

MINUTES
Approved by the Committee
Purchasing Laws Interim Committee
Wednesday, September 30, 2015
8:30 A.M.
Pond Student Union Building
Salmon River Room
Pocatello, Idaho

Co-chair Representative Neil Anderson called the meeting to order at 8:30 a.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: Michelle Weist - Idaho National Laboratory; Roger Egan, David Buck, Adam Jacobmeyer, Kent Kunz - Idaho State University; Blake Youde - State Board of Education; Jo Ellen DiNucci - Boise State University; Jeremy Chou - GivensPursley; Michelle Doane, Todd Sorensen - Idaho Transportation Dept.; Keith Reynolds - Dept. of Administration; Bob Prestwich - Electrical Wholesale; Catalina Steckbauer - Community Wellness Center, Inc.; Brandon Leatham - SMART Local #103; Rodney James - IBEW Local #449; Carmen Babb - Psychiatric Services BHC, Inc.; Terry Fredrickson - State Use Council, New Day Products; Tyler Mallard, Emily Patchin - RischPisca; Andy Akers - D&S Electrical Supply.

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.

Before addressing the agenda, Co-chair Anderson spoke to committee members regarding travel expenses (due to members traveling for separate functions: Pocatello Chamber of Commerce tour and this meeting). He stated that the House and Senate will pay for hotel expenses for Tuesday night and the House and Senate will cover travel mileage reimbursement not already covered by the Chamber of Commerce. He then informed those who intended to give public testimony that they should sign in. Finally, he discussed that the next meeting would be held October 15 in Boise; followed by a November meeting, also in Boise.

At 8:35 a.m., Co-chair Anderson called Mr. Roger Egan, Executive Director of Treasury, Procurement, Policies, and Business Services for Idaho State University, to provide his presentation "[Proposal for Flexibility in Idaho Purchasing Laws.](#)" Mr. Egan stated that, essentially, his presentation was about requesting more flexibility to include local vendors.

- Senator Jordan requested that LSO staff research what is the acceptable range of the multiplier for local purchasing.
- Senator Den Hartog asked that, if universities are granted flexibility to purchase off the state list, could Mr. Egan understand that the vendors on the state purchasing contracts may not be able to offer those lower prices because they may not achieve the large quantity orders they are expecting. And knowing that, could Mr. Egan still defend purchasing from local vendors. Mr. Egan responded that although the price may be higher, the service is local and immediate and ultimately builds better relationships.

- Senator Den Hartog then asked how often does ISU not purchase off the state contract list or could Mr. Egan anticipate how often would they do it. Mr. Egan did not know an exact number to report but stated that it has happened most often for items of immediate need.
- Representative Vander Woude asked Mr. Egan what percentage of ISU purchasing dollars were in-state versus out-of-state. Mr. Egan did not know the exact numbers. He further explained that a vendor being labeled as "in state" could be confusing because the payment may be sent to an address in Idaho but the main office may be out of the state. (Later it was reported by his staff that ISU purchasing dollars were spent approximately 40% in-state and 60% out-of-state.)
- Co-chair Martin asked if Mr. Egan had delegated authority to make purchases from the state purchasing department. Mr. Egan responded, "We do." Co-chair Martin then acknowledged that delegated authority does not apply if there is a state contract available for that service. Mr. Egan responded, "That is correct." Co-chair Martin then asked if having a certain amount of delegated authority--even though it is a state contract--would accomplish the flexibility he desired. Mr. Egan responded that it would.
- Representative Bell asked about occasions when Mr. Egan went to the Division of Purchasing (DOP) for permission to go outside of the state contract. Did the process go smoothly, or should the process be adjusted? Mr. Egan responded that it is currently a good process. He admitted that the university was not always successful and that it often takes more time for the purchase to occur. Before receiving delegated authority, the university was very limited in the dollar value of purchases it could make.
- Representative Crane asked Mr. Egan to speak to the technical aspects of scoring contracts. Mr. Egan explained that one aspect to consider when purchasing a product is how limited one will be in the future. Sometimes the resupply *has to be* from that vendor because no other item will fit. In that instance, it is very limiting to one's flexibility.
- Representative Nye asked for a point of privilege to recognize Mr. Egan for his service to Idaho State University as it was to be his last day--the next day he would be officially retired.
- Senator Davis asked if technical aspects could be brand-specific because a vendor is familiar with a certain brand. Mr. Egan explained that an RFP would/should be written to those specifics or to recognize the fact that another item is acceptable. Senator Davis stated that the practice of pitting a bid of one vendor against another was an unethical practice; is DOP encouraging "bid shopping" when they instruct an agency/university to negotiate with a state contract vendor to match the local vendor price? Mr. Egan explained that, as a university, ISU is not instructed by the DOP to bid shop; the DOP negotiated with the state contract vendor to match the local vendor price. Mr. David Buck, Director of Purchasing for Idaho State University, added that the normal process is that one speaks with local vendors to get a price and then brings that information back to the university's purchasing department. The individual is informed that there exists a state contract where vendors offer that same product. It is explained that the state contract offers the item at a certain price; can the local vendor match that? Therefore, bid shopping does happen. To avoid that scenario, vendors are encouraged to give the best price the first time so that there is not this instance where bid shopping occurs.
- Co-chair Martin stated that the state contract idea seemed to start as a great concept: better prices offered due to large quantities being provided. But when these instances occur where the local vendor offers a better price, faster delivery, and consistent support, it seems there should be a provision for this situation. In addition, the term "local vendor" should be discussed to include "in Idaho" as well, as a responsibility of the Legislature to the citizens of Idaho.

At 9:15 a.m., Co-chair Anderson called Michelle Weist, Procurement Director of the Idaho National Laboratory, to the podium for her remarks on public purchasing. Ms. Weist explained that she

has over 25 years experience in purchasing that dealt with a very broad spectrum of items. Her presentation focused on the following four areas of a purchasing system:

1. Governance and Policy

- Visit other purchasers and study their process--resources, contract administration, internal controls, training, ethics, compliance, etc.
- Be audited by other audit teams - voluntary appointment, not a penalizing process, multiple visits and reviews
- Perform a personal assessment by own team
- Non-competitive procurement by employing a "competition advocate" who collects all the data (also reviews how often company uses same vendor)
- Establish a performance matrix (example: X% of purchases must be awarded using the competitive process, X% must be from local/regional vendors)
- Establish a contract review board for high-risk and/or complex contracts
- Establish selection criteria (technical analysis separate from price analysis)
- Evaluate risks and plan for remedial action

2. Systems

- Outward facing program: procurement questions for vendor to answer--helps funnel providers to end of selection process based on quantity of "yes" responses
- Ask the right questions by company's key users
- Allows company to print reports of the collected information

3. People

- Understand your organizational structure (central, de-central, or hybrid)
 - A central system tends to create stronger relationship with vendors and uses more team members that are cross-trained
 - A de-central system tends to create stronger relationships with customers and allows foresight of industry issues (deployed members still report to central)
- Senator Davis asked if an individual needs to go to central to get permission to make decisions or does one possess the power to make a decision, knowing that he is subject to review. Ms. Weist responded that an individual is given delegated authority to make the decisions and is aware that he subject to review.

4. Performance indicators

- Customer perspective
 - Internal perspective of company
 - Use of rapid purchasing techniques (ex. purchasing card)
 - Learning and growth of procurement employees
 - Study own efforts on how tax dollars are spent
 - Benchmark with peer companies and encourage peer problem solving
- Co-chair Martin referenced a system of assigning a technical score and a cost score separately and then bringing them back together; what are her thoughts on that process? Ms. Weist responded that it is the same process that INL uses. It is an objective evaluation against the requirements of

the procurement. INL may do a "formula buy" where the technical is worth, for example, 30% of the final score and the price is 70%, but this method is not her preferred method.

- Representative Crane asked, in regards to purchasing locally, if INL tries to purchase the majority of items from local vendors or does INL leverage partnerships on a nationwide basis? Ms. Weist responded that INL establishes annual goals in which a certain percentage of purchases are made to small businesses. INL is willing to pay slightly more for items to reach that goal as a commitment to the community. A certain percentage of purchases is also dedicated to Idahoan companies versus out-of-state companies. INL's preference is to "buy Idaho" even though it has access to national contracts. Representative Crane asked if a business being located in Idaho is part of the technical score at INL? Ms. Weist explained that the decision to limit bids to local or national vendors is decided even before the process of sending out for bids. Representative Crane then asked if INL uses the internet for purchases. Ms. Weist responded that INL does not use the internet for actual purchases, mostly due to the possibility of counterfeit goods. INL does use the internet to price shop; and it does use it for its intra-net shop, which consists of a pool of vendors from which departments can make smaller purchases.
- Representative Vander Woude asked Ms. Weist to explain INL's procedure for addressing vendors who do not meet contract requirements. Ms. Weist explained that remedies are already established for when vendors do not meet the conditions of the contract: a contract may be terminated for failure of the vendor to meet requirements; or a contract may be terminated because the item is no longer needed. INL does try to work with the vendor to remedy any issues but INL has the power to terminate. These conditions are often written into the contract. INL also builds contingencies of performance and evaluation into the contract regarding the option to renew a contract.
- Co-chair Anderson asked if Ms. Weist was familiar with the NASPO organization or the American Bar Association's purchasing guidelines. She admitted that she was not, but INL uses other industry guidelines such as federal acquisition regulations and the Department of Energy acquisition regulations.

Seeing no more questions, Co-chair Anderson thanked Ms. Weist for her time and information. He then called for a 15-minute break.

At 10:05 a.m., the meeting reconvened for public testimony. Co-chair Anderson explained that written testimony may be submitted at any time to Elizabeth Bowen, any LSO staff member, or either Co-chair. Oral testimony was requested to be kept to 10 minutes per individual, including in that time the opportunity for committee members to ask questions.

Co-chair Anderson then called for Andy Akers to start off the public testimony portion of the agenda. Mr. Akers stated that he is the vice-president of D&S Electrical Supply. He spoke about the work his company has done as a regional contract vendor for different agencies of the state of Idaho. D&S Electrical is currently not on the state contract which has been awarded to Granger, Fastenal, and North Coast Electric--none of which have a corporate presence in Idaho. Mr. Akers expressed his concern that, after many years of creating a working relationship with local state agencies, the company was no longer able to provide services due to the state contracting process.

- Representative Nye asked Mr. Akers to further explain the effects to his company by not being a state contract vendor after being such a major provider to ISU. Mr. Akers explained that not only did the company provide normal service and products but also assisted in writing rebate requests to Idaho Power, donated supplies to the university, and consulted on electrical needs for new and old buildings. Mr. Akers expressed his frustration at seeing products bought outside Idaho when his company has the same item and is just down the street.

- Representative Vander Woude asked if Mr. Akers could report the price difference of items he carried compared to the out-of-state, contracted companies. Mr. Akers stated that for some items he compared, he found his company to be 8-9%, and sometimes 20%, less than the other company. He also observed that a common practice of the contracted companies is to create their list price high and then offer a large discount; he suggested that they just offer the item at the actual price. Representative Vander Woude asked what changes occurred recently that kept his company out of the purchasing process. Mr. Akers explained that DOP would send out RFPs and his company would participate in the bids. Recently his company was not included in the request for bids.
- Senator Davis commented that the legislature was assured that the removal of the sunset clause in 2013 for section 67-5728, Idaho Code, would not "tie the hands" of universities for procurements.
- Mr. Riggins asked what percentage of items sold by D&S Electrical Supply are manufactured in Idaho? Mr. Akers responded that it was probably less than 1%. Mr. Riggins observed that the majority of the profit from those items goes out of the state, and Mr. Akers replied "Yes."
- Representative Crane asked what percentage of electrical items available to D&S Electrical Supply are actually manufactured in Idaho. Mr. Akers pointed out that it is less than 1%; his company cannot provide more than what is available.
- Senator Davis expressed concern that comparing one widget to another is not such a simple process. There is such a thing as value added service and community responsibility.

Next to testify was Bruce Hansen of Hansen Janitorial Supply. He shared with the committee how his family and business is very committed to Idaho. He summarized that the current procurement process favors large, out-of-state businesses and discounts the value of the local provider. He reported that of every \$100 spent out of the state, only \$13 stays in the community; whereas for every \$100 spent in the state, \$45 stays in the community.

- Representative Nye declared a possible conflict of interest (Rule 38).
- Senator Davis asked Mr. Hansen to offer an example of an instance when the current procurement process was a deterrent to him as a small Idaho business owner. Being a janitorial supply company, Mr. Hansen used the example of toilet paper being provided to ISU for \$36.28/case by his company; the contracted company from Nevada provided it at \$58.18/case. After negotiations involving the DOP, the company brought the price to \$42.36/case. The price now is \$40.25/case which is still higher than the price Mr. Hansen was offering four years ago when the university could buy from his company.

The next individual to provide testimony was Carmen Babb of Psychiatric Services BHC, Inc. [Ms. Babb's testimony](#) focused on issues regarding a current state contract and her expressed concern that benchmarks of the contract are not being met.

- Senator Davis asked Ms. Babb to offer specifics from her perspective and experience that would help the committee write better language for the statute in dealing with professional services such as hers. Co-chair Anderson added that it is the focus of the committee to study the process; the committee is not studying current contracts for effectiveness. Co-chair Martin offered to take her detailed report and written comments and would submit those items to the chair of the Senate Health and Welfare Committee.

Ms. Babb felt that it was a poor decision to hire out to a company to do the work that many competent Idaho providers were already performing. She also felt that there was no accountability when parameters of the contract were not performed or not performed to the benchmark.

- Senator Jordan asked Ms. Babb to explain how the contract was awarded and how she was informed of that decision. Ms. Babb explained that there were three companies that bid on

the contract; two of the vendors felt that the contract parameters were unattainable and hence pulled themselves from the process. This event left only one vendor bidding and, so, that vendor won the contract. Senator Jordan summarized that previously the services were provided by regional contracts and now the services are done through the state contract, which eliminates the local providers. Ms. Babb responded that there existed regional representatives--not regional contracts--and the services were under the umbrella of the Department of Health and Welfare (DHW).

- Senator Den Hartog asked if Ms. Babb's main concern was the lack of monitoring and enforcement of the contract's guidelines. Ms. Babb replied, "That is absolutely correct."
- Representative Vander Woude asked if the current contract was to provide a certain dollar amount of service or a certain amount of services? Ms. Babb believed the contract allowed the vendor to keep money not paid out in services; and she expressed concern because she knew of many services that had been denied.
- Representative Crane asked Ms. Babb to confirm his summarization that the DHW was providing services through providers like her prior to contracting this third-party source. Ms. Babb agreed with his statement. Representative Crane then asked if Ms. Babb knew of any reasons why DHW decided to select a third-party provider. Ms. Babb replied that the DHW claimed they would save money. Representative Crane inquired if any study had been by providers to verify if any cost savings had been achieved. Ms. Babb believed that there was such a study done by leaders in the health and welfare profession, but she had not seen it. Finally, Representative Crane asked what advice could she offer to resolve problems regarding accountability of vendors with contracts. Ms. Babb shared that she would like to see a process where complaints and concerns of awarded contracts could be addressed.

At 10:49 a.m., Mr. Gale Lim, of Gale Lim Construction, spoke to evaluating the need of services prior to issuing a contract. He used the example of purchasing multiple front-end loaders that had very few work hours on them at the end of the year, when the state could purchase fewer machines that could be shared and used more often. His concerns were the utilization of items, quality of products, and the best use of monies. No questions were asked of Mr. Lim by the committee.

At 10:54 a.m., Mr. Terry Fredrickson, CEO of Newday Products and Research, took the podium. Mr. Fredrickson's testimony focused on the State Use Law (Section 67-2319, Idaho Code), the law established to provide services and products by nonprofit organizations for people with disabilities. In summary, he desired his testimony to bring attention to the need for review of IDAPA rules in tandem with addressing the state purchasing laws.

- Senator Davis commented that the director of Development Workshop, Inc. discussed with the senator the previous day the needs of those with disabilities in the workforce, echoing Mr. Fredrickson's request.

At 11:02 a.m., Catalina Steckbauer, of Community Wellness Center, Inc., began her testimony. She desired to bring attention to the shortfalls of a current state contract and the accountability of its vendor.

- Representative Nye declared a possible conflict of interest (Rule 38).
- Co-chair Anderson asked if Ms. Steckbauer felt that there were problems with how the contract was issued? Or with how it was monitored? Ms. Steckbauer felt the contract had not been monitored correctly and that this out-of-state vendor does not act in the best interest of Idahoans.
- Co-chair Martin noted that he had met with Ms. Steckbauer the previous day and that he promised he would take her concerns to the Senate Committee on Health and Welfare and the Department of Health and Welfare.

At 11:09 a.m., Bob Prestwich, of Electrical Wholesale, spoke to the discussion of "price" versus "value". He mentioned that the state of Wyoming adds a 5-10% increase to a contract if the vendor is from out of the state; but he was not sure if that was legally permitted in Idaho. He provided [examples of products and prices](#) that his company could provide to agencies compared to the same products of state contracted, out-of-state vendors. He expressed his disappointment that the relationships that local vendors create with their communities was not being rewarded/acknowledged as a "value" when the contracts are evaluated.

- Senator Davis acknowledged that he may have a conflict of interest with Mr. Prestwich's testimony.
- Representative Vander Woude asked Mr. Prestwich to provide suggestions as to how the committee could compensate for "services provided" when amending the statutes. Mr. Prestwich offered the idea of creating a matrix (much like INL discussed) where the technical side and price are evaluated separately. Then, maybe the "value" is in working with local vendors even though the "price" may be the lowest bid. He observed that since the federal government uses the practice, maybe the state should use it also.
- Representative Crane asked if providing for a weighted score, or some such idea, in the statutes for local vendors would be a helpful idea? Mr. Prestwich felt that would be a good plan, at least a good start.
- Senator Davis commented that the struggle to reward local or regional vendors without penalizing others is the root of the problem. Furthermore, how can it be justified by statute?

At 11:28 a.m., Dave Buck, Director of Purchasing for Idaho State University, approached the podium to make comments on the ideas discussed throughout the morning. He desired changes to be made to current statutes in order to "un-handcuff" those who purchase for universities. He specifically referred to sections 67-5717, 67-5726, and 67-5728 of the Idaho Code where the language is very limiting to purchasers; he also referenced the penalties listed in section 67-5734, Idaho Code. He suggested that the committee consider amending the statutes so that state contracts are optional rather than mandatory. This would allow universities to use their good judgment to purchase from local vendors as well as statewide vendors.

- Co-chair Martin asked if there existed sufficient safeguards--or needed to be safeguards--for purchasing agents who do not use state contracts to be financially responsible to the university and thereby to the state. Mr. Buck responded that the policy is always to get the best value; that is the training of a purchasing offer.
- Senator Davis commented that price IS a factor of every purchase. He indicated how Ms. Weist explained how you can use delegated authority in a positive way to get things accomplished but still hold individuals responsible. He continued with the observation that the statutes currently have some severe penalties when one doesn't stick to the rules.
- Co-chair Anderson summarized that the main reason state contracts work is because the vendor is promising a low price based on the fact that he will receive a large order; but if compliance is "optional," then the vendor may not receive the quantity of orders he is expecting. He asked Mr. Buck how to address the concerns of vendors if that situation is permitted. Mr. Buck recognized that concern but pointed out that many businesses offer more favorable pricing, delivery terms, etc. to institutions of higher education because of the visibility of the vendor's name.
- Representative Vander Woude confirmed Mr. Buck's comments by stating that not always does more volume equal better value, for example the IEN issue; better service was found by local providers.

At 11:40 a.m., Representative Bell read a letter from Anne Eschliman ([Public Testimony: Anne Eschliman](#)) regarding her small business and her recent experience with the state of Idaho purchasing

laws. This was the last item for public testimony.

Co-chair Martin expressed his thanks to the committee for their work. He also expressed his enjoyment of having citizens express their interests in this type of venue.

Senator Davis expressed his inability to attend the October 15 meeting and also the proposed November meeting. He asked the committee and staff to reconsider the November date so that he does not miss two meetings in a row.

Co-chair Anderson thanked the members and citizens who attended and testified at the meeting.

Seeing no other business to address, Co-chair Anderson adjourned the meeting at 11:45 a.m.