

MINUTES
Approved by the Committee
Purchasing Laws Interim Committee
Thursday, October 15, 2015
9:00 A.M.
State Capitol - Room EW42
Boise, Idaho

Co-chair Fred Martin called the meeting to order at 9:00 a.m. and requested a silent roll call. Members present: Senators Lori Den Hartog, Abby Lee, and Maryanne Jordan; Co-chair Representative Neil Anderson and Representatives Maxine Bell, Brent Crane, John Vander Woude, and Mark Nye; ad hoc members John Riggins (*Dru Nakaya attended afternoon); Legislative Services Office staff Elizabeth Bowen, Robyn Lockett, and Jennifer Kish. Excused: Senator Bart Davis.

Other attendees (signed-in): Janet Gonzalez - College of Western Idaho; Dan Goicoechea - State Controller's Office; Bill Burns, Sarah Helderbrand - Division of Purchasing; Jeremy Chou - Givens Pursley LLP; Roy Eiguren, Mark Estess - Eiguren Ellis Public Policy; Keith Watts - City of Meridian; Todd Sorensen, Jacqueline Leech, Michelle Doane - Idaho Transportation Dept.; Bob Perkins, Robyn Swaney, Alyssa Mitchell, Rusty McNeil - Ada County; Diane Morrison, Colin Millar, Missy Morrison - City of Boise; Colby Cameron - Sullivan & Reberger; Martin Bilbao - Gallatin Public Affairs; Jeff Whitehead - Cobalt Truck Equipment; Mitch Cunningham - Compunet; Lynn Tominaga - Idaho Ground Water Appropriators, Inc; Marty Durand - Idaho Building Trades; John Foster - Kestrel West; Jason Kreizenbeck, Skip Smyser - Lobby Idaho, LLC.

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 located in the State Capitol.

Co-chair Martin called the meeting to order at 9:00 a.m. noting that Senator Davis was excused. Co-chair Martin expressed his desire for members to discuss at the end of the meeting actions the committee would take regarding the information that has been gathered.

Co-chair Martin called Ms. Janet Gonzalez, Senior Analyst Contracts/RFPs for the College of Western Idaho, to open the meeting with her presentation [State of Idaho Purchasing-Impact on Community Colleges](#). Ms. Gonzalez shared information relevant to the experiences of the community colleges (College of Western Idaho, College of Southern Idaho, and North Idaho College) with the purchasing process.

- Representative Crane asked if the community colleges she represented had difficulty making purchases from local vendors for small or immediate need purchases? Ms. Gonzalez responded that difficulties have happened; but, as political subdivisions, the colleges have the option to use a state vendor--the colleges were not *required* to use the contracts.
- Representative Vander Woude asked why the colleges don't have qualified individuals, as she claimed, in positions to monitor the contracts? Ms. Gonzalez responded that it is simply due to staffing constraints. Many staff at the colleges do "double-duty" in their employment and often the most skilled person was not the person handed that duty. Ms. Gonzalez emphasized the fact that she was the only full-time purchasing person and was assigned to three colleges. Representative Vander Woude asked in his follow-up how supervision or oversight of contracts would be handled due to the variety of operations at each college? Ms. Gonzalez offered

that putting the requirement of oversight/supervision of contracts into statute would force the colleges to see it as a priority and hire more qualified individuals for those positions. Representative Vander Woude asked if colleges would find funds in the budget through the efforts of better monitoring of the contracts? Ms. Gonzalez responded that it would be an ideal justification for budgeting.

- Senator Den Hartog asked if Ms. Gonzalez was aware that the Department of Purchasing (DOP) offered trainings on the purchasing process, and did Ms. Gonzalez or her staff attend those trainings? Ms. Gonzalez stated that she does take advantage of those trainings but she was not sure that everyone who should, does.
- Co-chair Anderson asked if Ms. Gonzalez and her staff use the services of the DOP during the purchasing process? Ms. Gonzalez explained that if it is a state contract the college could use the DOP staff, but the DOP does not handle the procurement process for the college. Co-chair Anderson asked in a follow-up if the college could have DOP handle the college's procurement process? Ms. Gonzalez explained that the college could not do that since it was a political subdivision--not a state agency. Finally, Co-chair Anderson asked whether DOP staff were available to the college as counselors in the process? Ms. Gonzalez responded that the college could work, and had worked, with the DOP in that manner.
- Senator Lee asked if the monitoring of contracts needed to be provided for in statute--as a possible unfunded mandate--or were the colleges able to ensure their own accountability? Ms. Gonzalez explained that the colleges were quite capable of monitoring their own contracts, but she also felt it would have more importance if the requirement came from the Legislature. It is not a priority in relation to the many other issues on which the college staff focus for daily operations. Senator Lee then asked if it was possible to work with or go through the college's accreditation organization for requiring monitoring? Ms. Gonzalez responded that such an idea would be a good avenue to pursue and offered that it should be considered a focus of the college's auditing process as well.
- Representative Vander Woude asked if Ms. Gonzalez, in her role as a purchasing agent, had experienced contracts that were not fulfilled and, if so, how were those issues resolved? Ms. Gonzalez responded that she had worked with vendors to bring them into compliance and she had terminated contracts for nonfulfillment. Ms. Gonzalez explained that her authority to act is limited by who controls the contract.
- Senator Jordan asked if Ms. Gonzalez had a responsibility to report to the school's governing board or if Ms. Gonzalez's activities were reviewed by the board? Ms. Gonzalez replied "No." Senator Jordan then asked if Ms. Gonzalez's budget was reviewed by such a board. Ms. Gonzalez explained that she does not have an established budget; each department designates funds in its budget to cover her costs as a purchasing agent.

Seeing no more questions from the committee, Co-chair Martin thanked Ms. Gonzalez for her testimony.

Co-chair Martin asked for approval of the minutes from the September 29 meeting. Representative Bell made a motion to approve the minutes as presented. Representative Crane offered to second the motion if the following amendments were made: (page 4) correct the reference as "Senator Crane" to read "Representative Crane"; and (page 4) add language to Mr. Beers' response indicating that it was the Utah legislature that would not approve the amendments to include penalties to the purchasing law statutes. The minutes were approved by voice vote pending those amendments made by the secretary.

Co-chair Martin then called Dan Goicoechea, Chief Deputy from the State Controller's Office, to the podium for his comments on the public purchasing process. Mr. Goicoechea began his testimony by

answering an earlier request by Co-chair Anderson to identify the number of contracts that exist. Mr. Goicochea explained that it was difficult to gather a count of existing contracts because the number changes day by day. The controller's office uses a program called Software Asset Management and Contract Asset Management to track contracts and expenditures. He impressed upon the committee the necessity of having management oversight of contracts to prevent problems from occurring. He also emphasized the importance of having a system that tracks the contracts and of having audits done on the contracts. Mr. Goicochea requested that the committee review the current practice of applying a "processing fee" to contracts of a certain value to determine whether that process was an incentive or disincentive to agencies. If a new procurement process is created, he felt it imperative that Department of Purchasing (DOP) staff be involved in the discussion.

- Co-chair Martin asked Mr. Goicochea to reconfirm that the controller's office could not give an accurate report on the number of contracts that exist. Mr. Goicochea explained that his office could not offer an accurate report because the data would be inaccurate by the time his office completed the query (some contracts are not under his office's supervision and contracts begin or end suddenly). Co-chair Martin then asked if Mr. Goicochea felt it necessary for the committee to know how many contracts existed? Mr. Goicochea responded that he did not believe it helpful to know the exact number.
- Representative Vander Woude asked how the controller's office kept track of contracts, and how did the controller's office deal with contracts not fulfilled? Mr. Goicochea responded that all contracts were reviewed by leadership of the division, legal counsel, and the fiscal officer. Mr. Goicochea felt his office did not have many issues with contracts because the problems were avoided by the work done "up front". However, he added, all contracts should have provisions included for a possible breach of contract. He suggested that other agencies follow the controller's example of not making payment before receiving services because it was a type of leverage in the agency's favor.
- Senator Den Hartog asked if the controller's office sent RFPs (request for price) along with the draft contract? Mr. Goicochea explained that his office was not required to solicit RFPs; but if his office did solicit RFPs, then sample language was included rather than a sample contract. He did expect his office to begin including RFIs (request for information) for certain contracts in the near future. Senator Den Hartog asked Mr. Goicochea to confirm his earlier statement that he felt one of the "holes" in the current statutes was accountability and consequences for those who didn't follow the current purchasing process. Mr. Goicochea responded, "Yes and no." He explained that it was "yes" because of the overall contract and purchasing perspective; but it was also "no" because the agencies and individuals have to take responsibility for accountability and follow employment law.

No other questions were put forth to Mr. Goicochea.

Co-chair Martin then called Bill Burns, Administrator for the Division of Purchasing, for his presentation [Modernizing Idaho Purchasing Law](#). Mr. Burns offered a short review of his department: the DOP is the state's centralized purchasing organization; implements property procurement of goods and services; manages procurement policy; offers statewide training for purchasing personnel and vendors. The division was established to promote competitive bidding and open contracts and to maximize the competition for values received. He explained that the division's purview consisted of all state executive agencies--excluding elected officials' offices, the legislature, the judicial branch, Boise State University, University of Idaho, and the Department of Lands.

Mr. Burns reported statistics from a recent survey of 45 responding states: the majority had a centralized purchasing office; almost all reported that the central procurement officer had the power to prescribe rules and regulations; 30 states reported having IT purchasing in the central office; 96%

reported that management of highway construction was done by the state transportation agency; and 28 states had the central procurement officer report to the governor or cabinet-level officials.

- Senator Den Hartog asked Mr. Burns if the American Bar Association (ABA) Model Procurement Code provided penalties or accountability for those who did not follow the suggested code? Mr. Burns explained that gaps occur between the ABA Model Code (Chapter 11-Ethics) and Idaho Code's Prohibitions (section 67-5726) and Penalties (section 67-5734). Specifically, the Idaho Code does not provide for situations for the "right to recover kickbacks and other ill-gotten gains" and the Idaho Code does not provide for an ethics commission.
- Senator Den Hartog asked if Mr. Burns felt that contract monitoring should be done by the agencies or the DOP? Mr. Burns felt that the agencies were the experts on their own contracts. He suggested that a third-party monitor could be useful for complex, high-dollar and high-risk contracts (especially those related to IT).
- Co-chair Martin asked Mr. Burns to explain how such a third-party monitor could be created? Mr. Burns suggested including individuals from the boards that already exist for the agencies.
- Co-chair Martin asked Mr. Burns to explain how delegated authority was granted by the DOP and how that authority was maintained or kept accountable. Mr. Burns explained that delegated authority was bestowed upon an individual within an agency by himself and through his office. He explained how consideration was given to an individual's certifications and experience, and how his office reviewed previous contracts held by that agency, before bestowing that authority.
- Senator Lee asked if the DOP assigned delegated authority to non full-time employees? Mr. Burns responded "No."
- Co-chair Anderson inquired if exempt agencies participated in the quarterly meetings held by DOP. Mr. Burns responded "No."
- Representative Bell asked if certification was really a necessary requirement for individuals; weren't there currently capable staff doing the job without certification? Mr. Burns agreed that many employees did a good job without such certification; but in terms of "best practices," this was the standard that other states had adopted to justify the authority.
- Representative Nye asked how many members of Mr. Burn's staff were certified? Mr. Burns responded that five of his nine staff members were certified and two were in the process of being certified.
- Co-chair Martin asked Mr. Burns to clarify the department's definition of "regional/geographic location" for state contracts regarding multiple awards. Mr. Burns explained that the division often needed multiple regional vendors to meet the supply needs of the state. Co-chair Martin inquired if there existed any contracts that were statewide but had a provision to also be regional? Mr. Burns stated that the law wanted there to be only one vendor for the purpose of keeping costs low; however, there were instances where regional vendors had been permitted to cover the need.
- Representative Crane asked if Mr. Burns advocated for a mandatory provision for state agencies to use the state contract, or was he open to flexibility where local vendors could participate in the process? Mr. Burns explained that he was in favor of some flexibility--minor flexibility. He added that there was currently an exception to state contracts for instances where a better price was found; but there was also the opportunity for DOP to negotiate with a current state contractor to match those "one-time" instances. Representative Crane then asked Mr. Burns to confirm that the controller's office was not mandated to use state contracts but rather the controller's office has the *option* to use state contracts? Mr. Burns responded "Yes." Representative Crane commented that there seemed to exist a conflict of awarding contracts to the lowest cost versus the best value and best practice. Mr. Burns responded that cost was not always the deciding factor. He added that cost could be the deciding factor when items or services are *exactly* the same; but ultimately, it was the *value* of the vendor who more fully met the requirements of the contract.

Lastly, Representative Crane asked why such a process exists that limits agencies to selected vendors when the process could allow agencies to use their own expertise and knowledge and select vendors themselves? Mr. Burns commented that such a process would implode the whole idea of getting a better value through volume purchasing. Representative Crane asked why a provision where political subdivisions or state constitutional officers were permitted--not mandated--to use the state contracts should not be adopted? Mr. Burns explained that making the purchasing process elective to some agencies or all agencies would again undermine the process; vendors guaranteed better pricing for the promise of large volume orders.

- Representative Vander Woude asked if it was a fair assumption that the state was getting a better price because agencies were required to purchase from specific vendors? Mr. Burns agreed that was a correct assumption because that was the whole concept of having the open contracts. Representative Vander Woude shared that testimony provided in Pocatello offered experiences where better prices were obtained with local vendors which were not on the state contract; did Mr. Burns feel that exceptions should be made to the purchasing process for those instances? Mr. Burns responded that other exceptions were possible and he was open to discussion on the topic; but the current process was accepted by most states as the best practice.
- Senator Den Hartog asked if the process was fair to those vendors who could serve agencies regionally, even though the vendor could not serve the whole state? Mr. Burns concluded that the process was fair even in light of that fact. He explained that there were situations where local or regional contracts did exist and collectively provided for the whole state. Senator Den Hartog then asked if the local vendors were at a disadvantage in the bidding process? Mr. Burns commented that there was no exclusion of local vendors when bids were advertised; he further shared with the committee that the large vendors were "local" in that the vendors contribute taxes and provide employment to Idaho's citizens.
- Mr. Riggins asked if there existed any studies that proved the theory that state contracts provided "better value"? Mr. Burns deferred the question to Ms. Sarah Hilderbrand, the State Purchasing Manager for DOP. Ms. Hilderbrand responded that such a study was done by NASPO (National Association of State Procurement Officials) and the conclusion was: overall the states are saving money by using these large volume contracts.
- Co-chair Martin asked Mr. Burns to clarify the phrase "one exemption." Mr. Burns explained that it was not just a one-time exemption per year but rather it was one "type" of exemption by that agency.

Co-chair Martin called for a 5-minute break. After the break, Mr. Burns continued his presentation at the slide labeled "Recommend 6 - Printing Requirements."

- Senator Jordan commented that it would have been helpful if financial data/fiscal analysis could have been included to quantify the statements in Mr. Burns' presentation. Mr. Burns replied that he did not have that type of information to provide for the meeting and, that he wanted to focus on ideas with this presentation.
- Representative Nye asked if the slogan "Buy Idaho, Build Idaho, Hire Idaho" was promoted by state contracts? Mr. Burns explained that the process allows for the right service to be provided by the right vendor; however, sometimes the right vendor was not an Idaho vendor.
- Co-chair Martin inquired how a preference to Idaho companies could be included in the purchasing process and what were the legal grounds to do that? Mr. Burns explained that this committee could create that preference. He felt every state contract currently had some type of Idaho preference--indirectly, if not directly. Mr. Burns referred the committee members to review the NASPO brief titled [In-state Preferences](#) (provided by Mr. Burns), which offered the pros and cons of keeping purchases in-state, in deciding whether an Idaho preference was necessary.

- Senator Den Hartog asked how much time was allowed currently and how much additional time was being requested for the director of DOP to rule on an appeal? Mr. Burns explained that a vendor has five business days to make an appeal and the director has three business days to respond. Mr. Burns requested that the director's response be changed to five business days. He added that the procurement process involved in an appeal was placed "on hold" while the appeal was decided. Senator Den Hartog then asked if Mr. Burns and his office would support the idea of an appeals board rather than the director making the final decision? Mr. Burns stated that he and his office support the current process because he believes it does work. He reported the actual number of appeals that had occurred: 2010-9 (appeals); 2011-9; 2012-9; 2013-12; 2014-7; 2015-11.
- Representative Crane asked if having an appeals board would restore the public's confidence in the process? Mr. Burns stated that he did not see a need for an appeals board because the current process works, but the idea could be discussed.
- Representative Nye asked whether Mr. Burns felt the practice of having open contracts violated the concept of a free market and open competition? Mr. Burns responded that the process to identify open contract vendors actually accentuated the process of open competition because the contracts are competitively bid. Representative Nye inquired if Mr. Burns felt that it was competitive for the local vendors? Mr. Burns responded "Yes." Representative Nye then asked if Mr. Burns felt it would be acceptable to have a blend of the processes so that a state agency could have the discretion to shop from local vendors (limited to a predetermined dollar amount)? Mr. Burns expressed his concern that establishing these exceptions would undermine the essence of the process.
- Senator Den Hartog asked why none of Mr. Burns' recommendations included a process of accountability or establishing ethics? Mr. Burns explained that he did not have time to include recent ideas into his presentation.
- Representative Crane asked Mr. Burns to explain the impact of defining the terms "same" and "similar," which exist in section 67-5718A, Idaho Code. Mr. Burns stated that it would help his office make decisions because "similar" requires judgment whereas "same" is more comparative in the details. Representative Crane summarized that "similar" is subjective and "same" is easier to define; Mr. Burns agreed. Representative Crane asked if this language recommendation was suggested by the judge involved in the decision for the IEN (Idaho Education Network) contract? Mr. Burns responded that he did not know if that was one of the recommendations.
- Senator Lee asked if Mr. Burns had already made improvements in the DOP to compensate for previous "gaps" in accountability that would alleviate the need for changes to statute? Mr. Burns explained that many processes and forms had been put into service across the state from within the department to bridge those identified gaps.
- Co-chair Martin asked if Mr. Burns had heard of the concept "best value purchasing"? Mr. Burns described the concept as not looking at just the cost of an item; it also takes into consideration technical capabilities for a vendor to monitor and manage services beyond the initial purchase. Co-chair Martin asked if Mr. Burns was familiar with the companies WebProcure or Sycom? Mr. Burns explained that Sycom was the state's previous web-based e-procurement supplier; WebProcure was the state's current web-based supplier. Co-chair Martin asked Mr. Burns to clarify if WebProcure was a company or a system? Mr. Burns reported that WebProcure was a system and it was run by the company Perfect Commerce. He explained that the WebProcure system allows the DOP to perform all of the solicitations, as well as contracting and contract control, electronically. Mr. Burns further detailed how the WebProcure system could be used with another specific financial program that would allow the DOP to provide the "numbers" that the committee had requested regarding the number of contracts and the value of each contract. Mr. Burns explained that his office currently uses eleven different financial programs and hence could not easily provide that information. Co-chair Martin asked if Mr. Burns' department used

the WebProcure system as a cost-saving measure or because of a lack of staff? Mr. Burns explained that it was a very efficient system that broadly solicited contracts to vendors, allowed the department to populate the data quickly, and allowed vendors to access the contract information and submit the contract. Co-chair Martin asked for Mr. Burns' opinion regarding the establishment of an advisory board comprised of legislators, vendors, citizens, etc., to oversee the department during the purchasing process. Mr. Burns responded that he would be in favor of such a board for the purpose of oversight; but in regards to policy, he felt the current system was effective and efficient so he would not be in favor of a policy board.

- Mr. Riggins asked Mr. Burns to describe the advantages of adopting the proffered certification process (Recommend 3-Expansion of Procurement Training) versus the current system provided by the UPPC. Mr. Burns stated that the proffered certification process would be more specific to the laws of Idaho. Mr. Riggins asked if Mr. Burns felt that the requirements for certification should be required of the director of purchasing? Mr. Burns responded, "Absolutely."
- Ms. Robyn Lockett, LSO staff member, asked Mr. Burns to clarify what information he had received regarding ethics that he was unable to include in his presentation. Mr. Burns explained that it was a report about the comparison of Idaho's purchasing laws and the ABA Model Procurement Code.
- Representative Vander Woude inquired whether Mr. Burns' department always solicited multiple states for a statewide contract or was it ever limited to Idaho? Mr. Burns stated that the situation varied.
- Representative Nye asked Mr. Burns to further explain "NASPO-ValuePoint." Mr. Burns shared with the committee that years ago multiple western states organized as the Western State Contract Alliance (WSCA), where state purchasing agents leveraged procurement for large volume purchases and better values. Mr. Burns explained that the original WSCA organization became NASPO and was now known as NASPO-ValuePoint. Mr. Burns described how, in this organization, there is a "lead state" that contracts with a vendor and then the other states are offered the option to "piggy-back" the contract. Representative Nye asked if the division of purchasing was then "farming-out" the purchasing function? Mr. Burns replied that the DOP was not; rather the department was leveraging its buying power.

Mr. Burns concluded his presentation by requesting that the Department of Purchasing be included in the ongoing discussions regarding changes to the purchasing process. Co-chair Martin thanked Mr. Burns for his testimony and cooperation, and then adjourned the meeting at 11:55 a.m. for the scheduled lunch break.

At 1:15 p.m., Co-chair Martin reconvened the committee and called Jeremy Chou, attorney for Givens Pursley LLP, to the podium for his presentation [Seven Recommendations for Public Purchasing](#). Mr. Chou explained that while he has worked in both the private and public sectors with procurement, his testimony was focused on public policy consideration and not for any one specific client.

- Co-chair Martin asked Mr. Chou how he would state in statute the option for agencies to "opt-out" of state contracts? Mr. Chou responded that the language could be copied easily from the administrative rules as it exists there already.
- Senator Jordan asked how the committee should deal with a reciprocating policy at the state level? Mr. Chou responded that it seemed the best practice was not to penalize out-of-state vendors because eventually other states will incorporate the same policy and it became a no-win situation.
- Senator Lee asked Mr. Chou to express his opinion of an appeals board to oversee the purchasing process, or was Mr. Chou advocating judicial review?. Mr. Chou commented that oversight was always a good idea; the committee should consider other alternatives such as a newly-formed oversight board or possibly a hearings officer or a hearing process.
- Co-chair Martin asked if Mr. Chou felt that every contract should go through a review board or just contracts of a certain value? Mr. Chou explained that currently there were three avenues of

review: appoint a determinations officer, appoint a hearing officer, or review by the agency head and a letter of determination. Mr. Chou added that assigning a value to a specific process of review was the least time consuming and still provided transparency.

- Co-chair Martin asked Mr. Chou to identify the court level at which such a review hearing would occur for administrative appeal. Mr. Chou stated that this judicial review was already provided for by Idaho court rules.

At 1:55 p.m., Co-chair Martin called on Mr. Roy Eiguren, attorney for Eiguren Ellis Public Policy, for his comments regarding the purchasing process. Mr. Eiguren stated that his duties for his clients essentially were: to provide advice about the acquisition process; to provide appropriate access to key organizations and key individuals for procurement; and to serve as an advocate. Mr. Eiguren commented that his recommendations were based on his opinion that the current purchasing process works well. His recommendations were summarized as follows:

- Provide explicit statutory authority for the administrator of the DOP to delegate purchasing authority to individuals in various state agencies ([suggested model language](#));
- Provide for a longer period of time in statute for filing appeals;
- Provide for a longer period of time in statute for the director to review and act on appeals; and
- Enact legislation to define what constitutes permitted communication between potential vendors and state agencies.

In conclusion, Mr. Eiguren agreed that there needed to be legislation on matters of ethics regarding state officers and agency personnel, as well as vendors and agents. No questions were asked of Mr. Eiguren at the conclusion of his testimony.

At 2:10 p.m., Mr. Mark Estess, also with Eiguren Ellis Public Policy, provided comments regarding the purchasing process specifically as it relates to information and technology. Mr. Estess described how contracts related to information and technology were often of high value and endured for multiple years, which made the contracts unique to the process. The specifics of the contracts were very complex and sometimes contained blind spots in regards to the succession of technology. Such contracts also involved many individuals and reached across multiple departments, which often raised concerns for security issues. Mr. Estess observed that the most effective contracts were based on cooperation, collaboration, mutual respect and trust. No questions were asked of Mr. Estess at the conclusion of his testimony.

At 2:17 p.m., Co-chair Martin called Keith Watts, Purchasing Manager for the City of Meridian, to the podium for his presentation [Purchasing by Political Subdivisions](#). Mr. Watts spoke to his experience with the purchasing process as a political subdivision and offered specific examples for amending the current state purchasing law statutes.

- Senator Den Hartog asked Mr. Watts to explain the benefits to a political subdivision in acquiring used equipment. Mr. Watts explained that purchasing used equipment was a huge cost savings to small entities; but difficulty existed in quantifying/qualifying the "used" definition in comparison bids.
- Senator Jordan inquired if "used" equipment was defined? Mr. Watts stated that his office had often had such a discussion, but the definition does not exist for the purchasing process.
- Senator Jordan asked Mr. Watts how the committee should define a "poor quality" vendor; what are the measurements? Mr. Watts offered that purchasing agents could provide parameters for defining that term based on their own experiences.
- Senator Den Hartog asked Mr. Watts to explain how the City of Meridian handles a vendor's appeal? Mr. Watts explained that he had never had an appeal from a vendor come through his office. He added that if there was such a situation, he would call a meeting with the vendor to

resolve the issue. If the vendor did not find resolution with that meeting, the vendor would file an appeal with Mr. Watts' office and Mr. Watts would review the appeal and make a ruling. If the vendor did not agree with Mr. Watts' ruling, then the vendor would file an appeal with the city council.

- Senator Lee asked Mr. Watts to describe what type of provisions existed for incumbent vendors: prohibitions or pros? Mr. Watts explained that his department sticks to current language in the statutes, which do not address such a situation. He added that his department had discussed adding language to address possibilities when a conflict of interest occurred but that the opportunity had not occurred. Senator Lee inquired if Mr. Watts gave any preference to incumbent bidders when awarding contracts. Mr. Watts replied that no preference was given.

At 2:45 p.m., a short break was called by Co-chair Martin.

Upon reconvening, Co-chair Martin called on Mr. Bob Geddes, Director of the Department of Administration, for his comments and testimony. Mr. Geddes expressed his appreciation for the committee's efforts at gathering information on the purchasing process. He also noted the effort and passion of his staff in performing their duties. In his brief time in his position, Mr. Geddes had discovered that appeals and complaints most often grew from misunderstanding the process; and, most often, a simple meeting with the individual solved the issue. Mr. Geddes felt that the current system was an effective and efficient process, but no process was without possible improvements. No questions were asked of Mr. Geddes by the committee.

Co-chair Martin called on Mitch Cunningham, representing the company Compunet, as the first person for public testimony. Mr. Cunningham discussed the background of Compunet being a native Idahoan company. He spoke in favor of the current purchasing process per his experiences here in Idaho (Compunet also operates in Oregon, Utah, and Montana) and he felt the process created a healthy competitive market.

- Senator Lee asked Mr. Cunningham to express his thoughts on the current appeals process: Did Mr. Cunningham feel any negative pressure to not file an appeal for fear of retribution by the DOP for future contracts? Mr. Cunningham responded that he really could not speak to such a situation because his department did not lose contracts often; but he would not be deterred from filing for fear of retribution.

Co-chair Martin then called on Marty Durand, from Idaho Building Trades, for her public testimony specifically on public works contracts. Ms. Durand expressed concern regarding the current possibility of awarding contracts on a "lowest bid" concept--especially regarding construction projects. Ms. Durand felt that there were many other items to consider when awarding a contract to a construction company: safety records, prior bankruptcies or outstanding liens, cost overruns, completed projects on time, or abandoned projects. She explained how these hidden features could influence the overall cost of a project and influence unforeseen costs to the state.

- Representative Crane asked if Ms. Durand felt there should be a wage scale associated for contract projects? Ms. Durand felt that a livable wage should be associated in some manner. Representative Crane then asked if Ms. Durand felt that her listed suggestions should be put into statute or in the scoring process for awarding the contract? Ms. Durand replied that multiple ways were acceptable, but she preferred that the ideas were included in statute.
- Co-chair Martin asked Ms. Durand to identify the percentage of contracts awarded to local/in-state vendors. Ms. Durand responded that she did not know the percentage for current contracts.

Co-Chair Anderson read the following list as a beginning point of the possible actions/issues on which the committee could focus:

1. Role and level in the state government hierarchy of the Division of Purchasing.
 - Should the administrator be a cabinet-level position?
 - Should purchasing be centralized or decentralized?
2. Review and consolidation of state purchasing laws.
 - Should the purchasing laws have their own chapter of code?
3. Vendors' ability to seek redress.
 - Appeals process – does it need to change?
 - Should judicial review be available?
 - Prevention of "blackballing."
4. Role and influence of lobbyists and private sector representatives.
5. Delegated authority.
 - Process of delegating authority.
 - Demonstration by agency personnel of competency prior to delegation of authority.
 - Ongoing training of agency personnel involved in purchasing.
 - Certification of agency personnel involved in purchasing.
6. Contract monitoring.
7. Information retention / record keeping.
 - Should there be a centralized state database to track all contracts?
8. Auditing.
9. Advisory committees to help with drafting of complex RFPs.
10. Information technology.
 - Should IT purchasing be treated differently?
11. Local preference.
 - Should local/Idaho companies have statutory preference?
12. Deviation from state contracts.
 - How much flexibility should be allowed?
13. 1.25% funding for Division of Purchasing.
 - Should this work differently?
 - Should all state contracts be subject to this, even those not handled by the DOP?
14. Permitted levels of purchasing amounts.
 - Should these change?
15. Intergovernmental feedback group.
 - Feds
 - Large state agencies
16. Exempt officers and agencies.
 - How proficient are the staff working on purchasing?
17. Citizen oversight committee.
18. Political subdivisions.
19. Accountability.
 - Penalties for noncompliance.
20. DOP's relationship with Legislature.
 - Should there be a reporting requirement?
21. Ethics.
 - ABA Model Procurement Code or something similar?
22. State information security.

Representative Crane requested that the above list be included in the minutes so as to be part of the public record. Co-chair Martin agreed with the request.

Co-chair Martin announced that the next meeting would occur on Friday, November 13; and then he adjourned the meeting at approximately 4:00 p.m.