

MINUTES
Approved by the Committee
Purchasing Laws Interim Committee
Tuesday, September 29, 2015
2:00 PM to 5:00 PM
ISU Pond Student Union Building
Salmon River Room
Pocatello, Idaho

Co-chair Representative Neil Anderson called the meeting to order at 2:05 p.m. and requested a silent roll call. Members present: Representatives Maxine Bell, Brent Crane, John Vander Woude, and Mark Nye; Co-chair Senator Fred Martin and Senators Bart Davis, Lori Den Hartog, Maryanne Jordan; ad hoc members Dru Nakaya and John Riggins; Legislative Services Office staff Elizabeth Bowen, Robyn Lockett, and Jennifer Kish. Excused: Senator Abby Lee.

Other attendees: Blake Youde - State Board of Education; Jo Ellen DiNucci, Stacy Pearson - Boise State University; Jeremy Chou - GivensPursley; Michelle Doane, Todd Sorensen - Idaho Transportation Dept.; Paul Loomis - City of Blackfoot; Julia McIlroy - University of Idaho; Mike O'Bleness - Development Workshop, Inc.; David Buck, Kent Kunz - Idaho State University; Catalina Steckbauer - Community Wellness Center, Inc.; Robert Geddes, Keith Reynolds - Dept. of Administration; Paul Anderson - Idaho Wireless Corp.; Marc Beitia - City of American Falls; Terry Fredrickson - New Day Products; Cathryn Wight - Community Wellness, Inc.

Note: presentations and handouts provided by presenters/speakers are posted on the Idaho Legislature website: <http://legislature.idaho.gov/sessioninfo/2015/interim/purchasing.htm>; and copies of those items are on file at the Legislative Services Office.

Co-chair Anderson called for any changes to the minutes of the August 5th meeting. Hearing none, he called for a motion to accept the minutes as presented. Co-chair Martin made such motion and Rep. Bell seconded the motion. All members voted in favor of the motion's approval.

Co-chair Anderson reminded the audience that the intention of the committee is to gather as much information as possible from as many sources as possible due to the fact that purchasing is a very broad concept and influences the state agencies and taxpayers as well. He went on to explain that the initial attempt at gathering a portion of that information was decided to be a survey, which was sent to directors and purchasing staff of state agencies and posted on the website for vendors and legislative advisors (lobbyists) to review. Before calling on the first presenter who would speak to those surveys, Co-chair Anderson welcomed and recognized John Riggins as a nonlegislative member appointed to the committee after the August 5th meeting.

Co-chair Anderson then called Ms. Robyn Lockett, Principal Budget and Policy Analyst for LSO, to begin her presentation. Ms. Lockett spoke to the responses collected by a survey sent to 90 state agency directors to evaluate their perception of the current procurement process [State Purchasing Survey \(Directors\)](#) . The survey was distributed September 1 and responses were collected over the following three weeks. Following are the four questions asked in the survey:

- On a scale of one to ten, with ten being high, how do you think the current purchasing process works in meeting the interests of the user, the vendors, the state and the taxpayers?
- What parts of the purchasing process work well?

- What parts of the purchasing process could use improvement?
- Other comments or further elaboration?

Responses were quite varied - ranging from a score of 2 to 10 - but were full of details that would seem to be helpful to the committee in understanding the nuances of the process. Overall, the responses were positive and that was reflected in the average score of 6.86 and the median score of 7.

Ms. Lockett then spoke to the findings of a separate survey sent to state agency purchasing staff to evaluate their experience with the current procurement process [State Purchasing Survey \(Purchasing Staff\)](#) . This second survey asked these individuals who directly work with the procurement process to provide feedback on the following six items:

- Do you believe that Idaho's purchasing laws need to be revised? If so, what specifically would you like to see changed, and why?
- What kinds of contracts (goods, equipment, parts, supplies, services, etc.) does your agency typically enter? What is their usual range in value? What is the value of your highest current contract, and what is the contract for?
- Does your agency have a system to keep track of all its contracts? If so, please describe the system.
- What is your agency's typical contracting process? What aspects of this process work well for your agency? What aspects of this process could be improved, and how do you feel these improvements could be best accomplished?
- Do any employees in your agency have delegated purchasing authority from the Division of Purchasing? If not, have any of your employees had delegated authority in the past? What are your thoughts on delegated authority?
- Please share any additional comments on purchasing that you would like the committee to consider.

The survey was sent to an estimated 200 individuals. These responses were - like the previous survey - quite varied and lengthy in detail about their experience with the process. Responses exposed the many differences that agencies of varied sizes experience. Overall, individuals provided a positive attitude toward making improvements to the system through suggestions of creating clearer guidelines and training for staff.

Responses from both surveys were included in their entirety in Ms. Lockett's written report. Ms. Lockett also explained that names of the agencies and staff were omitted from both surveys in order for the committee to focus on the response rather than from whom it was reported. Upon conclusion, no questions or clarifications were asked of Ms. Lockett regarding her presentations. Co-chair Martin spoke to the claim by an agency in Ms. Lockett's report that there was no website for agencies to use for the purchasing process. He brought attention to the fact that the website www.purchasing.idaho.gov does exist where, in actuality, there is quite a long list of helpful items on the process, but it may lack the step-by-step process that helps one determine when and what process an individual is required to follow. Co-chair Martin recommended that maybe such a step-by-step process should be added to the purchasing website.

Co-chair Anderson then spoke of his initial desire for committee members to reach out to vendors who had actually been awarded contracts with the state. He tested the process himself and found after a few attempts to connect with vendors that the approach was either not well met or did not provide as much new information as he expected. As such, he did not continue the project and hence apologized for not having a presentation for the Vendor Poll Results portion of the

agenda. At 2:30 p.m., Co-chair Anderson called for a 15 minute break before the committee would reconvene for a conference call presentation by Kent Beers, Director of the Utah Division of Purchasing and General Services.

At 2:45 p.m. Co-chair Anderson reconvened the meeting with the acceptance of Mr. Beers' call. Mr. Beers commented that he had prepared a list of "talking points" ([Revising the Utah Procurement Code](#)) to discuss his recollection of the process that Utah took to update their procurement laws. He informed the committee that Utah's procurement code had not been updated in 33 years and key people felt that it should be brought into compliance with the 2000 American Bar Association (ABA) Model Procurement Code. The process took several years beginning in 2010.

1. Informal agreement between Governor's Office and Legislative Leadership to safeguard the Bill(s); Permission was obtained from the Governor to move forward on the process and an agreement with key players was created that no special interest group(s) would influence the writing of the bill(s).
 2. Committee Assigned to Update State's Procurement Code; Individuals of relevance were assigned to the committee; also, concepts and drafts were provided to other key boards/councils, associations, and cities/counties for their feedback.
 3. Based on 2000 ABA Model Procurement Code;
Reviewed code of other states that were reported to have model procurement codes and "best practices." Referred to key publications and expert individuals and associations for further exposure to "best practices", i.e., the National Association of State Procurement Officials (NASPO), an American non-profit association formed by the top procurement officials for the fifty states and Washington, D.C.; ValuePoint (formerly WSCA), which provides public cooperative contracting by leveraging the leadership and expertise of states with the purchasing power of their public entities; and Michael Asner, who is a speaker, consultant, and published author dealing with public sector procurement and the RFP process.
- Senator Davis asked Mr. Beers if Utah found the ABA Model Procurement Code too "stale" or ineffective being that it was published in 2000? And secondly, was Mr. Beers aware if the ABA had intentions of updating the code and when? Mr. Beers responded that Utah legislators had asked that same question in 2010 when they began the process and found that, at the time when they contacted the ABA, that the ABA did not have plans to release an updated version.
 - Co-chair Martin asked Mr. Beers who is Michael Asner of whom he spoke, and did Mr. Beers have contact information for that individual. Mr. Beers responded that he did have that information and would forward Mr. Asner's email on to Elizabeth Bowen at LSO.
 - Representative Nye addressed Mr. Beers, wondering if, regardless of whether Article 15 [12] (regarding ethics) of the ABA Model Code was "stale," as stated earlier, was it still in effect and of "good practice" regardless of its date of publication. Mr. Beers responded that it offered "very good" guidance, is still in effect, and was adopted by many states; of note - the Utah committee received the most "push-back" from institutions of higher education on that section of the ABA Model Code and ended up not adopting it (Article 12 - Ethics in Model Contracting) into their revised code, opting instead to write their own but incorporating many of those key concepts.
 - Co-chair Anderson asked what were the reasons that the state of Utah began the process of updating their procurement code. Mr. Beers responded that, first of all, it was just the perception that the state was "out of date" in regards to the ABA Model Procurement Code and the awareness that other states had updated their code. Secondly, by explaining the goals - which was the next item of the outline - he could easily provide more answers to that question.
4. Goals:
 - (a) Standardization of procurement practices for those public entities subject to the procurement code. A standardization of the process for all entities would be better because

vendors/agencies/individuals would not have to learn a new system whether they moved to different entities or whether they worked with different levels of the city/county/state.

(b) Streamline the protest and appeal process to be in a timely manner and to ensure an objective and fair process. Entities would no longer be able to use/abuse the process to strategically continue the contract while under protest.

- Senator Den Hartog asked - regarding standardization - if statewide elected officials of Utah were exempt from the procurement process. Mr. Beers responded that the legislature does have to follow the procurement code for their own procurements even though they are not under the jurisdiction of the chief procurement officer. Individual elected public officials are under the Public Employees and Officers Ethics Act; whereas full-time procurement officers are under the Unlawful Conduct and Penalties Act. Either way, no entity is permitted to violate procurement laws as they are regulated under different statutes.

(c) Prevention of procurement fraud by having separate scoring of the cost from the RFP; requiring a cost-benefit analysis if the proposal with highest combined score is not the lowest cost proposal; standardizing the procurement process for all public entities subject to the procurement code; creating a section on unlawful conduct and corresponding penalties; and requiring and providing training for all state employees conducting any type of procurement.

- Representative Crane asked Mr. Beers whether, prior to the reforms put into policy, were there any penalties - legal penalties - for someone who changed the contract or the scores on a contract? If not, under the new process, are there penalties? Mr. Beers responded that there was not anything in the code previously regarding the override of an evaluation, and there were no penalties. Now it is prohibited but there are no penalties, i.e., no specific penalties listed for every possible violation.
- Representative Crane asked in a follow-up question why no specific penalties were written into the code. Mr. Beers responded that attempts to do such were not well received and ultimately were not approved by the Utah legislature.
- Co-chair Martin asked regarding the technical qualifications and cost scores, how long has it been in effect and how difficult is it to separate the two. Mr. Beers responded that it has been in place for about four years? Initial opposition occurred but mostly just due to the fact it was a change in the process; all are used to it now so it is going quite well. Mr. Beers pointed out that if the chief procurement officer finds a justification for not separating the cost and the officer can justify in writing why the items should not be separated, then the requirement may be waived - but that is not the "norm."
- Co-chair Martin asked whether there exists online a descriptive, step-by-step process for staff to refer to for the purchasing process in Utah. Mr. Beers answered that the process is outlined by statute and by administrative rule, both of which are accessible online. The state of Utah also offers quarterly training on the procurement process.

Mr. Beers emphasized the need for others to adopt the goal related to requiring training for any staff member who conducts any type of procurement - even at the smallest level. It is better for the knowledge to come from the state to its employee than from a salesperson. In the long run it leads to more knowledgeable staff and that is always a good thing.

5. Revisions and clarifications.

- Senator Davis asked that if a comparison document was created, what percentage of Utah's current procurement code would be the same as, or compliant with, the ABA Model Procurement Code of 2000. Mr. Beers responded that approximately 30% of the code would be different - not considering the ethics section which was not adopted by Utah.

- Senator Davis asked the follow-up question that, in light of the time it had taken Utah to reach this point with their code, is Idaho being naïve to think that they would be able to write and adopt legislation this session? Mr. Beers explained his own experience in thinking it could easily and quickly be rewritten that year. Then he realized that, even though the committee decided to divide the code and tackle certain sections and topics each year, they found more and more to add into the code to make it better or they found that individuals reviewing the rewrites found issues with how it had been written.
- Senator Davis' additional follow up question sought to discover if the 15-year-old ABA Procurement Code was adequate in dealing with the delivery of technology related to the procurement process. Mr. Beers responded that, luckily, the procurement of technology was in a different statute and they did not have to deal with it. But the committee allowed for the rulemaking process to provide for the purchase of types of technology and all technology procurements must ultimately go through the Department of Technology.
- Senator Davis then asked where did Utah obtain the technology statutes model that they currently have: did they create it or base it on another? Mr. Beers stated that he did not know but he would get an answer from technology services and forward it to Ms. Bowen.
- Representative Vander Woude asked Utah's statutes provide for a follow-up process that made sure all provisions of the contract had been followed. Mr. Beers explained that there is a process to evaluate a contract's compliance; it is currently done by an outside audit firm.
- Co-chair Anderson asked how long - from initial idea to the present - did the process take. Mr. Beers explained that it has taken about 5 years in total: 3 years introducing legislation on the re-write of the statutes and 2 years which are considered "cleanup".
- Co-chair Anderson then asked how long it took from the point they began to the point of introducing legislation. Mr. Beers responded that the committee began about 9 months before the legislative session with meetings and drafts. With that process, his committee covered about one-third of the code each year.
- Co-chair Anderson asked if the committee that Mr. Beers spoke of earlier did all the writing; he responded "Yes."
- Co-chair Anderson then asked if all purchasing law is now in one place in the Utah code? Again Mr. Beers responded "Yes."
- Co-chair Anderson inquired about a central procurement officer - is that what Utah has? Mr. Beers explained that, yes, they have a procurement officer, but it is not a cabinet level position. He is a division director; within the Department of Administrative Services, Purchasing is a division within the Department. "We are centralized; we are over the procurement of all state agencies. We are authorized to issue these statewide contracts that all public entities and nonprofit organizations within the state can use. So we do a lot of procurement for all the other public entities. We did about \$2 billion in our state cooperative contracts last year. So it is about 50% from all the other public entities who are voluntary users."
- Representative Nye stated that he had discovered an update of the ABA Model Procurement Code occurred in 2007 and that there is currently an ongoing process for further update.
- Co-chair Martin asked if Utah is considered a centralized purchasing system or a dispersed system. Mr. Beers stated that Utah is a centralized system. All state agencies go through his office even if they have to go through the technology department later.
- Co-chair Martin's follow-up question was whether agencies had to go through his department even for small purchases. Mr. Beers acknowledged that the agencies do have small purchase authority but the agencies have to go through the training. The agency limit is up to \$1,000 on their own; for \$1,000-\$5,000 they can obtain two quotes for an item if not on state contract;

\$5,000-\$50,000 the agency needs to come through his office and the office will obtain the quotes for them; and if over \$50,000 his office will go out with either a formal bid or an RFP.

- Co-chair Anderson asked Mr. Beers to clarify that he claimed himself to be "centralized"; but hadn't he explained earlier that he had hundreds of purchasing people across the state. Mr. Beers explained that his office provides *training* to all of those with purchasing authority but his jurisdiction is only over the state agencies.
- Co-chair Anderson explained that in Idaho the term "delegated authority" is used when the state purchasing department gives an individual within another department the authority to make purchases and it seemed that Utah does not have such a policy. Mr. Beers responded that Utah does have that capacity but on a very limited basis, and the term "limited purchasing delegations" is used.

In conclusion, Mr. Beers wanted to report that the quarterly trainings his office runs are attended by school districts, institutions of higher education, and cities and counties. These people are not required to attend because they *are not* under his jurisdiction, and they also do not have to use the state contracts. However, they do use the state contracts quite often. State agencies *are* under his jurisdiction and they are required to attend those trainings and they have to use the state contracts. He continued that the Utah purchasing process is getting better known and more widely used. Seven years ago, he witnessed \$450 million spent on statewide contracts, whereas this year he witnessed just under \$2 billion.

- Co-chair Anderson inquired as to the size of his office's staff. Mr. Beers shared that he has 25 purchasing agents, three technicians, and one office manager.
- Representative Vander Woude asked how Mr. Beers' staff is funded. Mr. Beers explained that 25% is from general appropriation and 75% is from the administrative fee that is charged to the vendors on statewide contracts, which averages less than 0.5%.
- Representative Vander Woude additionally asked what is the total budget for Mr. Beers' office. Mr. Beers' responded that it is approximately \$2.6 million.
- Senator Jordan asked if any of the training that his office offers is offered by webinar. Mr. Beers stated that the last two trainings were offered in that manner and that approximately a half-dozen individuals took advantage of the opportunity.

No further questions were broached and Mr. Beers was thanked for his time and information by the committee.

At 4:02 p.m. Co-chair Anderson called Blake Youde, Chief Communications and Legislative Affairs Officer for the State Board of Education, to the podium for his presentation regarding the purchasing process permitted to institutions of higher education ([SBOE presentation](#)). In conclusion:

- Current law provides flexibility among the public higher education institutions regarding a procurement and purchasing process that best meets their needs;
 - SBOE has enacted additional policies that provide a check on purchases regardless of whether the institution utilizes the services of DOP or conducts its own purchasing;
 - Institutions would like an opportunity to purchase... from vendors in their community for cases in which the cost is equal or less than an open state contract.
- Senator Davis commented that, per Mr. Youde's presentation, institutions would like to have the opportunity to purchase from local vendors when the cost is equal or less than an open contract; but what is the position of the State Board of Education in regards to that fact. Mr. Youde responded that the SBOE has not taken a formal position on institutions buying locally. It focuses more on the institutions being financially responsible with their purchasing and acknowledges the fact that open contracts often provide better purchasing power. The SBOE

also recognizes the desire to build better communities and hence the institutions may take a more formal stance on this item.

- Senator Davis then asked why schools decide not to follow the process. Mr. Youde explained that since the University of Idaho was established prior to statehood, their policies do not align with the established purchasing procedures. As for Idaho State University, Eastern Idaho, and Lewis-Clark State College, they are smaller institutions; and with smaller institutions you find smaller purchases and therefore they do not often fall under these guidelines.
- Co-chair Anderson asked if Mr. Youde knew if those institutions had purchasing people on staff. Mr. Youde responded that they do have purchasing staff: ISU has 4 FTE; LCSC has 2; University of Idaho has 3.5; and Idaho State has 4.
- Co-chair Martin asked how the system for the institutions to include purchases from the community would be set up? Mr. Youde referred the question could better be answered by Mr. Egan in his presentation to occur the following day.
- Representative Vander Woude asked if Mr. Youde felt that there was enough accountability of the institutions in the current statutes for the current process or was more needed? Mr. Youde responded that, in the Board's opinion, Boise State has a great accountability system. The others also have great accountability and work closely with staff to ensure that what was sought is what was delivered and that it was paid accurately. That being said, he expected that the Board would be happy to continue to look at the current statutes for any "tweaking" that may need to occur.

At approximately 4:20 p.m., Jo Ellen DiNucci, Associate Vice President for Finance and Administration for Boise State University, was called to the podium by Co-chair Anderson for her presentation "Purchasing and Contract Management" ([BSU presentation](#)). Ms. DiNucci was not interrupted during her presentation for any questions. Her summary slide concluded that:

- Higher education is a good blend of centralized and decentralized purchasing;
 - Flexibility is imperative, required to allow our organization to meet the changing needs of the campus;
 - BSU has a very strong staff and has done a good job of managing this area under SBOE oversight.
- Senator Davis asked whether Boise State was one of the institutions to which Mr. Youde referred when he stated in his presentation that "Institutions would like an opportunity to purchase ... from vendors in their community for cases in which the cost is equal or less than an open state contract." Ms. DiNucci stated that the university would always like to have flexibility. The opportunity has come about in the past that they used that exception to make purchases. So ultimately, her answer was "yes."
 - Senator Davis then asked if that bullet item from Mr. Youde's presentation was built into Boise State's purchasing process. Ms. DiNucci explained that the university does not embrace that policy; that in fact the university follows state contracts and has - in a few instances - justified when they did not.
 - Co-chair Anderson asked what the training is for those individuals who make purchases for the university. Ms. DiNucci explained that there is training for those who are assigned "delegated authority" (contract signers) by the vice-president's office for purchasing and that those individuals are required to attend training and refresher-training by the university's legal and purchasing departments.

No other questions were asked of Ms. DiNucci and she was thanked for her presentation.

Co-chair Anderson then reminded the audience that tomorrow's meeting would convene at 8:30 a.m. and then he adjourned the meeting at 5:05 p.m.