

**MINUTES**  
**Approved by the Committee**  
**Purchasing Laws Interim Committee**  
**Friday, December 04, 2015**  
**9:00 A.M.**  
**State Capitol - Room WW17**  
**Boise, Idaho**

Co-chair Senator Fred Martin called the meeting to order at 9:03 a.m. Members present: Senators Bart Davis, Lori Den Hartog, and Abby Lee; Co-chair Representative Neil Anderson and Representatives Maxine Bell, John Vander Woude, and Mark Nye; nonlegislative member John Riggins; Legislative Services Staff Elizabeth Bowen, Robyn Lockett, and Jennifer Kish. Absent: Senator Maryanne Jordan (Excused), Representative Brent Crane, and nonlegislative member Dru Nakaya.

Other attendees (signed in): Eric Berggren - IBM; Charlie Foster - Lobby Idaho; Michelle Doane, Todd Sorensen, Jacqueline Leech - Idaho Transportation Dept.; Betsy Russell - The Spokesman-Review; Bill Burns - Dept. of Administration; Colby Cameron - Sullivan & Reberger; Keith Watts - City of Meridian.

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 in the State Capitol.

Co-chair Martin called for a motion to approve minutes from the November 13, 2015, meeting. Senator Den Hartog made the motion to approve; Representative Vander Woude seconded the motion. All voted in favor of the approval with no corrections.

At 9:07 a.m., Co-chair Martin called on Elizabeth Bowen, Legislative Research Analyst for LSO, to present her draft legislation [http://legislature.idaho.gov/sessioninfo/2015/interim/151204\\_plaw\\_01\\_DraftLegislation.pdf](http://legislature.idaho.gov/sessioninfo/2015/interim/151204_plaw_01_DraftLegislation.pdf). Ms. Bowen explained that her packet was comprised of seven drafts: six drafts proposed substantive changes to the current purchasing laws and the last draft was a concurrent resolution to reauthorize the committee for next session, if the committee's work needed to be continued. The topics of the six substantive drafts were:

- 1) Contract Oversight;
- 2) Delegation of Authority;
- 3) Ethics in Procurement;
- 4) Multiple Awards;
- 5) Open Contracts; and
- 6) Procurement Training.

**Draft 1 (DRELB050) - Contract Oversight** Ms. Bowen explained that the first draft addressed contract oversight and required that the administrator establish rules relating to the administration, management, monitoring, and other oversight of contracts entered into by state agencies. The draft required exempt officers, institutions and agencies to also establish policies relating to contract oversight. The policies and procedures established under this section defined the roles and responsibilities of persons assigned to administer, manage, monitor, or otherwise oversee state contracts. Ms. Bowen added that, per Representative Vander Woude's request, the draft also includes a section on reporting to the legislature when an officer or agency entered into a high-risk or high-dollar contract. And, finally, that high-risk and high-dollar contracts were defined in the last subsection.

- Co-chair Martin requested to know how many contracts were let above the suggested high-dollar mark (\$500,000.00); how many contracts were contested or disputed at that level; and how

many contracts there were annually in the state of Idaho. Mr. Bill Burns, Administrator of the Division of Purchasing (DOP), responded that it has always been difficult to define risk regarding contracts, so his office partitioned all of its contracts to understand what the values were. The DOP then created additional procedures for monitoring contracts over \$5 million. Mr. Burns said that doing so limited the number of contracts that the DOP had to monitor, but the number of contracts being monitored encompassed a huge dollar value, approximately 70% of the value of all the contracts. The DOP approached the monitoring from the dollar standpoint, rather than the risk standpoint. Mr. Burns added that, in his personal opinion, where risk was most often involved, beyond contracts of high-dollar, was in contracts on IT development. Mr. Burns explained that it can be difficult to define those, but that was where he witnessed the major risks in the delivery of services under such contracts.

- Co-chair Martin noted that the draft suggests \$500,000 as the high-dollar threshold; he asked Mr. Burns how many contracts would fall annually into that designation, if the language was left in the draft? Mr. Burns replied that he did not know, but he didn't expect it to be a terribly high number of contracts. Mr. Burns believed that most of the contracts his department monitors were below that value.
- Co-chair Martin observed that while high-dollar contracts can be easily quantified, high-exposure contracts were more difficult to define. Co-chair Martin asked whether Mr. Burns felt that IT development contracts would fall into that category the majority of the time. Mr. Burns responded that those contracts would fit that category, in his opinion.
- Ms. Bowen stated that, in defining high-risk contracts for the draft, she used language found in a memo from the federal government because she could not find any definition of high-risk contracts in language from Idaho or its neighboring states. Ms. Bowen reminded the committee that the language could be changed to read however the committee wanted it to be defined.
- Co-chair Anderson asked whether the DOP annual report to the legislature would be given to leadership, to the germane committees, or someone else? He also inquired as to what the legislative body would do with the report once it was received. Co-chair Anderson noted that he originally thought/remembered that the legislature once received a list of such contracts. Ms. Lockett, Senior Budget and Policy Analyst for LSO, acknowledged that, for the last two legislative sessions, the Department of Administration (DOA) has had intent language in its budget bill that asked the DOA to provide a report to the legislature that included a list of the contracts over \$1 million and asked for information on contract renewals. Ms. Lockett commented that such information does come monthly from the DOP, and she forwards that information to the JFAC chairman and, she believed, members of this committee. Ms. Lockett added that the intent language covers the requirement through the end of this fiscal year.
- Representative Vander Woude commented that, if each department has oversight, there should be a designated person who does the oversight for specific contracts, so that, when a citizen or vendor has concerns, it was clear who was to be contacted. Representative Vander Woude stated that he would like to see this requirement included in the rules.
- Mr. Riggins stated that he had a concern with (5)(b)(iii) [i.e. *A multi-year contract; or*]. He explained that his department awarded multi-year contracts within its delegated authority, which was \$100,000. He noted that his department probably has 30 to 40 multi-year contracts that were relatively low-dollar contracts, which would then be required to be part of this process. Mr. Riggins explained that he didn't object to multi-year contracts being characterized as high-risk, but that many multi-year contracts were of a lower value and didn't present what he considered a high risk to the agency or the state. Mr. Riggins felt it was a little broad to simply say "multi-year" because it would capture a lot of contracts that weren't really at risk.
- Co-chair Martin asked whether there was a difference between multi-year contracts and, for use of a better phrase, perpetual contracts? He inquired whether the state has perpetual contracts that were just ongoing and were of concern? Mr. Burns reported that there were a few contracts

that do have annual renewals; he added that of the department's portfolio of contracts, especially those over \$100,000, most were multi-year, so the statement (5)(b)(iii) was very broad in what it was trying to encompass.

- Mr. Riggins suggested combining the definitions of high-dollar and high-risk rather than making them both individual characteristics (i.e. "...high-dollar contracts that are high-risk...").
- Representative Nye pointed out that proposed subsection 67-9231 (1) states that "...the administrator shall formulate rules and establish policies..." and he suggested having an independent administrator or other person - such as a czar or ombudsman - who was independent of the agency to report and provide oversight before and after the contract was issued. He added that doing so would mean more staffing, but it would also mean it was independent and transparent. Representative Nye inquired whether that was indicated by the proposed language or if something more clear was needed. Ms. Bowen explained that the current suggested draft language did not require an independent person to monitor the contracts, aside from the legislature itself receiving reports. She said there had been an interest expressed to the committee in the establishment of an office of the inspector general and possibly giving that position responsibilities related to contract oversight; but that she felt it was not in her power to create such a position in this draft proposal without the committee's permission.
- Representative Vander Woude commented that he felt the people issuing the contracts would have the best of idea of how to establish the rules, guidelines, and some of the oversight on the contracts and then the committee could discuss later to whom those reports were submitted. He felt it was better for an independent person to establish all the procedures, rather than to have every agency establish different rules, to create uniformity. He observed that there was already intent language that states the agencies should be reporting such information and he'd like to see how the agencies were doing the reports.
- Senator Davis noted that this draft, DRELBO50, referring to "'agency' under section 67-9203" in subsection (2) was referring to Ms. Bowen's previously presented recodification draft DRELBO20 [http://legislature.idaho.gov/sessioninfo/2015/interim/151113\\_plaw\\_08BBowenDraft.pdf](http://legislature.idaho.gov/sessioninfo/2015/interim/151113_plaw_08BBowenDraft.pdf) from the November 13 meeting. Ms. Bowen agreed. Senator Davis then asked to what degree subsections (2) and (4) of DRELBO50 went back into constitutional officers other than the governor and his department and agencies. Ms. Bowen replied that it went back into all of them; she explained that it did not put those officers under the authority of the DOP, but it did require the officers to establish their own policies on contract administration, monitoring, management, and oversight. Senator Davis noted that subsection (1) of DRELBO50 states: "Subject to approval of the director..."; and he inquired who is the "director" in this reference? Ms. Bowen replied that the "director" in this reference is the Director of the Department of Administration, which would be defined in 67-9203 of the recodification bill DRELBO20 under DEFINITIONS. Senator Davis summarized that subsection (1) of DRELBO50 was attempting to align with language of DRELBO20; Ms. Bowen agreed with his statement. Senator Davis noted that the language of subsection (1), line 10, permits the department to promulgate administrative rules; Ms. Bowen agreed. Senator Davis then observed that subsection (2) of DRELBO50 states that those excluded from the definition of "agency" shall also establish policies and procedures relating to the administration, management, monitoring, and other oversight but that those rules do not need to go through the administrative process of approval by the legislature. Ms. Bowen agreed with Senator Davis' statement. Senator Davis then asked why those rules were not required to go through approval? Ms. Bowen explained that she did so in an attempt to avoid creating any problem with the separation of powers.
- Senator Davis stated that this draft required administrative rules to come to the legislature for consideration; and he asserted that these other constitutional officers were not exempt from legislative creation of certain responsibilities and the administration of their duties. Ms. Bowen replied that she understood that under the Idaho administrative procedures act not all of the

constitutional officers were required to submit their rules to the legislature for approval. Senator Davis then asked whether it was an intentional act in drafting to exclude the rules, but that the officers would have policies and procedures. Ms. Bowen confirmed that such statement was correct as the language was currently drafted, but that did not mean the language could not be changed for the final draft.

- Co-chair Martin asked whether it would be correct to say that this suggested contract oversight was to occur at the beginning of the process? Ms. Bowen replied that it would be ongoing. Ms. Bowen further explained that she was unable to find consistent definitions for contract administration, monitoring, and management and that what she observed in other states' laws was that state legislatures weren't comfortable defining these terms and were more comfortable allowing the procurement professionals to define them for themselves. She also observed that legislatures wanted to establish requirements, but trusted that the professionals knew better how to enforce them.
- Co-chair Anderson asked whether there was any connection in subsection (2) of DRELB050 between the establishing of policies and procedures independently in their agency versus the guidelines and direction that DOP would typically operate under without violating any law? Ms. Bowen replied that, as the draft was written currently, it would be an independent process; the exempt officers and agencies would not be subject to the policies and procedures of the DOP and would establish their own policies and procedures. Ms. Bowen suggested that the exempted entities might look to the DOP for guidance, but that the draft did not require the entities to do that. Co-chair Anderson inquired whether there could be significantly different procedures among the departments of state government? Ms. Bowen agreed that it was possible.
- Senator Den Hartog stated that, as she understands it, the constitutional officers currently aren't under the DOA and already have separate rules, policies, and procedures for contracting, so such a situation was not inconsistent with how things were currently done.
- Ms. Lockett cited an example of a past report that the DOP had put together for this committee in June. The report was about six pages in length and listed all the contracts, types of contracts, the start date, the expiration date, the contract length, who the vendors were, etc. Ms. Lockett suggested that if the committee requires a report from DOP that this could be an example of how it may appear. Ms. Lockett then submitted the report to committee members for review.
- Mr. Riggins noted that the DOP's share of the purchasing pie was relatively small in terms of the actual number of contracts. He reported that there were 43,000 contracts (per an August report) in place, so it was a huge administrative burden to monitor all of the contracts. Mr. Riggins commented that he liked Representative Nye's comment about having a dedicated office in place; not for monitoring or managing, but for taking in information, digesting the facts, and discovering where problems exist for future addressing. He felt that the sheer number of contracts would preclude an independent office from doing the monitoring or the management.
- Co-chair Martin stated that he didn't need to know about every contract in which the state was involved, but felt a need to know those that were of a high-dollar or high-exposure. He felt a need to know about those types initially for when someone challenges that contract. Co-chair Martin stated that it was more important to know when that could happen and to have a mechanism in place to assure individuals that his or her problem with the contract could be addressed. He commented that he was not opposed to the oversight, but that he was more concerned with the process of when a contract was challenged.
- Representative Bell asked where one went for the information? Ms. Lockett responded that there currently was not a central place to go, and that issue was part of the committee's initial meeting discussion. Ms. Lockett explained that, currently, one has to go to the DOP, the superintendent's office, each of the constitutional officer's offices, and the legislature; one could find the information but it would not be easy. Representative Bell reaffirmed her desire that the committee consider such a central location for information, a clearing house of some type, for that purpose.

- Representative Vander Woude requested that there be contact points/people within each agency who know the contracts related to the division. He stated that if a central person was established to be in charge of all contracts, that person would still have to go back to the agency for specific information. Representative Vander Woude commented that he would rather have a person from within the agency assigned to deal with questions for each contract because he did not believe the director or one statewide person could possibly answer all the questions that would arise.
- Co-chair Martin asked Representative Vander Woude how he would propose such information be collected and dispensed so that a legislator or a member of the public could view the contract information for high-risk, high-dollar contracts? Representative Vander Woude responded that he could see each administrator of an agency posting the high-risk, high-dollar contracts along with contact information for when anyone should have a question about a specific contract.
- Senator Den Hartog summarized that the committee was discussing two types of information gathering: 1) internal to the agency and 2) reporting to the legislature. She asked whether the DOP would have the capacity to be the central location/clearinghouse to gather that information and be the conduit from which individuals could request the information? Co-chair Martin piggybacked Senator Den Hartog's question by adding a request for Mr. Burns to provide details as to how information was gathered currently (i.e. does DOP know the high-dollar, high-risk contracts and could anyone look at those contracts)? Mr. Burns responded that the DOP does know those type of contracts because it was requested of individuals with delegated authority to report those types of contracts through IPRO. Mr. Burns continued to explain that when a contract was written by the person with delegated authority, then that individual owns the administration and the management; when the contract was written on behalf of an agency through the DOP, then the DOP owns the administration and the agency owns the management. Mr. Burns felt that the agency was the expert on that subject matter and hence that agency should monitor the contract. He explained that the rules proposed last year by DOP were rejected because of confusion as to ownership of the contract at specific points; he further explained that it was his office's desire to have a contract manager do the day-to-day monitoring. Mr. Burns responded that the designated individual could report information back to DOP as needed and was the accountable individual. Co-chair Martin restated that those proposed rules were rejected last year, and so those requirements were not currently in effect; he then asked whether the DOP would resubmit that language this year? Mr. Burns responded that it would depend on the work accomplished by this committee as to what would be submitted.
- Co-chair Martin asked Mr. Burns what it would take to report the requested information of high-dollar, high-risk contracts? Mr. Burns explained that it depended on the length of the information requested, and that the department currently reports contracts over \$1 million. Co-chair Martin inquired whether contracts that were in process and had been challenged could be reported? Mr. Burns explained that the current process required a letter of intent to be filed to the potential vendor and then a waiting period of five days occurs before the contract is awarded in the event of an appeal. Currently there was not a process to advertise that a challenge has been filed.
- Mr. Riggins asked whether Mr. Burns knew of a way to flag an existing appeal, termination of a contract, etc. in the current WebProcure program used by DOP, and could it then be linked to Transparent Idaho? Mr. Burns explained that he was not currently aware of using WebProcure in that manner, but it could be looked into.
- Co-chair Anderson inquired whether the concerns reported by OPE (Office of Performance Evaluations) in January 2013 regarding contract management were being addressed by this draft language? Ms. Bowen reported that the draft language does seem to address the majority of the items from that report's concerns, but it was not all-inclusive. She expressed a preference to have individuals with more expertise in procurement to assist in creating those rules. Co-chair Anderson asked whether the language requiring contract oversight wasn't already addressed by

rules? Ms. Bowen responded that rules proposed earlier by the DOP to mandate oversight through promulgation were rejected by last year's legislature; and if the committee proposed these ideas by way of draft legislation, it would be indicating to the rest of the legislature that this topic needs to be addressed.

- Co-chair Anderson commented that the DOP must be operating under *some* rules. Ms. Bowen explained that oversight was not required by law and so this language would make that requirement. She continued that some agencies have their own oversight, per recommendation of DOP, and this language would overrule those. Mr. Burns commented that, per that 2013 report by OPE, gaps in the process were discovered and addressed; mostly because law dealt with how contracts were let but not how the contracts were managed afterwards. Co-chair Anderson inquired whether approval of this draft language would give DOP the power to enact and enforce the rules? Mr. Burns stated that it would.
- Co-chair Martin asked whether the committee was comfortable with the limit of \$500,000 in the definition of high-risk, high-dollar contracts? Representative Vander Woude expressed his desire to make the limit at \$1 million or \$1.5 million. Mr. Burns commented that the committee needed to consider that the "value" of a contract had to be considered over the life of the contract (i.e. \$1 million over 3 years = \$3 million contract value.) Senator Lee supported the higher value in her comments and wanted to also emphasize the need to use the expertise of the agency's procurement officers.
- Representative Vander Woude expressed his desire to focus on training for those procurement officers. Ms. Bowen reminded the committee that there was a draft on training yet to be discussed.
- Senator Davis inquired whether subsection (1) was intended to modify subsections (2) through (5)? Ms. Bowen stated that it was not; subsection (1) was to allow the administrator of DOP to create rules for agencies; subsection (2) was to require those exempt agencies to create rules for themselves; subsection (3) applies to both; subsection (4) was a reporting requirement; and subsection (5) was to define what was required to be reported in subsection (4). Senator Davis asked if he was correct to conclude that the DOP still could not create the rules for exempted agencies per subsection (2)? Ms. Bowen stated that was a true statement.
- Co-chair Anderson expressed his concern about what was done with the information collected. Representative Nye shared Co-chair Anderson's concern. Senator Den Hartog expressed her desire to make sure the information on contracts was visible and transparent so that issues could be identified before things went awry. Mr. Burns reported that contracts regarding services often involved the most risk, and hence the rules presented last year focused on service contracts. Co-chair Anderson asked whether contracts involving IT were considered high-risk? Mr. Burns reported that most often when IT service contracts lasted over an extended amount of time, the contract would be considered such.
- After much discussion whether "high-risk" and "high-dollar" should be separated or combined, a suggestion was made to rewrite the language to reflect that the dollar amount be tied to the length of the contract. Senator Davis proposed a motion (with permission for Ms. Bowen to rework the phrasing) to:
  - create a 5[(b)](v) that specifically states "IT development contracts";
  - strike "high-dollar and high-risk" (line 23) and insert "**qualifying/qualified**";
  - restructure subsection (5) (line 33) to strike the (a) and (b) to then read:

[For purposes of this section] ", a qualified contract would apply to contracts valued at more than \$1.5 million and each of those contracts must meet at least one (1) of the following conditions:

(i) [as is]

(ii) [as is]

(iii) [as is]

(iv) [as is]

"(v) IT development contracts."

Representative Bell seconded the proposed motion.

- In discussion, Co-chair Anderson asked why the wording should not just be stated "a contract over \$1.5" for (5) or any one of the (i) items. Senator Davis expressed that his suggested wording would catch those criteria which have previously been of issue. Representative Vander Woude felt that it didn't matter if too many were reported, the goal was to get them reported and then other guidelines could be discussed as to how to weed through the reported contracts. Senator Lee recognized that this draft would be reworked by its assigned committee during the legislative session. The motion was approved by unanimous vote (8 ayes, 0 nays).

At 10:40 a.m., Co-chair Martin called for a ten-minute break.

At 10:50 a.m., Co-chair Martin called the meeting to order and asked Ms. Bowen to explain the next proposed draft (DRELB059).

**Draft 2 (DRELB059) - Delegation of Authority** Ms. Bowen explained how the committee had identified delegated authority as an issue that needed to be better defined by statute. She continued providing an overview of the draft: (1) to whom the administrator of DOP may delegate the authority; (2) limitations of the delegated authority; and (3) that the administrator shall create rules for delegated authority.

- Co-chair Anderson asked Mr. Burns to describe the current process for delegation of authority by DOP. Mr. Burns restated those requirements. Co-chair Anderson inquired how the delegation was sustained. Mr. Burns explained that the individual was required to prove competency. Co-chair Anderson asked Mr. Burns how an agency would prove competency; Mr. Burns felt that it would be more difficult to verify the competency. Senator Den Hartog expressed her support for an agency to be granted authority (as stated in DRELB059 (1)(b)) because of the delay in getting reestablishing it when an individual with delegated authority left an agency. Mr. Riggins felt that more risk was incurred in assigning it to an agency rather than an individual, due to accountability. Senator Lee expressed that those details could be addressed by agencies in the creation of rules.
- Co-chair Martin asked Ms. Bowen to explain how the delegation to an agency would play out; Ms. Bowen replied that an office may need such delegation even though the agency does not have a dedicated person - such as when a vacancy occurs. Representative Nye expressed that there was no need for the committee to get bogged down by this language (subsection (1)) because the key language was the "may" that existed in the paragraph. Co-chair Anderson stated that he agreed with Mr. Riggins' earlier statement of fearing unaccountability if given to an agency and that he didn't believe this was the best way to address the vacancy issue. Senator Den Hartog supported the language as provided. Ms. Bowen restated that the authority was not mandated but a possibility as Representative Nye observed.
- Senator Davis asked whether an individual granted delegated authority continued to possess that authority when a director of the agency or of DOP left employment? Ms. Bowen explained that such confusion would be addressed by subsections (2) and (3), which currently do not exist in statute. Senator Davis proposed that language be added in line 22 after "granted" so that it read: "...may be granted, **continued** or revoked;..." Representative Vander Woude expressed his support of the language because it helped the agencies understand what needed to be done, if anything, to continue the authority.

- Co-chair Anderson asked how individuals/agencies granted authority were monitored/supervised? Ms. Bowen explained that such issues could be addressed by rule, and they currently were addressed by rule. Co-chair Anderson asked whether such rules would be consistent across the agencies; Ms. Bowen replied that the rules could be if done correctly.
- Senator Davis restated his previously proposed language as a motion, the motion was seconded by Representative Bell, and the committee approved it by voice vote (8 ayes; 0 nays).

**Draft 3 (DRELB051) - Ethics in Procurement** Ms. Bowen next presented the draft language regarding ethics; following the draft, she included an outline of existing statutory provisions for ethical behavior relating to procurement. She explained that subsection (1) of DRELB051 was intent and applicability; subsection (2) covered unethical breach of conduct; subsection (3) covered penalties for agency staff; subsection (4) covered penalties for state officers; and subsection (5) applied to a vendor for unethical breach of conduct.

- Senator Davis asked whether language in lines 39-42 could be difficult for an officer to abide by without failing his/her constituents when asked for assistance? Ms. Bowen explained that the item was included to prevent questionable behavior when not otherwise allowed, as stated in lines 41-42; she added that such item was added per request to be specific about communication. Senator Davis asked whether paragraph (f) was necessary because he felt that the issue was addressed by the preceding paragraphs. Senator Lee commented that she liked the specific language (later she commented how it addressed the request for a "black-out" period where no contact was permitted for fear of influencing the contract). Co-chair Martin expressed that paragraph (d) addressed the "attempt to influence" and paragraph (f) addressed actual "communication." Mr. Riggins interpreted that paragraph (d) addresses the official, whereas paragraph (f) addressed the vendor's attempt to influence. Ms. Bowen commented that, as the committee's analyst, she felt that paragraphs (a) through (e) were comprehensive and covered the undesired behavior that the committee wished to deter. Representative Vander Woude and Senator Den Hartog commented that the language of paragraph (f) was all about perception, but in truth, perception (poor perception) was what caused the formation of this committee.
- Ms. Bowen proposed altering the draft language to read:
  - for subsection (2), at line 27, to begin: "**In any matter relating to state procurement, it is an unethical.....**";
  - in paragraph 2(b), at line 30, change it to read: "Act in a manner that constitutes a ~~criminal offense under any provision of law~~, **misdemeanor or felony**, including chapter 13, title 18, Idaho Code"; and
  - for subsection 2(f), delete lines 39-42 as presented, and insert: "**Act in violation of rules relating to communication with state officers or employees during the solicitation period.**".

Ms. Bowen explained that the first change would limit unethical behavior only as related to state procurement (not random unethical behavior); and the second change would address/align with existing contract law that currently prosecutes at a misdemeanor level but does not include civil infractions.

- Senator Davis expressed his desire to further tighten the language regarding the term "communication" before he could give the language in subsection 2(f) his blessing.
- Co-chair Anderson asked whether, in subsection (3), the term "may" was correctly used? Ms. Bowen responded that the use of "may" allowed for other existing statutes to be considered and/or not overridden.
- Co-chair Anderson asked Ms. Bowen to describe the allotted time frame for a vendor being disqualified as discussed in subsection (5). Ms. Bowen explained that the time frame was



explained in the codified draft DRELB020 in section 67-9215 for a period of not less than 6 months and not longer than 6 years, which was current statute.

- Co-chair Martin directed the committee's focus back to lines 39-42. Senator Lee felt the language was still necessary but agreed that it still needed to be reworked. No other comments were voiced.
- Senator Davis expressed concern for creating fear for an employee to act in regards to the penalties listed in subsections (3), (4), and (5). Ms. Bowen counseled that if criminal penalties were not addressed here under procurement laws then amendments for defining would need to be made in other statutes. Senator Davis asked whether other states addressed such procurement violations? Ms. Bowen reported that she did not consult other states' laws because the items were already defined in Idaho statute.
- Co-chair Martin concluded from the committee members' lack of overwhelming support that this draft (DRELB051) was not ready to be approved as it stood. Ms. Bowen asked if the committee wanted more change regarding criminal intent language? Representative Vander Woude responded that he did desire to see language that addressed incompetency or criminal intent, possibly through promulgated rules.

Co-chair Martin restated that the committee wanted more work on this draft before approving. The committee decided to continue working through the remaining drafts without a break.

**Draft 4 (DRELB052) - Multiple Awards** The next draft (DRELB052) discussed dealt with multiple awards, and would replace the previously presented language regarding multiple awards (as created by section 67-9209 of DRELB020). Ms. Bowen explained that the section allows for multiple vendors to be awarded portions of a contract for fulfillment of the solicitation.

- Senator Davis asked what factors were involved when the administrator was justifying multiple awards and were those factors established? Mr. Burns explained that such awards were based on the administrator's judgment.
- Senator Den Hartog asked how this version of 67-9209 differed from the current statute? Mr. Burns explained that the terms "similar" and "same" had been eliminated because the terms were difficult to define and defend.
- Senator Davis asked whether this current version of 67-9209 (DRELB052) was to completely replace the version of 67-9209 from DRELB020? Ms. Bowen stated that it would. Representative Vander Woude commented that the current language was too vague and did not provide adequate guidelines for making that judgement. Ms. Bowen asked whether the committee and Mr. Burns felt that language from the 67-9209 of DRELB020 (page 6 for DRELB020 and page 22 of the accompanying notes) could be inserted into DRELB052's 67-9209 following the end of line 15 to read: [taken from subsection (4) of DRELB020] "A multiple award of a contract for property under this section shall not be made when a single bidder can reasonably serve the acquisition needs of state agencies." She felt that, in so doing, the language would be more limited and not as open to the whim of the administrator. Mr. Burns commented that he would be amenable to the suggestion.
- Senator Den Hartog asked whether the possibility of a contract being portioned was explained in the initial solicitation? Mr. Burns stated that it was; but noted that it was not often portioned regionally but by services or provided goods. He added that, when that was a possibility, a vendor was permitted to provide a bid in whole and in part under the solicitation.
- Ms. Bowen restated her earlier language proposal at the request of Co-chair Martin, and offered additional language as suggested by Ms. Lockett to read: "In such instances as, but not limited to: [from subsection (1) of DRELB020, 67-9209] (a) To furnish the types of property and quantities required by state agencies; (b) To provide expeditious and cost-effective acquisition of

property for state agencies; or (c) To enable state agencies to acquire property that is compatible with property previously acquired."

- Senator Davis expressed his concern that including the proposed paragraphs (a), (b), and (c) from the original DRELB020, section 67-9209, did not then adequately allow small companies to compete with larger, possibly non-Idaho based companies, and therefore he did not want to include that language in the newer draft.
- Ms. Bowen asked the committee whether the members wanted new language regarding multiple awards, but just not the language as presented in today's draft (which was drafted with assistance from DOP.) The committee members agreed with her statement. Ms. Bowen asked the members to offer/provide language that the committee wanted to see in the draft. Senator Davis suggested that Ms. Bowen consider phrases from the current ABA model code, such as "practicable," "advantageous," or "illustrations of best interests." He commented that there must be language out there in other states or the ABA that could meet the committee's desired phrasing.
- Co-chair Martin suggested that the committee was not ready to approve the provided draft and that the committee should move on to the other drafts.

**Draft 5 (DRELB053) - Open Contracts** Ms. Bowen explained that this draft would replace the language provided earlier by DRELB020's section 67-9214. She explained that the language was suggested by the DOP to open up the earlier limitations of when an entity may be excused from the open contract.

- Senator Den Hartog commented that this language addressed the requests of many who testified about having more flexibility in the procurement process.
- Representative Vander Woude requested a requirement that a report be filed that detailed how many exemptions were requested, how many were granted or denied, and for what reasons for the purpose of better understanding how the proposed changes have been helpful.
- Co-chair Martin asked whether the committee had any objections to the language as presented; no objection was made. Co-chair Martin then stated that the committee was not accepting the draft as written—because others had additional ideas to add at a later time—but that the committee was ready to move to the next item.

**Draft 6 (DRELB054) - Procurement Training** Ms. Bowen explained that both DOP and OPE had identified training for procurement officers as a weakness in the current process; this draft was new language to address that weakness and would be included in the recodification draft DRELB020. She explained that there needed to be different levels of training with respect to the different levels of procurement.

- Co-chair Anderson asked whether this draft language provided the authority for DOP to provide training and whether the draft language required staff to take the training? Ms. Bowen replied that both situations were included. Co-chair Anderson inquired whether the draft language required continued training? Ms. Bowen responded that it did not, but of course it could be included; such as inserting the phrase "including continued training when necessary".
- Senator Davis suggested that the two subsections be combined as one subsection, so as not to stand alone, or the language be more simplified for future consideration.
- Having no other discussion, Co-chair Martin directed the committee to the next draft.

**Draft 7 (DRELB060) - House Concurrent Resolution** Ms. Bowen explained that this draft of a House Concurrent Resolution would request the continuance of the Purchasing Laws Committee for the 2016interim. Ms. Bowen noted that the HCR could be redrafted to be very specific as to what issues the committee should address in its continuance. No other discussion occurred about the HCR.

Co-chair Martin brought to the committee's attention the receipt of a package of information from Representatives Boyle and Gannon, which was included in today's member packets. Senator Davis commented on the letter and additional documents that requested the committee to consider the Representatives' proposal.

Representative Nye made a motion to adjourn the meeting. Ms. Bowen requested the date of the next meeting be established. Co-chair Martin suggested the next meeting date be Thursday, January 14, 2016, from 3-6 p.m. Co-chair Martin then adjourned the meeting at 1:01 p.m.