371,026:

- Division of Purchasing: \$982,100
- Health & Welfare: \$817,316
- Department of Lands: \$290,505
- ITD: \$1,241,0870
- Division of Public Works: \$755,727
- College & Universities: \$1,189,291
- Elected Officials, none, with the exception of the Superintendent of Public Instruction for \$95,000.

**Ms. Lockett** summarized her remarks, stating that the quantity and value of state-issued contracts have been relatively stable over the last several years. The data gathered reflects that the Division of Purchasing issues a small volume of contracts annually, but comprises 30 to 40 percent of the total cost (value) of the contracts in the last few years. Additionally, she stated the data reflect how actively various agency personnel are engaging in contracts and purchasing activities across state government. From a fiscal perspective, she observed that as a whole, the purchasing system is rather decentralized though the Purchasing Division is centralized.

**Representative Crane** asked **Ms. Lockett** to explain the differences in cost between ITD and the colleges and universities, noting that while their FTP numbers are similar, ITD's costs are double. **Ms. Lockett** stated both ITD and the colleges and universities have some staff dedicated to purchasing, and that in some instances the differences are simply driven by the reality that the staff are compensated differently. She explained that because the data are estimated, it cannot be compared apples-to-apples. Also, in some cases, as it is with ITD, the cost for benefits is included while other agencies do not include benefit costs. Following up on this, **Representative Vander Woude** asked if the benefit costs listed include just salary and **Ms. Lockett** responded that it is difficult to discern that from the data collected. She agreed to follow up and will report her findings regarding the inclusion of the costs of benefits.

Referring to the personnel costs for the elected officials, **Senator Jordan** asked if all the exempted entities within the Department of Education go through purchasing. She also noted that the amount for the office of the Superintendent of Public Instruction of \$95,000 seems low given the work they do. **Ms. Lockett** responded that the superintendent's office does a high volume of contracts, though they didn't have a dedicated contract person until fiscal year 2016, and elected officials are statutorily exempt. She pointed out that elected officials do not do a large volume of contracting, do not use the Division of Purchasing, and they do purchase off the statewide contracts for paper and office supplies. **Representative Vander Woude** asked if the agency data can be broken down to distinguish between in-state contracts versus out-of-state contracts, and **Ms. Lockett** responded that she did not get a list of the contracts; the agencies simply provided her the number of contracts, so there are no other details.

**Co-chair Senator Martin** introduced **Mr. Robert Geddes**, Director of the Department of Administration. **Mr. Geddes** introduced his staff present at the meeting and explained that he is just two months on the job as director. He remarked that the location of the Division of Purchasing in the basement of the Len B. Jordan Building creates problems because bidders on contracts often cannot find their offices, and as a result, they have missed deadlines on bids. Alternative sites under consideration would allow the division staff to provide better access and service to agencies. **Mr. Geddes** noted that the Division of Purchasing also provides service to all other entities of government statewide, including cities and counties. He stated that his impression of the division's staff is that they are above reproach, observing that they do things in a manner that is very fair, honest and brings a high level of integrity to the process. He suggested two improvements that will help the division: (1) a better location, which will improve access for those who use the service; and (2) better access to those agencies so they understand the benefit it provides, such as tapping the division's expertise. He noted that of the nine staff that **Ms. Hilderbrand** supervises, two have law degrees. He shared examples that reflect the practical value and benefits of using negotiated contracts when possible. In closing, he emphasized the importance of maintaining transparency in the process.

**Co-chair Representative Anderson** asked if **Mr. Geddes'** ideal system would be a decentralized one and **Mr. Geddes** responded that he believes the division can expand their support but that it would be more work than the present 11 staff members can provide. Continuing, he added that he is not concerned that other agencies are involved in purchasing, because in many instances, those entities are so specific in their work that they know better what they need, though he is confident his

division can help them with the bid procedure process. **Senator Den Hartog** asked how much time is spent by the division's staff, once the contract has been awarded, to monitoring and follow-through and **Mr. Geddes** stated the division has less than a full opportunity to administer the contracts. He opined the responsibility to monitor usually falls upon the agency or user of the contract. He stressed the importance of taking full advantage of the buying power of the state. He added that in some instances Idaho uses its purchasing associations with other states and piggybacks off those contracts.

Referring to the challenges of connecting with customers at their present location, **Representative Bell** asked whether the division's website had helpful links to the other 17 agencies involved in purchasing and **Mr. Geddes** deferred to **Mr. Burns** and **Ms. Hilderbrand** to answer the question. He stated, that if the division is administering a big contract, the division hosts a pre-bid conference with the bidders in order to personally explain the terms and conditions and the restrictions of their present location pose logistical problems. **Mr. Geddes** introduced **Mr. Burns**, Administrator of the Division of Purchasing. **Mr. Burns** explained his office consists of himself, **Ms. Hilderbrand**, four purchasing officers and five buyers, whose combined experience totals 190 person years of experience in public contracting, private contracting and legal practice. The mission of the Purchasing Division is to acquire property, goods, and services for the state and to maximize the acquisition of value through competition for the benefit of our taxpayers and our agencies. He then highlighted the value of a centralized purchasing organization, including:

- Generating savings - The division leverages buying power for all levels of government. In fiscal year 2015, savings totaled \$50 million dollars through the use of statewide contracts (\$23 million dollars from the subentities);
- Ensuring procurement process integrity - Fair, open, honest, and transparent, with equal access to all suppliers to state business opportunities and transparent disclosure to the public; and
- Sustaining private sector jobs - State participation in cooperatives often nationalize the local markets by opening up national opportunities to local vendors as prime bidders or through partnering with other vendors.

**Mr. Burns** stated that the basic tenets of purchasing, whether for public or private purposes, speak to leveraging your purchasing power to achieve advantage in cost, quality, responsiveness, and technology. He noted the differences between private and public procurement law as it pertains to transparency. In public procurement, property is acquired in accordance with law, which addresses providing a level and competitive playing field to all of their suppliers. Also, in public procurement they must compete on everything.

**Co-chair Senator Martin** asked how purchasing authority is delegated to the agency, asking if it is based on the capabilities of agency staff and **Mr. Burns** stated that the delegation of purchasing authority is based on the capabilities of the individual at an agency. If they possess the capabilities to act in the stead of purchasing staff, then delegation is given to that individual. **Co-chair Representative Anderson** followed up, asking **Mr. Burns** to outline his responsibilities compared to those of the Purchasing Manager. **Mr. Burns** shared that he has four entities under his responsibility. **Co-chair Representative Anderson** asked if there was a charge for services they provide to the other entities around the state and **Mr. Burns** acknowledged that the department is self-funded, through applying an administration fee of 1.25 percent of the contract, which is rebated based on the usage of that contract from the vendor. Regarding delegated authority, **Senator Lee** asked if his staff met with the individual to evaluate competence. **Mr. Burns** detailed how these individuals must have both experience and be certified by the official body of public procurement, the UPPCC. He then introduced **Ms. Sarah Hilderbrand**, State Purchasing Manager, who presented "Purchasing 101," which can be viewed at: <http://www.legislature.idaho.gov/sessioninfo/2015/interim/purchasing101.pdf>.

**Ms. Hilderbrand** began her remarks by responding to **Representative Bell's** question regarding the division's website. She explained that their website does provide links to state agencies, such as

ITD, BSU, and the Department of Education. She clarified that the 1.25 percent fee does not apply to small contracts with an initial contract value of \$100,000 or less. Also, the fee is not applied to pass-through federal funds, so in contracts that include pass-through funds, the fee is applied only to the administrative portion. **Senator Jordan** asked if the fees collected from pass-through contracts include a percentage for administration and if this amount is used by the agency for their administrative costs. **Ms. Hilderbrand** stated the funds collected are applied to agency administration and sometimes are directly applied to the contractor to fulfill all the federal requirements.

**Ms. Hilderbrand** thanked the committee for the opportunity to comment on every piece of code that the division currently operates under and talk about some of the inconsistencies, where additional clarification would help. Her presentation will provide a few examples where, she stated, the division has experienced challenges due to how the statutes and current IDAPA rules are written. After a review of Chapter 57, Title 67, Idaho Code, and IDAPA 38.05.01, as well as the steps within the purchasing process for the division, **Ms. Hilderbrand** highlighted the "value-added" aspects of the division:

- Centralized Purchasing aggregates volume for better pricing and service and results in soft cost savings;
- Division of Purchasing's standard templates provide for consistent procurements throughout the state, provide documentation of exemption and exception processes, and represent our "lessons learned" over decades of combined experience; and
- Division of Purchasing operates in a collaborative manner; and uses its experience to help agencies identify and mitigate risk in the bid process and in administering the resulting contract, focusing on critical areas of the solicitation including: specifications, delivery requirements, warranty needs, insurance, performance metrics, required reporting, remedies for nonperformance, termination and contract close-out.

She addressed in more detail the following types of purchasing: small purchase, large purchase, "open contract," emergency purchase (exemption), sole source purchase (exemption), and policy directive (exemption). Regarding the small open contracts, **Co-chair Senator Martin** asked how the division oversees contract compliance and **Ms. Hilderbrand** explained the division pulls financial reports to look for vendors of similar commodities and services outside of these contracts, each of her purchasers are assigned out to the 25 state agencies and they regularly meet with the agency representatives. As part of the liaison meeting, staff will counsel the agency buyer on use of the statewide contracts. Following up, **Senator Lee** asked what penalties are assessed when an agency fails to follow the guidelines. **Ms. Hilderbrand** indicated that there are penalties enumerated in the Idaho Code but she was not sure how they are enforced. She emphasized that her staff takes noncompliance as an educational and training opportunity and, in some cases, when there is willful noncompliance, the division will reach out to the agency supervisor to ensure the situation does not occur again. She added that delegated authority can be taken away.

**Senator Den Hartog** asked how often open contracts are renegotiated and **Ms. Hilderbrand** stated that it varies by contract, but the majority go out to bid within three to five years. Referring to the requirement for large purchase contracts, **Representative Crane** asked if the bidders know what the evaluation process is going to be for the RFP and he asked her who determines what the weighted scoring will be. **Ms. Hilderbrand** stated that the division assists the agency prior to the bidding process, helping determine the most important factors in order to identify where the value is. She agreed with **Representative Crane** that the weighting system is subjective and can change from project to project. Following up, **Co-chair Senator Martin** asked who typically writes the RFP and **Ms. Hilderbrand** explained that it depends; if an agency does not have a strong purchasing officer, the division will write it, and in some instances, the agency will fill in the gaps with their subject matter specifications.

While discussing the details of open contracts, **Ms. Hilderbrand** noted that they are enhancing the user-friendliness of this part of their website. **Representative Vander Woude** asked if the

contractors involved in professional service contracts are able to renew with another contract each year without engaging in the process and **Ms. Hilderbrand** answered they may not. Referring to the "Contract Management and Administration" slide, **Representative Bell** asked if the process works in practice as well as it appears to work on paper. **Ms. Hilderbrand** responded that sometimes the agencies have a very good understanding of purchasing contracts and sometimes they do not. She added that another challenge expressed in OPE's report is that there is no guidance in Idaho Code regarding who is responsible for contract administration versus contract management. **Co-chair Senator Martin** asked if there is a price to pay for not adhering to the required process and **Ms. Hilderbrand** again emphasized the approach they take is to use the situations as learning opportunities for the department agents. Also, she noted the division recently put in place a memo of understanding (MOU) template that they are using with agencies on larger, more complex contracts. Within the template, they try to clearly identify the roles and responsibilities of the division of purchasing and the state agency through the contract administration process and they will work with the agency to tailor the MOU.

**Co-chair Representative Anderson** asked if the division is monitoring any contracts at present and **Ms. Hilderbrand** stated that it is the division's responsibility to monitor the 130 statewide contracts. They receive usage reports and key performance indicators from contractors and they take feedback from agencies on vendor performance and put out survey to agencies to assess contractor performance. Following up, **Co-chair Representative Anderson** asked how the division funds ongoing monitoring and he asked for the total dollar amount of the contracts. **Ms. Hilderbrand** stated that the monitoring responsibility falls to the individual staff assigned to the current contractor. Department staff visit with the vendors with contracts coming up for expiration and they review the lessons learned. Regarding the total dollar amount of the contracts, **Ms. Hilderbrand** stated that the total has varied and has been reduced down over the years because the division put the \$100,000 dollar threshold in. She noted the division no longer has an administrative fee on renewals. **Representative Vander Woude** asked if a penalty has ever been assessed for failure to perform under the contract, especially on services. **Ms. Hilderbrand** responded that the penalties vary by contract and that there is a provision in code that allows the division to go back to that contractor and charge him for what it costs to go back out to bid and to get a new contractor in place. She emphasized there are various remedies depending on the type of failure to perform.

After the lunch break, **Co-chair Senator Martin** recognized **Ms. Lockett**. She provided revised information, correcting the ITD costs for benefits presented in the slide "Personnel Costs Related to Contracts in FY 2016." **Co-chair Senator Martin** then introduced **Mr. Brian Kane**, Assistant Chief Deputy, Office of the Attorney General. **Mr. Kane's** presentation entitled "Purchasing Laws of the State of Idaho" is available at: <http://www.legislature.idaho.gov/sessioninfo/2015/interim/purchasinglaws.pdf>. He provided an overview of the pertinent code sections within chapter 57, title 67, Idaho Code. He asked the committee to consider providing a title specifically dedicated for state purchasing. He stated another consideration is determining whether the division has sufficient independence, given that the division administrator is appointed by the Governor. **Senator Davis** asked if other states provide insulation from this type of influence and **Mr. Kane** replied that he does not know but that he is simply suggesting this should be discussed with the division and the Director of Administration. He added that he believes external review of other states and their approaches is entirely appropriate. He suggested the committee ask the question: "is the system broken or do we just have to deal with some outliers and can you create a legal system that doesn't have outliers?"

**Senator Davis** observed that a lot of the administrative decisions are not made by **Mr. Burns** but rather made by individuals who are nonexempt, classified employees. He asked if there are lessons that can be learned from reviewing how the administrative arms of other departments within the Idaho Code are defined. **Mr. Kane** observed that the Idaho Code is often very replicative; for

instance, the chain of command is defined similarly across divisions, based on decision making. He suggested keeping in mind the concept of whether or not the checks and balances built within the system are sufficient for what the Legislature's goal for the system is. He provided a brief overview of the pertinent purchasing statutes, including: 67-5714 - Creates division; 67-5715 - Purpose of the act; 67-5716 - Definitions (Agency); 67-5717 - Powers and duties; 67-5718 - Notice/bid procedure; 67-5718A.- -Multiple awards; 67-5719 through 67-5724A - Miscellaneous; 67-5725 - Records; 67-5726 - Prohibitions; 67-5729 - APA; and 67-5730 - Vendor qualification and appeals.

Given that the mission statement delineated in 67-5714, Idaho Code, reflects priorities as they existed in 1975, **Mr. Kane** suggested that as the committee reviews the statutes, they consider whether the balance of low price and value is appropriately struck within the framework of how purchasing decisions are made. Referencing section 67-5717, Idaho Code, **Senator Davis** asked whether powers and duties should be separated out. **Mr. Kane** answered that he reads the "shall acquire" language as a dual grant; use of the word "shall" bridges the powers and duties issue. **Senator Davis** asked if the language "significant Idaho economic presence," in section 67-2349, Idaho Code, has been defended in the courts and **Mr. Kane** stated that he did not know if his office has opined on this recently but he noted that the wording is very carefully presented in section 67-5718, Idaho Code. In that section, regarding the Idaho preference, it says it has to be the same bid price and same quality, so he opined that is how it would be positioned in front of the court.

Referencing the Syringa Networks case as an example of contract complexity, **Senator Davis** opined the need for better language, in order to divide the scope of the contract horizontally and vertically. He asked **Mr. Kane** to discuss what the standards are. **Mr. Kane** suggested the first priority is to determine if the criteria for multiple awards, set forth in section 67-5718A, Idaho Code, is defensible. It is essential to: (1) inform the bidders up front that multiple awards are likely; (2) prior to the award, issue the determination letter indicating multiple awards will be made based on these criteria; and (3) steadfastly adhere to that criteria. He suggested that the committee ask the division if they have the tools to make a multiple award that can be defended. And, explaining the discretionary flexibility allowed through section 67-5718A, Idaho Code, **Mr. Kane** reiterated the critical factors: (1) the determination is made prior to issuance of the award; and (2) the criteria is steadfastly adhered to.

After **Mr. Kane** stated that section 67-5734, Idaho Code, criminalized the actions prohibited in section 67-5726, Idaho Code, **Senator Davis** asked how many criminal actions have been filed and **Mr. Kane** answered that to his knowledge none had been filed. **Co-chair Representative Anderson** asked if he had previously owned a company, at which point he was put on probation and sold the company, would he be free to make a bid. **Mr. Kane** responded that it depended on the notice of disqualification, but specifically to his example, he had no history of a situation like it occurring.

**Mr. Kane** suggested that the appeals area in section 67-5733, Idaho Code, should be streamlined and simplified. **Co-chair Senator Martin** asked if he is volunteering and **Mr. Kane** stated that the office is happy to provide assistance. **Senator Lee** asked for more details on the enforcement mechanism of complaints. **Mr. Kane** stated that this area needs clarification in the Idaho Code. He further suggested the committee consider that contract management and administration be defined. And, he offered several alternatives for committee consideration and spoke to the value of cooperative contracting. In his closing remarks, **Mr. Kane** emphasized that purchasing is complex, and the laws are complex. He observed that personalities can override the law, even though law is designed to provide consistency, predictability, and a foundation, He advises the committee to answer the question, "Is the problem a legal one or a personality one?" He observed that more laws usually mean more ways to challenge. By and large, he opined, the law works, but it can be fine tuned.

**Co-chair Senator Martin** introduced **Ms. Kristin Ford**, Legislative Librarian. **Ms. Ford's** presentation entitled "Ye Olde Legislative History of Purchasing Laws" is available at: <http://www.legislature.idaho.gov/sessioninfo/2015/interim/legislativehistory.pdf>. She presented a purchasing laws timeline, highlighting:

- 1919 - The creation of the first centralized purchasing agency within the Department of Public Works as well as the key features of the purchasing system;
- 1927 - The creation of the position of State Purchasing Agent;
- 1939 - Amendments of state purchasing law that included the creation of an advisory board that enjoyed final decision power;
- 1974 - As part of a state government reorganization, the position of State Purchasing Agent was abolished and the function of centralized purchasing was placed with the Division of Purchasing within the Administration Department.

**Ms. Ford** discussed the efforts made by the 1974/1975 Purchasing Laws Interim Committee to rewrite the state purchasing laws. She explained that due to concerns voiced by two constitutional officers, an amendment to the committee's bill was accepted and it moved forward. The amendment served to exempt all constitutional officers from the purchasing laws generally. However, **Ms. Ford** stated that since the exemption meant that the Purchasing Division would not be able to inspect and inventory their property, a new provision was inserted requiring an annual report of purchases by the constitutional officers.

#### **Key New Features of the 1975 Purchasing Laws**

- Exemptions for constitutional officers;
- Vendor notice changed from newspaper publication to direct notice to registered vendors;
- New appeals process for losing bidders;
- Contracts over one year in duration;
- Purchasing Division authority to file complaint against noncompliant agencies;
- New timeline to ensure prompt payment to vendors.

**Senator Davis** observed that State Treasurer **Ms. Marjorie Moon** presented the allegation that there would be a violation of the separation of powers and **Ms. Ford** stated that purchasing was not addressed and she explained in more detail the required reporting by the constitutional officers. **Ms. Ford** concluded her prepared remarks by noting a handful of miscellaneous additions or changes to the purchasing laws since 1975, these included: in 1991, the requirement for constitutional officers to file a report was repealed without comment; and in 1993, the language "significant Idaho economic presence" was added in Idaho Code. Prior to that time, and back to 1919, the language was that "local and domestic manufacturers" would be preferred and did not specify the state of Idaho. **Co-chair Representative Anderson** asked if the term "significant Idaho economic presence" was quantified and **Ms. Ford** replied that she did not know. She continued, commenting that it was only in 2006 that the law provided that, if a bid was canceled before it was rewarded, it would be returned to the bidder and not be a public record. Also, in 2002, the definition of agency was broadened to include the higher education institutions.

**Co-chair Senator Martin** introduced **Ms. Amanda Bartlett**, Principal Evaluator, Office of Performance Evaluations (OPE). Her presentation entitled "Contract Management in Idaho" is available at: <http://www.legislature.idaho.gov/sessioninfo/2015/interim/contractmanagementope.pdf>.

**Ms. Bartlett** presented the lessons learned from two reports her office completed in 2011 and 2013 respectively. She emphasized that contracting is a small part of a much bigger process. She voiced the main take-away point as, "when we get undesirable results, we need to determine if there are other system problems." Continuing, she stated, we must learn how to identify failure quickly in order to rectify the problem. She suggested that restructuring the Idaho Code could provide a better



framework for contract monitoring. Additionally, she stated how "best practices" can give the user the concepts to consider and a general progression of things to be thought through.

**Representative Crane** stated that he did not see any mention of contract monitoring and **Ms. Bartlett** responded that there are eight recommendations in total, two policy and six for purchasing, to work through. **Co-chair Representative Anderson** asked for clarification of the term "exempt agencies." **Ms. Bartlett** explained one nuance to the delegated authority is that it is in the division's authority to delegate that authority. So it can set up rules for when they want to give that authority and when they want to take it back. With statutory exemptions, the division has no authority to set rules for these agencies so the division can neither delegate nor take away authority. Following up, **Co-chair Representative Anderson** asked if division monitoring isn't a contradiction, given that the division is not involved in the contract through the awarding process. **Ms. Bartlett** suggested that there is a middle ground, perhaps the monitoring can be deployed during the pre-planning and RFP part of the process. She commented that a good contract begins with a good concept and good plan, which can be built into the RFP. Referring to the "Exemptions to Statewide Rules/Administrative Agencies" slide, **Co-chair Senator Martin** asked why so many agencies are exempted from the statewide purchasing rules and **Ms. Bartlett** stated the slide is poorly designed. She clarified that only the higher education institutions have the option to be exempted, if they get approval from the Board of Education and the Department of Lands. The others are subject to the rules of the Purchasing Division.

**Ms. Bartlett** discussed two policies the Legislature might consider: (1) require exempt agencies to incorporate best practice checklists into their policies; and (2) require exempt agencies to be subject to contract monitoring for high-dollar or high-risk contracts. She also covered the following recommendations already presented to the Division of Purchasing: (1) strengthen existing framework; (2) increase agency capacity; and (3) establish a contract management framework. She noted that in response to OPE's report recommendations, the Division of Purchasing took action. They enhanced existing resources, expanded their training program, proposed changes to rules, and focused on high-dollar service contracts. She went into more detail regarding the proposed requirements for high-dollar service contracts: (1) involve a third party, subject matter expert; (2) board oversight; (3) administrative agreement; (4) project manager; and (5) reporting requirements. **Ms. Bartlett** also outlined the lifetime value of active service contracts.

**Co-chair Representative Anderson** asked if OPE has an opinion on what realistic balance can be struck between centralized versus decentralized purchasing to best serve Idaho and **Ms. Bartlett** noted they did not take a formal position but she noted that one of the benefits of a more centralized approach is that one can take a more systematic look at what's happening across multiple agencies and discover trends and common causes that are tripping people up, if there are procedures that can be streamlined, or if there are vendors that are problematic or really great to work with. Further, a centralized approach would allow for analyzing all the contracts in the system and identify how many contracts there are and the value of those contracts. She identified that there are trade-offs with centralization, including agency independence. **Representative Vander Woude** asked why the limit for monitoring contracts is set at over \$5 million dollars. **Ms. Bartlett** stated there would be a contract management and monitoring component to every contract. She commented that right now it is not very clear what the agency responsibility and what the division responsibility is with contract monitoring. Primarily the responsibility should be with the agency, because they are going to know if the services have been delivered. The Purchasing Division is proposing that for high-dollar contracts, it would take a much more active role, where monitoring takes place at a higher level in a specific way. Additionally, third-party experts would be brought in and an oversight board would be appointed.

**Representative Vander Woude** recommended that any long-term contracts be included in this monitoring and **Ms. Bartlett** agreed that this would be reasonable. **Representative Nye** asked if there is a dollar value associated with the total number of contracts and **Ms. Bartlett** stated there is no central repository to pull the data from. **Representative Nye** asked if there is data on the total number of contracts. **Ms. Bartlett** stated that they know how much is spent in dollars going out but not how much money is tied to a contract. For statewide data they would have to go agency by agency and then compile that information.

**Co-chair Senator Martin** introduced **Mr. Rakesh Mohan**, Director, Office of Performance Evaluations (OPE). **Mr. Mohan** responded to the question posed regarding striking a happy balance between centralization and decentralization. He opined that the policy recommendations in the report and the implementation of the two recommendations will strike this balance. He noted they can't monitor everything. The balance will come if every agency has its own policies in place for contracting that are based on the best practices framework. He stated that the Legislature can require this, as well as monitoring. **Co-chair Representative Anderson** asked how the certification of compliance monitors will work. **Mr. Mohan** answered that the fine details will need to be worked out but noted it is essential to keep the issue of monitoring in view and part of the process. **Representative Vander Woude** asked how the accountability issue will be addressed when the job isn't being done. **Mr. Mohan** stated the accountability rests with both the agency who issues the contract and the contracting entity.

**Co-chair Senator Martin** invited **Mr. Burns** back to the podium for concluding remarks. Regarding data visibility, **Mr. Burns** stated that once the contract is awarded to an agency, the division learns how much is spent on each contract. The electronic procurement system relies heavily on the vendors getting the data back to the division. He commended OPE for their study on the monitoring portion of contracting in the state of Idaho. He stated that when his division received OPE's recommendation that they should monitor these contracts they pushed back because they are not the subject matter experts and they would be cutting the legs out from under that agency director. He suggested putting controls in place for high-dollar contracts. He commented that an effort to define a special process for monitoring was rejected by the Legislature last session. And, **Mr. Burns** explained how some departments they surveyed reported that had their own effective contract monitoring already in place. The division responded to this feedback by exempting those agencies that can prove and document that they have certified project managers and monitoring processes in place. This was all a part of the negotiated rulemaking process, he explained; the division wrote the exemption in the rules.

**Co-chair Senator Martin** introduced **Mr. John Riggins**, a public policy expert with 35 years of public service experience. He explained that **Mr. Riggins** has volunteered to act as a resource to the committee. **Mr. Riggins** stated his academic background in public procurement policy and explained that he is presently a professional procurement officer for the Idaho State Police, and was formerly on active duty with the U.S. Air Force for 25 years. He is an Idaho certified public manager and certified through the UPPCC. He stated that his research emphasis at Boise State University is public procurement policy and he offered his services to the committee.

**Co-chair Senator Martin** introduced **Mr. Dru Nakaya**, staff attorney for the J.R. Simplot Company. He stated that prior to going to law school, he had 14 years experience in construction and his primary practice is construction and procurement law and general contracting. **Mr. Nakaya** shared with the committee the best practices applied by his private sector company, as it related to their recent construction project, the building of a state of the art potato processing plant. He commented that though he wasn't sure if their purchasing process can be applied to the public sector, he hoped the sharing of specifics might be helpful. He noted that his company's preference is to use the competitive bid process, but they use sole source when they have to. With the competitive bid,

RFPs are issued and he explained that included with the RFP is a simple cover letter, along with instructions that detail what they expect to receive back in the proposal. A draft contract is always included in the RFP package. The bidders are asked to include any exceptions they anticipate. If the bidders submit questions, the company sends out the questions and the answers to all bidders. He outlined the steps the company employs to evaluate the RFPs. He referred to section 67-5715, Idaho Code, and explained his company has learned "cost is not the driving factor, if you are looking for the best overall solution." He spoke to the benefits of form templates, which can create efficiencies with buyers. Additionally, his company is looking into centralizing contracting in order to ensure as much bargaining leverage as possible and to set up master agreements (statewide open contracts) so that the only thing that needs to be negotiated is the price and the delivery.

**Co-chair Representative Anderson** asked if **Mr. Nakaya** can suggest a way to keep a "need" from becoming a "want." **Mr. Nakaya** stated his company struggles with this, opining the best solution begins with getting the right parties involved from the outset. Someone other than the end user should be involved, input from a third party helps the purchaser distinguish between the "need" and the "want." **Representative Crane** asked how his company implements the monitoring process and **Mr. Nakaya** stated that there needs to be a project manager in place who will monitor the contract from the beginning through when it is delivered, checking to ensure that each milestone is met along the way. Following up, **Representative Crane** asked **Mr. Nakaya** what his company did when a provided service was not acceptable. **Mr. Nakaya** shared a particular instance when it appeared a vendor was going to be late with a time-critical delivery on a project. The company reached out to the vendor and reinforced the contract requirements. This monitoring minimized the effects of what otherwise would have been a very costly delay. **Senator Lee** stated her concern that the RFP process might disadvantage those unfamiliar with the process. **Mr. Nakaya** agreed that this is a valid concern and one his company is working on. **Senator Den Hartog** asked if past poor performance by a vendor impacts his company's present RFP decision making. **Mr. Nakaya** stated that it does affect their decision making - they select vendors who pay attention to their needs.

**Co-chair Representative Anderson** reminded the committee that the next meeting will be September 30th, in Pocatello, Idaho, on the campus of Idaho State University. He also invited the members to join him for an informal gathering at his ranch on the evening of the 29th. **Co-chair Senator Martin** adjourned the meeting at 3:55 p.m.