

# Strengthening Contract Management in Idaho

Evaluation Report  
January 2013

Office of Performance Evaluations  
Idaho Legislature



Report 13-02

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Elaine Smith

Rakesh Mohan, Director  
Office of Performance Evaluations

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# Office of Performance Evaluations Idaho Legislature

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**Rakesh Mohan**  
Director

January 15, 2013

**Joint Legislative  
Oversight Committee**

Members  
Joint Legislative Oversight Committee  
Idaho Legislature

**Senators**

Dean M. Mortimer,  
cochair  
Clifford R. Bayer  
Elliot Werk  
Les Bock

Effective contract management is essential to ensuring that public funds are spent appropriately. In this evaluation, we found that Idaho's structure for contract management falls short in protecting the state's interests in two key areas—training and monitoring.

**Representatives**

Shirley G. Ringo,  
cochair  
Maxine T. Bell  
Gayle L. Batt  
Elaine Smith

The recommendations we provided to the Division of Purchasing (within the Department of Administration) and the Legislature are intended to strengthen contract management through additional training and statewide contract monitoring. In response, the director of the Department of Administration indicated that carrying out these recommendations will require additional authority and resources. The Legislature might want to consider whether providing specific statutory authorization and allocating additional resources would ensure effective implementation of these recommendations.

We thank Division of Purchasing staff for their assistance with the evaluation, and we thank contract management staff at agencies for their participation in our survey. Formal responses from the Governor and the Department of Administration are included at the end of this report.

Sincerely,

A handwritten signature in blue ink that reads "Rakesh Mohan".

Rakesh Mohan



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## *Executive Summary*

# **Strengthening Contract Management in Idaho**

Efficient and effective state government relies in part on successful contracts with vendors to provide goods and services; contracts can play a vital role in helping agencies meet their mission. Idaho state agencies spend hundreds of millions of dollars each year on contracts for goods and services. Making sure that these contracts are well written and properly managed helps ensure public funds are spent appropriately. When contracts are not successful, the potential consequences are high. Delays, changes in deliverables, and increased costs can have a major impact on agency operations and the public trust.

Contracting in Idaho relies on a partnership between the Division of Purchasing (within the Department of Administration) and the contracting agency. The division's role is to generally work with the agency on contract development and award once the agency has determined a need for a contract. After the award, agencies are responsible for ensuring that timelines, budgets, and deliverables align with contract terms. For this partnership to work, all state agencies have a responsibility to ensure that the goods and services they receive align with the terms of the contract. At the same time, policymakers have a responsibility to ensure that public funds are spent effectively and that agencies are adequately trained to manage their contracts once they have been awarded.

We found that contract training among agencies is inconsistent and that Idaho provides no formal framework for contract monitoring. Agencies have a significant amount of autonomy in managing their contracts with very little accountability at the state level. Through additional staff resources at the Division of Purchasing and by requiring agency training and statewide contract monitoring, Idaho can better balance autonomy, efficiency, and accountability throughout the life of its contracts.

## **Training Is Key to Increasing Idaho's Capacity for All Elements of Contract Management**

The concept of best practices for contract management is not new, nor is it unique to Idaho. Several organizations, including the NIGP: The Institute for Public Procurement, the National Contract Management Association, and the National State Auditors Association, have created checklists for agencies to use as a best practice framework. However, the benefits of any framework are

limited by the capacity of a state or agency to align its operations with the framework. Developing rules, guidelines, and requirements that align with best practices means little if the state does not have the capacity to implement them. For the checklist to be effective, roles and responsibilities of the agency, the purchasing office, and the vendor must also be clearly defined for each contract.

The Idaho Division of Purchasing offers training to agencies on a range of contracting topics. However, most agencies are not required to receive any training on how to develop contracts, monitor them once awarded, or close them out once complete.<sup>1</sup> In our survey of agency staff who are involved in at least some aspect of contract management, we found that not all staff have received training from the Division of Purchasing and that some staff reported receiving no training at all. Both agency staff and division staff listed additional training as a primary means to improve the contracting process in Idaho.

## **A Formal Structure for Contract Monitoring Will Help Improve Accountability Statewide**

According to NIGP, contract monitoring is a critical component to reducing problems commonly associated with various types of contracts. However, Idaho Code and Administrative Code are silent on the structure and role of proper contract monitoring. As a result, Idaho does not have a formal, state-level mechanism to provide agencies with guidance on proper monitoring throughout the life of a contract. For example, we issued a report in 2011 that focused on delays in Medicaid claims processing following the Department of Health and Welfare's transition to a new Medicaid claims processing system. We found that the system began processing claims before all interim deliverables had been met, which then raised questions about how well the contract had been monitored.

Within Idaho's existing statutory structure, the Division of Purchasing lacks the ability to expand its role and begin formally partnering with agencies to monitor contracts. A lack of state-level support in the contract monitoring process leaves agencies open to risk when contracts are either poorly written or poorly managed. Dedicated contract monitoring staff within the division could not only help increase the capacity of agencies to manage their contracts, but also help reduce the likelihood of major contract problems such as delays or unacceptable deliverables. Given the important role contract monitoring plays in a successful contract, we also recommend that the Legislature and the division consider adding standardized monitoring requirements to Idaho Code and Administrative Code.

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<sup>1</sup> The Division of Purchasing does require training for agencies to maintain their delegated authority, which is discussed in chapter 2.

Adding contract monitoring requirements would strengthen the contracting structure for most agencies, but would have no impact on those agencies that are exempt from the division's requirements. To help hold all agencies accountable for properly monitored contracts, regardless of whether they currently follow the Division of Purchasing requirements, the Legislature should consider requiring all agencies to participate in relevant training and develop specific policies and procedures for contract development, monitoring, and closeout.

## **Acknowledgements**

We appreciate the cooperation and assistance we received from the Division of Purchasing. We also appreciate the assistance we received from the Department of Health and Welfare, the Department of Lands, the Transportation Department, and the Office of the Attorney General.

Amy Lorenzo of the Office of Performance Evaluations conducted this evaluation and Margaret Campbell was copy editor and desktop publisher. Dr. Kathleen Sullivan, visiting professor and former director of the Center for Educational Research and Evaluation at the University of Mississippi, conducted the quality control review.



# Introduction

## Legislative Interest and Study Focus

Successful public procurement of goods and services relies on clearly communicated expectations and well-defined roles and responsibilities among the contracting agency, the vendor, and the Idaho Division of Purchasing within the Department of Administration. Over the past seven years, our office has conducted two evaluations that focused on some of the consequences of contracts that were poorly written or poorly managed, or a combination of both.

In 2006 we released our report *Idaho Student Information Management System (ISIMS)—Lessons for Future Technology Projects*, which examined the failed partnership between the Idaho Department of Education and the J. A. and Kathryn Albertson Foundation to create a statewide student information system. The impacts of the failed partnership were far reaching, costing millions of dollars and leaving many districts mistrustful of the department and future IT projects.

In 2011 we released our report *Delays in Medicaid Claims Processing*, which focused on the contract management issues associated with the Department of Health and Welfare's transition to a new Medicaid claims processing system. Problems with the new system eroded public trust and created significant financial difficulties for Medicaid providers.

After the release of our report on delays in Medicaid claims processing, legislators expressed concerns that Idaho's contracting structure left the state vulnerable to cost and performance issues with future contracts. As part of their study request, legislators highlighted large-scale projects in education and human services that had either recently started or were scheduled to begin in the near future.

## Methodology

Rather than conduct another evaluation of a specific contract, this study examined the framework of Idaho's contracting process to identify any areas for improvement and to more closely align Idaho with existing best practices. Our

study was designed to better understand how agencies develop, monitor, and close out contracts and then determine how, if at all, the Division of Purchasing and agencies could further improve the process for developing, awarding, and monitoring contracts.

The contracting process begins with an agency's determination that it has a need to contract for a good or service, and the process should end with the terms and conditions of the contract being successfully met. To understand this process in Idaho and from a national perspective, our evaluation included a range of research methods:

- Reviewed national publications to identify best practices in contract management, including guidelines by the Government Accountability Office, the National Contract Management Association, the National State Auditors Association, the NIGP: The Institute for Public Procurement, and the National Association of State Procurement Officials
- Researched contracting practices in Arizona, Georgia, Kentucky, Minnesota, Montana, Nevada, Oregon, Texas, Utah, and Washington to better understand contracting practices outside of Idaho
- Analyzed survey responses from 220 state employees (representing 33 agencies) who are involved in at least some aspect of contract management to learn more about contracting at different agencies and to better understand the strengths and weaknesses of the current process
- Surveyed all eight purchasing officers at the Division of Purchasing to better understand their workload and the challenges they face in working with agencies throughout the contracting process
- Interviewed contracting staff at the Department of Health and Welfare, the Department of Lands, and the Transportation Department to learn more about how contracting processes vary by agency
- Compared Idaho Code, Administrative Code, and state procurement guidelines with recommended best practices to identify any areas for improvement
- Attended a pre-proposal conference to observe potential vendors' responses to a request for proposal for the Idaho Students Come First Mobile Computing Initiative
- Analyzed data from the Division of Purchasing to identify any trends or reasons associated with contract amendments

## **Study Scope**

Our study looked only at those purchases processed according to rules of the Division of Purchasing (see appendix A for study scope). We further narrowed our study based on the following criteria:

- We focused our study on the procurement process for large purchases (more than \$100,000) that were awarded using a request-for-proposal process.
- We did not evaluate the contracting structure of the Division of Public Works, which is a separate entity and responsible for a wide range of facility projects that includes new buildings, improvements, and renovations.
- As discussed in chapter 1, Idaho Code § 67-5716 outlines a number of entities that are exempt from the rules of the Division of Purchasing and were not part of our study. Exempt entities are the legislative and judicial branches of government, the Attorney General, the Governor, the Lieutenant Governor, the Secretary of State, the State Controller, the State Treasurer, and the Superintendent of Public Instruction. Boise State University is currently excluded from the rules of the Division of Purchasing
- Although not specifically identified as exempt under the same section of Idaho Code, the Department of Lands has created its own procurement procedures and does not use the Division of Purchasing to conduct its solicitations. The department does not maintain its contracting information using the division's e-procurement system.<sup>1</sup>

## **Report Organization**

We have organized our report into three chapters:

Chapter 1 provides examples of a best practices framework and recommends that the Division of Purchasing develop and incorporate a checklist for best practices into its contracting processes.

Chapter 2 outlines Idaho current process for contract development and award, including roles and responsibilities of the agency and the Division of Purchasing.

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<sup>1</sup> According to the department, it has the authority to enter into contracts pursuant to Idaho Code § 58-104. In our review, we found this language to be similar to the authority granted to other agencies, such as Veteran's Services, which do work with the Division of Purchasing.

The chapter highlights the relatively limited role of the Division of Purchasing and provides recommendations to agencies and the division that would expand contract training requirements statewide.

Chapter 3 examines how closely Idaho's contract monitoring structure aligns with best practices. The chapter provides recommendations to strengthen Idaho's contracting structure by developing a statewide contract monitoring system.

## **Chapter 1**

# **Best Practices Framework**

To better understand how and where Idaho could make improvements to its contracting structure, we first identified whether a national framework of best practices existed. We found that a number of entities have created best practices documents to guide agencies through the contracting process. These documents often follow similar themes and are designed to strengthen the decision-making process by giving agencies tools to better develop and manage their contracts.

### **Idaho’s Contracting Framework Does Not Align with Best Practices in Two Key Areas**

An interest in developing best practices for contract management is not unique to Idaho. Frameworks at the state and national levels are designed to help ensure contract terms—including timelines, budgets, and deliverables—are met and public funds are spent appropriately. In our review of existing best practices, we found that a number of state and national organizations have recently conducted studies and that many of them have created tools for agencies to use as they administer contracts.

To better understand the role a best practices checklist can play in managing contracts, we reviewed several checklists, including the National Contract Management Association (NCMA), NIGP: The Institute for Public Procurement, and the National State Auditors Association (NSAA). Each association has released best practices checklists that outline key considerations in developing a procurement system that is efficient and effective. Checklists such as these, which are discussed in the next few pages, can serve as a valuable tool for agencies and the Division of Purchasing when making contracting decisions.

As discussed throughout our report, the successful development and implementation of any checklist in Idaho depends in part on whether agencies and the division can increase their training and oversight capacity, particularly as it relates to contract monitoring and close out. Further, the use of any checklist must first rely on clearly defining roles and responsibilities for the division, the agency, and the vendor for each contract. The checklists, which the division may reference as it creates its own checklists, are listed in their entirety as appendices B, C, and D.

## ***Decision to Contract***

NSAA recommends the following steps before an agency pursues a contract with any vendor:

- Analyze the agency needs, goals, objectives, and services and determine whether the service is necessary
- Conduct a cost-benefit analysis and evaluate options, such as whether contracting is more or less expensive than using agency staff
- Determine whether state law either prohibits contracting for services or requires the agency to demonstrate its need to contract

In Idaho, the initial decision to contract is made by the agency. The Division of Purchasing does not begin working with the agency until after the need for a good or service has been identified. According to division staff, initial decisions to contract should be made by the agency because individual agencies have the best sense of their needs and capacity to provide specific services.

## ***Planning***

Proper planning provides the foundation for contract award and monitoring. Planning identifies what services are needed, when they are needed, and how they should be provided. Proper planning allows agencies to make informed decisions about what information will eventually be included in their request for proposals. In Idaho, making informed decisions means agencies must have a good understanding of the state's procurement system, including the laws and rules that govern procurement; both the division and agencies must also ensure that roles and responsibilities are clearly defined for each contract. The NIGP: The Institute for Public Procurement notes that roles and responsibilities should be determined early so that members of the contract team know their authority, limitations to their authority, and understand the importance of communication and coordination among the team.

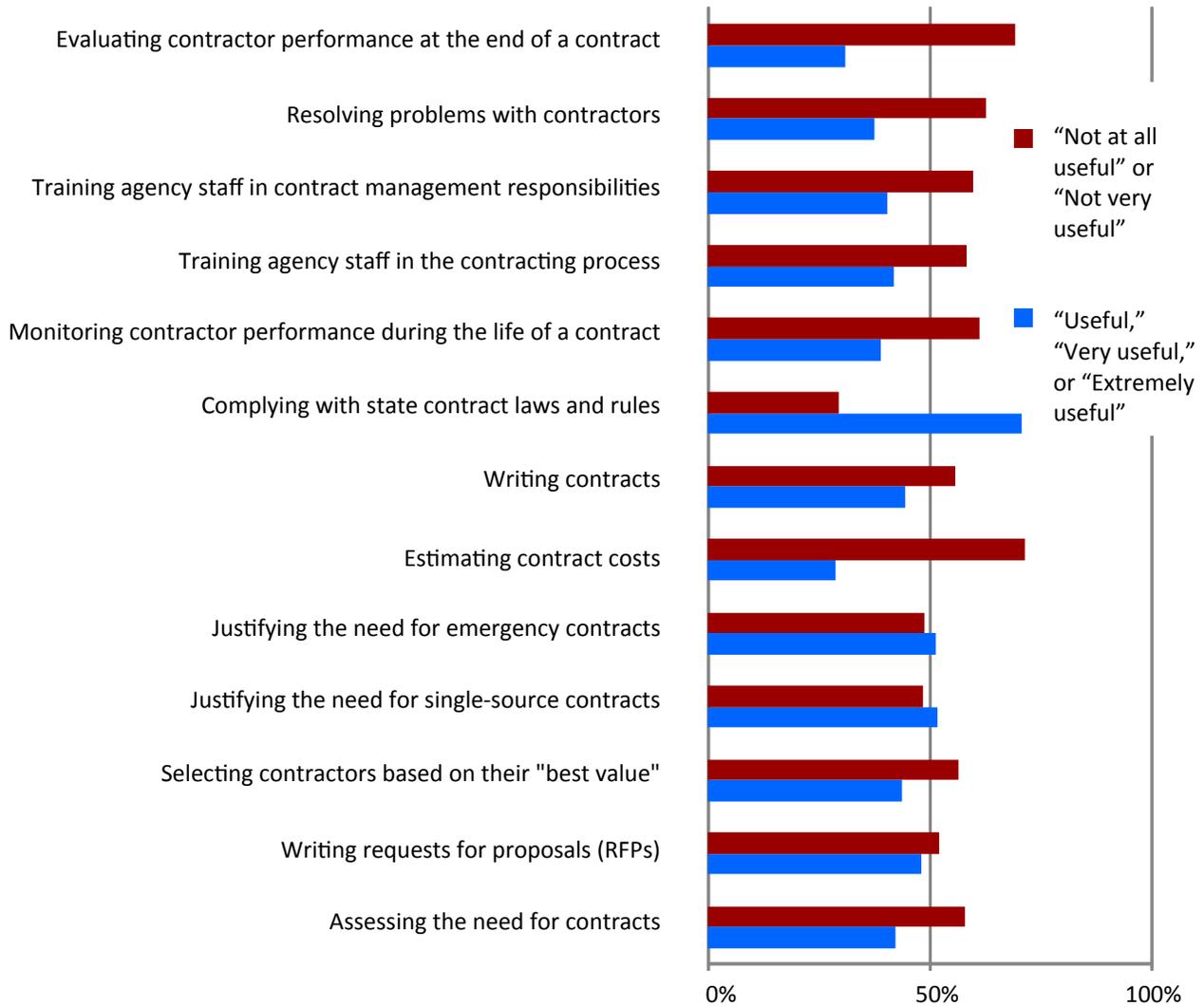
Agencies do not generally find Idaho Code and Administrative Code to be useful throughout the contracting process.

As part of our evaluation, we surveyed agency staff throughout the state who are involved in at least some aspect of contract management (see appendix E). We asked them how useful Idaho Code and Administrative Code are in providing information on specific elements of the contracting process. As shown in exhibit 1.1, more than half of the respondents indicated that Idaho Code and Administrative Code are “not at all useful” or “not very useful” for 10 of the 13 elements.

These responses were supported by purchasing officers at the Division of Purchasing. In our survey of officers, respondents indicated that complying with state contract laws and rules was one of the elements most likely to create challenges for agencies (see appendix F). In our review of Idaho Code and Administrative Code, we found that not all elements of contract development and award were clear. In addition, we found little or no mention of monitoring requirements once the contract was awarded. Chapter 3 further discusses the importance of monitoring a contract.

**EXHIBIT 1.1 USEFULNESS OF IDAHO CODE AND ADMINISTRATIVE CODE TO AGENCIES**

Using your own experiences, please rate how useful Idaho Code and Administrative Code are in providing information in each of the following areas:



Source: Office of Performance Evaluations’ survey of agencies.

Note: N=176

A lack of clear, comprehensive language that outlines the entire contracting process makes it difficult for agencies to properly develop, award, and monitor their contracts using a standardized, statewide framework. In interviews with the Office of the Attorney General, officials agreed that a restructuring of Idaho Code and Administrative Code could provide agencies with more clear information about the procurement process.

We asked agencies how much they rely on Division of Purchasing documents for specific elements of the contracting process. As shown in exhibit 1.2, agencies were divided on how and when they relied on division documents. The lack of consistency among responses may suggest that division documents are not as helpful as they could be in guiding agencies through the planning process.

### ***Request for Proposals***

When developing a request for proposals (RFP), NSAA recommends that agencies clearly state the scope of services to be provided, including a statement of work that flows from a business-needs analysis and that presents a logical plan to address the stated needs. Agencies should also clearly state the evaluation criteria and weighting factors for scoring proposals. According to NIGP, four basic mechanisms can be implemented when developing an RFP that will shape the overall administration of the contract:

- Writing effective contract specifications
- Determining the acquisition method
- Determining the type of contract pricing
- Determining the type of delivery requirements

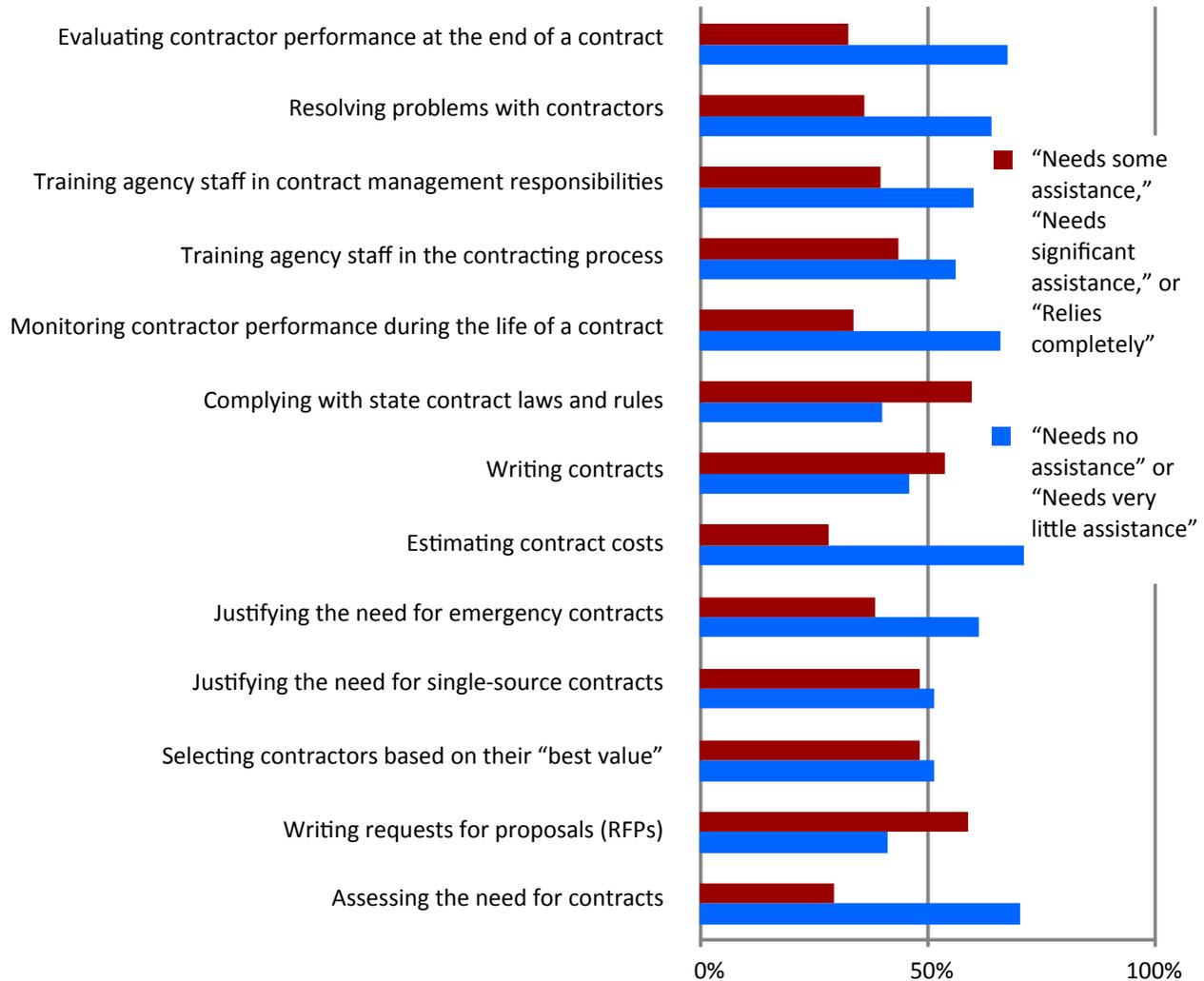
We found that Administrative Code outlines many of the RFP elements identified in best practices and that the Division of Purchasing guidelines more clearly explain the components of the RFP process. Because this study did not review any one particular agency or contract, we did not evaluate whether all contracts that were awarded through an RFP followed best practices or the guidelines set forth by the division. The RFP process for large contracts is described in more detail in chapter 2.

### ***Award Process and Decision***

Evaluation methods should ensure that vendor proposals are responsive to an agency's needs. The methods used to evaluate proposals should be applied consistently and objectively and should be fair in awarding contracts to responsible vendors. Without proper awarding practices, the state has little assurance that an agency has selected the most qualified vendor at the best price. NSAA highlights several key steps to ensure a solid, defensible award, such as confirming that an adequate number of proposals are received and that procedures are established for handling late or incomplete proposals. NSAA also

**EXHIBIT 1.2 AGENCY RELIANCE ON DIVISION OF PURCHASING DOCUMENTS**

Using your own experiences, please rate how much your agency relies on Division of Purchasing documents in each of the following areas:



Source: Office of Performance Evaluations’ survey of agencies.

Note: N=187

recommends carefully controlling proposals upon receipt to ensure they are not opened prematurely to give late bidding vendors confidential pricing information. According to NCMA, however, the quantity of bidders does not always translate to the quality of the bids received. A large number of less-qualified submissions may actually complicate the decision-making process.

Administrative Code clearly outlines the requirements for accepting and opening both bids and proposals, as well as outlines the provisions for submissions that are late, incomplete, or unacceptable. However, agencies in Idaho have some discretion when making award decisions. For example, agencies are required to disclose their criteria for reviewing proposals but have the flexibility to determine how to weigh different elements of the proposals.

### ***Contract Provisions and Performance Requirements***

NCMA recommends that agencies conduct a pre-performance conference or project kick-off meeting to review contract terms and conditions before work begins. NSAA reinforces the importance of clear contract provisions and specific performance requirements, including:

- Clearly state and define the scope of work, contract terms, allowable renewals, and procedures for any changes.
- Provide the specific measurable deliverables and reporting requirements, including due dates.
- Describe the methods of payment, payment schedules, and escalation factors if applicable.
- Tie payments to the acceptance of deliverable or the final product, if possible.
- Include positive or negative performance incentives.
- Identify the staff who will be responsible for monitoring vendor performance. Ensure that sufficient staff resources are available to manage the contract.

As discussed throughout the report, the division's role during the contract development and award is primarily advisory. For each of the elements on the checklist to be effective, the division staff and agency staff must work together to ensure the checklist is considered as the contract is developed and awarded. As mentioned, roles and responsibilities among the division, the agency, and the vendor should be clearly defined and the checklist should be modified based on each individual contract.

In our survey of agencies, we asked contract staff to identify which aspects of the contracting process do not work well for their agency. The most commonly provided responses were concerns that the contracting process is too slow and cumbersome. However, as outlined in chapters 2 and 3, agencies are not consistently trained in navigating the contracting process, which may be contributing to some of the perceived inefficiencies.

## ***Monitoring***

In 2003, the Minnesota Office of the Legislative Auditor released a report that examined the state's approach to professional contracting. In terms of contract monitoring, the report noted that "statute specified that agencies must diligently administer and monitor the contracts they have entered into...." The report provided three key principles for agencies to follow:

- Maintain expertise within the agency to effectively manage vendors
- Periodically evaluate the progress of the contract and determine whether it is prudent to continue
- Follow up on results of monitoring reviews, audits, and investigations

As shown in appendix C, the NSAA checklist also highlights key considerations for a contract once it is awarded. NSAA recommends that, after contract completion, agencies should evaluate the vendor's performance against a set of standard criteria and retain the record of contract performance for future use.

Idaho does not have a statewide framework for contract monitoring, which is further discussed in chapter 3. Proper contract monitoring is essential to ensure that state dollars are spent properly and that the agency receives the goods and services as outlined in the contract. Because we did not evaluate any specific agency or contract, we did not determine how closely agency monitoring practices align with the best practices framework.

## ***Closing Out the Contract***

As the final step of the monitoring process, NSAA recommends that agencies complete closeout reports after a contract ends in order to identify any lessons learned and further analyze how well the contract met the needs of the agency. Of those who responded to our survey, 65 percent indicated they are responsible for closing out contracts after they are complete. According to NCMA, few organizations pay sufficient attention to contract closeout activities, which are vital to the success of a contract.

NIGP recommends a contract closeout checklist to ensure all required documentation is in the contract files. An example of a checklist for closeout reports is provided in appendix D. For closeout reports to be meaningful, the agencies need to ensure that any finding or issues identified in the closeout reports are appropriately disseminated among relevant staff and then used to further build the agency's contracting capacity. As noted in a recent report released in Minnesota, proper closeout and review help agencies identify any lessons learned and provide an opportunity to review the entire contracting process with a more critical eye.

## Not All Agencies Are Subject to Division of Purchasing Requirements

State contracting in Idaho generally takes place by the individual agency purchasing a particular good or service, often with support and guidance from the Division of Purchasing throughout the initial contract development and award. Idaho Code § 67-5716 defines agencies as “all officers, departments, divisions, bureaus, boards, commissions, and institutions of the state, including the Public Utilities Commission.” These agencies are required to follow the Division of Purchasing requirements for their procurements.

Idaho Code § 67-5716 excludes several entities from the definition of agency, which then exempts these entities from the requirements of the Division of Purchasing: legislative and judicial branches of government, the Attorney General, the Governor, the Lieutenant Governor, the Secretary of State, the State Controller, the State Treasurer, and the Superintendent of Public Instruction.<sup>1</sup>

Agencies that are exempted from the Division of Purchasing requirements must develop their own guidelines for contracting and may not benefit from the expertise and assistance of the division. Through the course of our study, we met with the Department of Lands and the Transportation Department. Both agencies noted that they work with the division on some issues. Staff at the Department of Lands, which issued more than \$10 million in contracts in fiscal year 2012, noted that many of its policies and procedures mirror the division’s requirements.

Because we did not conduct a study of specific agencies or contracts, we did not examine the contracting structure of exempted agencies, such as the Superintendent of Public Instruction. Our 2006 report *ISIMS—Lessons for Future Technology Projects* was prompted by concerns from legislators that the project, which was a partnership between the Idaho Department of Education and the J. A. and Kathryn Albertson Foundation, was not properly developed or monitored. The study raised questions about the department’s capacity to manage future IT projects. For example, inspections of district networks and their network connectivity capacity did not take place until 2004, three years after the contract had been awarded. Because specific language was not part of the contract developed by the Department of Education, contract staff were not allowed to assist districts in addressing connectivity issues.

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<sup>1</sup> Idaho Code § 67-5728 exempts postsecondary institutions that have developed policies and procedures approved by the Board of Education. This temporary section of Idaho Code is in effect until July 1, 2013.

## **Strengthening Idaho's Contracting Process Goes Beyond a Best Practices Checklist**

The best practices framework outlined in this chapter is only as valuable as the number of agencies that are willing to consider its elements when making contracting decisions. The value of any checklist is also limited by the skills and abilities of individuals who play a role in the contracting process. As outlined in chapter 2, the majority of agencies in Idaho are not required to participate in any state-level training to properly manage contracts after they are awarded. The value of any checklist is further diminished by Idaho's statutory framework that allows a number of state entities to enter into contracts with no statewide guidance, framework, or requirements. Without proper training, a checklist will do little to ensure contracts are properly written and managed.

The checklist examples we have provided in the appendices highlight key elements of the contracting process from a variety of sources. Because this framework may not apply to all contracts or all agencies, we recommend that Idaho develop its own document in conjunction with the training and monitoring requirements we have outlined throughout the report.

Given the important role that incorporating best practices may eventually play in strengthening Idaho's contracting structure, we also recommend that policymakers consider requiring the implementation of best practices for all agencies, including agencies that are exempt from complying with Division of Purchasing requirements. Holding every agency accountable for sound contracting decisions will help ensure integrity and transparency for all contracts, not just those awarded through the Division of Purchasing. Well written and properly managed contracts allow agencies to maintain flexibility and autonomy in making contracting decisions and ensure taxpayer dollars are spent efficiently and effectively.

### **Recommendations**

**Recommendation 1.1:** The Division of Purchasing should develop and then formally incorporate a best practices checklist and a closeout checklist into its training materials. The division should distribute its checklists to all agencies as a reference tool when making contracting decisions and as a tool to ensure contracts are properly closed. The development of the checklists should happen in conjunction with the training and monitoring recommendations outlined in chapters 2 and 3.

**Recommendation 1.2:** The Legislature should consider whether to require all agencies, including agencies that are exempt from complying with Division of

Purchasing procurement requirements, to incorporate a best practices checklist into their contracting process.

Recommendation 1.3: The Division of Purchasing should work with the Office of the Attorney General to review sections of Idaho Code and Administrative Code related to the procurement process. The review should identify any opportunities to reorganize and clarify existing language that will make it more accessible and user-friendly to agencies. The division should then consider whether any updates should be incorporated into its contracting guidelines.

## **Chapter 2**

# **Contract Development and Award**

To help protect the state’s interests throughout the contracting process, Idaho has a number of safeguards in place, including open records laws, inspections, and the fair treatment of vendors throughout the contracting process. For those agencies that are subject to the Division of Purchasing requirements, the division also provides oversight, guidance, and support to agencies as contracts are developed and awarded.

### **The Division of Purchasing Advises Agencies Throughout Contract Development and Award**

Contract specifications are developed by the agency, consultants, or another governmental entity and should be written in a way to encourage maximum competition. Agencies work with the Division of Purchasing to develop contract terms and specifications and to help inform the award decisions. The division may provide guidance on contracting language terms, deliverables, or performance metrics.

For the purposes of this study, we looked primarily at the development and award process for contracts valued at more than \$100,000 and focused our review on purchases requiring a request for proposals (RFP). These purchases, such as technology products and professional services, require consideration of factors in addition to price.

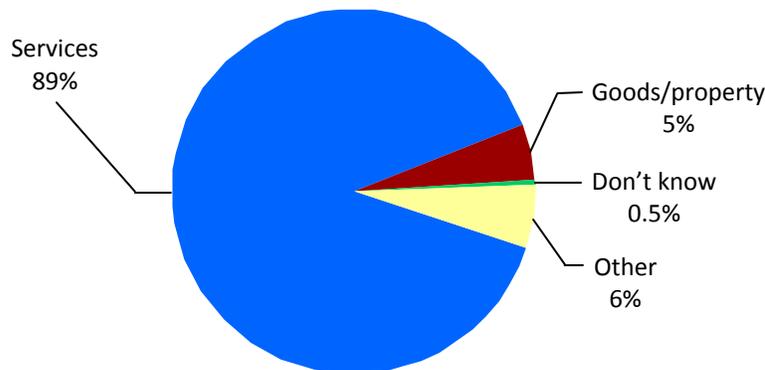
#### ***Request for Proposals***

In instances when an agency is making a purchase of goods or services of more than \$100,000, it follows a formal procurement process, which involves the issuance of requests for proposals. In our survey of agency contracting staff, nearly half of the respondents indicated they are responsible for a mix of both small and large contracts, and an additional 15 percent indicated they are currently responsible for only large contracts. As shown in exhibit 2.1, the vast majority of staff indicated they are managing service contracts.

### EXHIBIT 2.1 TYPES OF CURRENT STATE CONTRACTS

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Of the contracts you are currently managing, are they generally contracts for (N=217)



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Source: Office of Performance Evaluations' survey of agencies.

Note: Percentages do not sum to 100 because of rounding.

Before the division issues an RFP, the agency must first develop specifications and create a plan to evaluate submitted proposals. According to the Division of Purchasing, finalizing specifications can take much longer when agencies do not involve the division early on. Early involvement means the division may help finalize the specifications in as little as one day. In contrast, if an agency does not involve the division, the division estimates that the process may take up to six weeks.

The division issues an RFP on behalf of the agency once the specifications are finalized. The RFP is posted through the state's e-procurement system and via hardcopy at the Division of Purchasing. Idaho Code § 67-5718 requires the division to seek a minimum of three proposals from vendors having a significant economic presence in Idaho.<sup>1</sup> Potential vendors are given a specific amount of time to submit proposals, as well as time allotted for the agency to answer any questions before the submission period ends. Questions are solicited from vendors at the pre-proposal conference; answers are incorporated into the final RFP.

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<sup>1</sup> IDAHO CODE §67-2349. Significant Idaho presence means a bidder must have, for a minimum of one year before the bid, maintained in Idaho one of the following statuses: fully staffed offices, fully staffed sales offices or divisions, fully staffed sales outlets, manufacturing facilities, or warehouses or other necessary related property. Further, if the bidder is a corporation, it must be registered with the Secretary of State in order to do business in Idaho.

As part of our evaluation, we observed a pre-proposal conference, which brought division staff and agency representatives together with potential vendors to address vendors' concerns or clarify contract terms or deliverables. Vendors submitted questions in writing to ensure all vendors would have access to the same information. After the conference, the division compiled the responses and sent them out to the vendors.

### ***Awarding a Contract***

All formal proposals are sealed until the submission period has closed. Once the submission period closes, the agency will open the proposals and begin the review process. If necessary, the agency will enter into negotiations with the vendor, solicit any feedback, and ultimately make a decision about the award. Idaho Administrative Code and Division of Purchasing guidelines provide requirements for agencies to follow during the evaluation of proposals and award of contracts. The division has the right to reject any or all parts of a proposal when

- it is in the best interest of the state;
- the submission does not meet the minimum specifications;
- the proposal is not the lowest responsible submission;
- the bidder is not responsible; or
- the item or service offered significantly deviates from the specifications.

In evaluating proposals, common award methods are lowest priced responsive bid, highest rated responsive bid with a combined rating of technical merit and price, highest rated responsive bid within budget, or any combination of these. Purchasing guidelines provide examples of each of these methods to help guide the decision-making process.

According to our survey responses, selecting vendors is one of several contracting elements most likely to create challenges for an agency. As shown in exhibit 2.2, 26 percent of respondents expressed concerns with this step of the process. As discussed in the following section, proper training is essential to ensure agencies are equipped to navigate the award process.

### ***Cancellations***

In some cases, the Division of Purchasing must cancel an RFP. Reasons for cancellation include inadequate or ambiguous specifications, a revision in the specifications, or when the cancellation is in the best interest of the state.<sup>2</sup> For example, if an insufficient number of vendors submit proposals, the division may decide to cancel the RFP and enter into direct negotiations with a specific vendor to acquire the desired goods or services. In the event of a cancellation, all submitting vendors are notified.

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<sup>2</sup> Idaho Administrative Code, IDAPA 38.05.01.092.

## EXHIBIT 2.2 AREAS OF CONTRACT MANAGEMENT MOST LIKELY TO CREATE CHALLENGES FOR AN AGENCY

Please select the areas of contract management that you think are most likely to create challenges for your agency throughout the life of a contract.

	Responses	Percentage of Respondents
Writing requests for proposals (RFPs)	62	29
Selecting contractors based on their "best value"	55	26
Resolving problems with contractors	44	20
Writing contracts	40	19
Monitoring contractor performance during the life of a contract	40	19
Training agency staff in the contracting process	38	18
Training agency staff in contract management responsibilities	37	17
Justifying the need for single-source contracts	31	14
Estimating contract costs	30	14
Complying with state contract laws and rules	27	13
Evaluating contractor performance at the end of a contract	16	7
Justifying the need for emergency contracts	13	6
Assessing the need for contracts	5	2
Other	21	10
We do not experience challenges	12	6
Don't know	19	9

Source: Office of Performance Evaluations' survey of agencies.

Note: Percentages do not sum to 100 because respondents could select up to three options. (N=216)

### ***Appeals***

Depending on the circumstances, vendors who are not awarded the contract may appeal the award decision.<sup>3</sup> When a vendor files an appeal, the appeal is reviewed by either the administrator of the Division of Purchasing or the director of the Department of Administration.<sup>4</sup> For example, if appeals are submitted based on a challenge to the specifications outlined in the proposal, they are initially reviewed by the division administrator. If appeals are made based on a submission that was declared nonresponsive, those appeals are made directly to the department director.

According to the division, the number of appeals has declined in recent years. As shown in the table on the next page, just six appeals were submitted in fiscal year 2012. All of these appeals were denied.

<sup>3</sup> Any vendor can make a specifications appeal within ten business days of a bid release of any modifications to the bid. Only responding vendors may appeal a bid declared nonresponsive.

<sup>4</sup> IDAHO CODE § 67-5733.

**Appeals**

Fiscal Year	Appeals Filed	Appeals Denied
2012	6	6
2011	13	13
2010	12	10
2009	29	19
2008	20	17

The number of appeals filed has declined since 2009.

Through the course of our study, we heard concerns that Idaho’s appeals process does not provide for a judicial review.<sup>5</sup> When we spoke with the Division of Purchasing, officials indicated that potential legislation had been discussed during the 2012 legislative session that would have modified the appeals process to include such a review. Officials noted that they would support judicial review as long as the vendor requesting the review paid a deposit of 10 percent of the value of the contract. If the vendor loses the appeal, the deposit would be used to cover the cost of processing the appeal.

In making any changes to the current process, policymakers may wish to consider whether some appeals should not be eligible for additional review. When a vendor files an appeal based on procedural issues, the criteria for that appeal is often straightforward and relatively easy to determine. For example, if a vendor files an appeal based on a missing signature on the proposal, the vendor should not be able to appeal the decision once the division has verified the proposal was not properly signed.

**The Division of Purchasing Uses Delegated Authority to Give Agencies More Autonomy in Issuing Contracts**

When an agency identifies a need for larger, more complex purchases and has demonstrated its in-house capacity to follow state guidelines throughout the purchasing process, the division uses a mechanism called delegated authority to give agencies additional flexibility.<sup>6</sup> Delegated authority allows agencies to make purchases (usually limited to no more than \$100,000) without relying on the division.

<sup>5</sup> Because appeals are currently decided in the Department of Administration, a judicial review process would allow for an external review of the appeal.

<sup>6</sup> All agencies have the ability to make basic purchasing decisions (up to \$10,000) without directly involving the Division of Purchasing.

The division outlines eight criteria that an agency must comply with before the division considers granting delegated authority. If an agency is granted delegated authority, the division may review, reduce, or revoke it at any time if an agency fails to comply with the following criteria:

- Demonstrate a need for the dollar-limit authority requested.
- Receive approval from the agency head.
- Submit a plan of purchasing responsibility that identifies the individual(s) designated as the agency's chief purchasing official(s) and that demonstrates adequate staff who possess the capability to handle delegated authority. Individual(s) must demonstrate the purchasing ability to meet the agency's particular needs and have sufficient knowledge of public procurement issues and trends.
- Submit an agency purchasing policy and procedure manual showing compliance with Idaho Code and Administrative Code.
- Require that all personnel involved in the purchasing process participate in training sessions, workshops, or conferences offered by the Division of Purchasing and send its purchasing staff to ongoing training.
- Submit monthly purchasing reports as identified by the Division of Purchasing.
- Undergo reviews by the Division of Purchasing to determine effectiveness and performance of the agency's purchasing system and to evaluate compliance with Idaho Code and Administrative Code.
- Consistently comply with Idaho Code § 67-5714 and Administrative Code, IDAPA 383.05.01, in conducting purchasing activities.

In some instances, agencies have demonstrated the capacity for an increased delegated authority. Both the Department of Health and Welfare and the Department of Environmental Quality have delegated authority much higher than other agencies (\$25 million and \$5 million respectively). According to the division, these two agencies procure services that are unique to each agency and have the expertise to properly manage their contracts; additional involvement by the division would not add value to the process. For example, the Department of Health and Welfare currently has over 1,000 active contracts totaling more than \$750 million, well beyond the value of most agencies.

To maintain levels of delegated authority, the division requires agencies to fulfill training requirements within two years of the date that the dollar amount of the delegated authority was increased. According to the division, its staff conduct regular reviews (generally every six months or annually) to provide agencies

with feedback and guidance on how to maintain their delegated spending authority. For example, the division staff noted in one review that the agency needed to strengthen its record keeping for reference in the event of an audit.

## Agencies Are Not Consistently Trained to Make Contracting Decisions

The procurement process can be very complex and must consider a wide range of factors. According to our survey responses, agencies recognize they are primarily responsible for ensuring contract terms are clear, comprehensive, and accurate (82 percent of respondents indicated ensuring contract terms is the agency's responsibility).

As previously discussed, the Division of Purchasing uses delegated authority as one tool to increase agency capacity and requires those agencies to be properly trained. However, the state does not require any training for agencies that do not have delegated authority, even though all agencies are responsible for contracts once they are awarded.

Agency staff are often involved in the early stages of the contracting process. In our survey of agencies, 79 percent of survey respondents indicated they provide input for the initial decision to enter into a contract. Respondents also indicated that training is inconsistent and may not be adequately preparing agency staff to manage or monitor contracts. Without proper training on the initial development of a contract, agencies are at risk for issuing contracts that may potentially result in delays, extensions, or increased costs.

Idaho does not require most agencies to participate in contract training.

Our survey results also suggested that agencies are not consistently using the division as a training resource. As shown in exhibit 2.3, the majority of respondents have participated in some type of in-house training (69 percent), while approximately one-fourth (27 percent) had received training through the division. Conversely, 14 percent of respondents indicated they had received no training. As shown in exhibit 2.4, respondents also listed additional training as the most frequent suggestion to improve Idaho's contracting process.

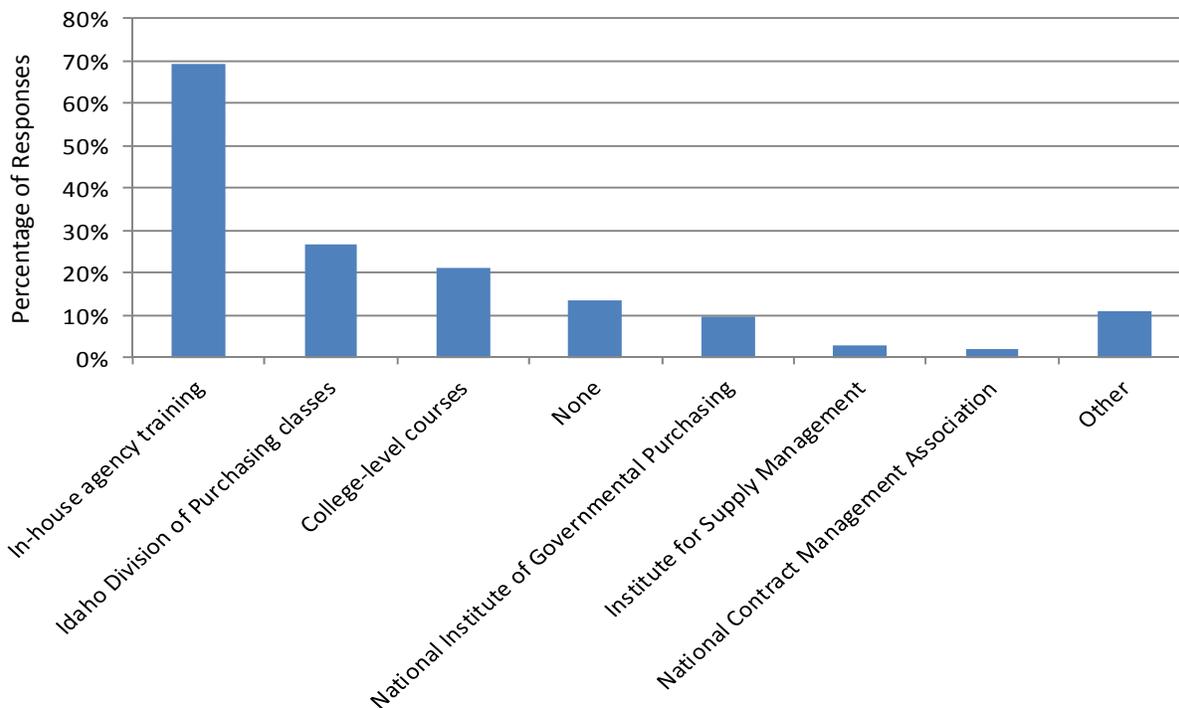
## Resources Are Available to Increase Agency Expertise

We found the Division of Purchasing and the Department of Health and Welfare offer training opportunities that could be expanded or modified for statewide use. A robust, standardized training program will give agencies the tools they need to make decisions for contract development, award, and monitoring.

### EXHIBIT 2.3 TRAINING LEVELS OF AGENCIES' CONTRACT MANAGEMENT STAFF

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What training have you had to help prepare you to manage contracts?



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Source: Office of Performance Evaluations' survey of agencies.

Note: Percentages do not sum to 100 because respondents could select multiple options. N=219

### ***Division of Purchasing Training***

Depending on the contract and the agency, purchasing officers at the division work with agencies in a range of capacities throughout the procurement process. Each officer is certified in public procurement and several officers have more than one certification.<sup>7</sup> The division also provides the following training to agencies throughout the year and when requested:

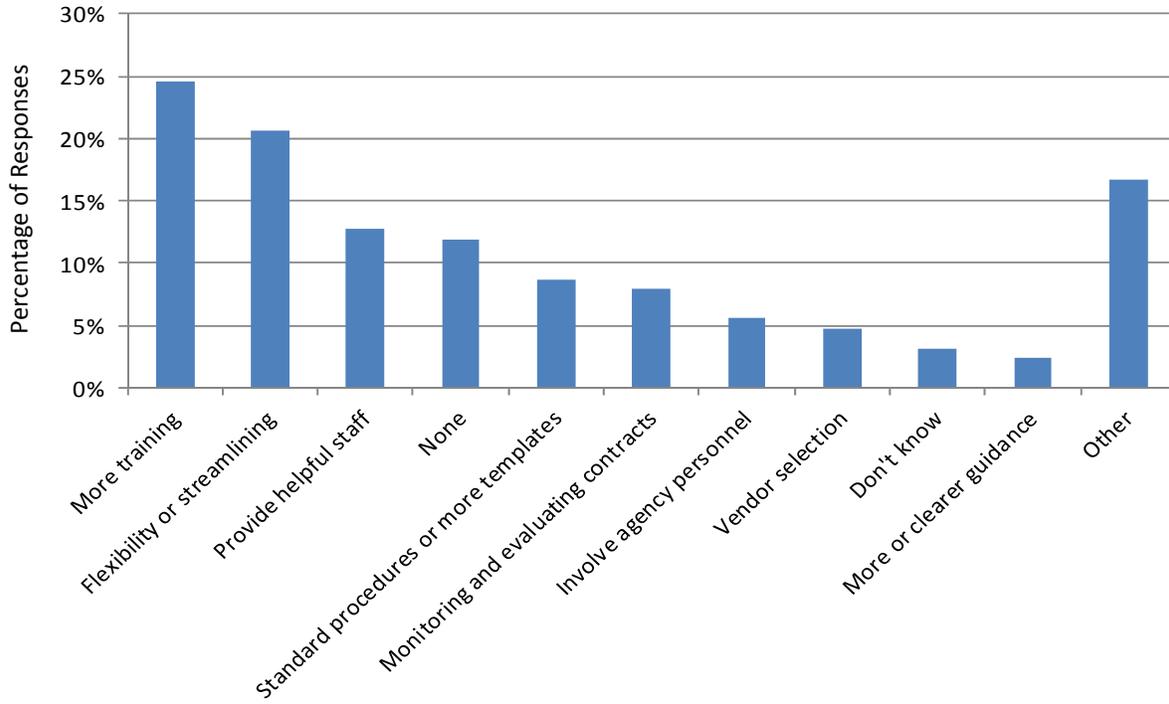
- Introduction to Idaho Public Purchasing
- Request for Quotation/Small Purchasing Guide
- Writing Effective Specifications
- Creating and Awarding an Invitation to Bid

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<sup>7</sup> The certifications are Certified Purchasing Manager (CPM), Certified Public Procurement Officer (CPPO), and Certified Public Professional Buyer (CPPB).

**EXHIBIT 2.4 SUGGESTED IMPROVEMENTS TO CONTRACTING PROCESS**

What changes would you suggest to improve Idaho’s contracting process?



Source: Office of Performance Evaluations’ survey of agencies.

Note: Not all respondents provided a response; respondents could provide more than one suggestion. N=126

According to division training records, the division has provided training and hosted several NIGP workshops throughout the state over the past year. The number of individuals who took part in some type of training was significantly fewer than the number of agencies with active contracts; the lack of consistency in which agencies have recently taken part in training may be due in part to the fact that training is not a requirement for agencies unless they have some level of delegated authority. In addition, the division does not have a position that is solely dedicated to training. Instead, one of the purchasing officers must balance statewide training needs with other job duties. Having a purchasing officer whose sole purpose is to provide statewide training could more effectively train more agency staff on contracting issues specific to each agency and the specific roles and responsibilities of agency staff.

## ***Department of Health and Welfare Online Training***

We interviewed officials at the Department of Health and Welfare to better understand how the department trains the large number of individuals who are involved in some level of contracting. Officials said the department has recently developed a contract training program and requires all employees who are involved in contract management to receive some type of training. The department is currently using its web-based training center, which offers three sets of online training modules:

- **Contracting 101** provides a basic overview of the procurement process, the development of a contract, contract policies, and the basic roles of contract monitors and managers
- **Contracting 102** explains common contracting terms, provides instruction on how to write a scope of work, and identifies common elements of a successful contract
- **Contract Monitoring** outlines the purpose, goals, and process of monitoring, explains how to effectively monitor performance and deliverables, and addresses the importance of maintaining professional relationships with contractors

Depending on their assigned role in a contract, Health and Welfare employees may be required to complete one or all of the modules. The department rolled out the new modules in fall 2011 for approximately 400 employees who are subject to the new requirement. As of October 2012:

- 78 employees had completed Contracting 101
- 57 had completed Contracting 102
- 235 had completed Contract Monitoring

Health and Welfare officials said they plan to get all employees who are required to take the training through the online program by the end of 2012. The department provided us with copies of each module; we found them to be concise and informative as well as easy to navigate. The department has offered to share its training information with other agencies and the Division of Purchasing, where the department training could be combined with existing training and shared electronically.

## **Recommendations**

Recommendation 2.1: To ensure all staff who are involved with the purchasing process be adequately prepared before making contracting decisions, the Division of Purchasing should require relevant training for agency staff involved with various aspects of the contracting process. The basic training structure should be developed by the division and then modified according to agency need. Training could take place online, at the Division of Purchasing, or a combination of both, depending on the needs and capacity of the individual agency.

Recommendation 2.2: To increase agencies' capacity in making contracting decisions, the Division of Purchasing should create a full-time position dedicated to providing statewide training. This position will work directly with agencies to increase their procurement capacity. The creation of an additional position will also help to better balance the existing workload of division staff, as discussed in chapter 3.



## Chapter 3

# Contract Monitoring

Through the course of our evaluation, we found that the most effective contracting structure relies on a balance of autonomy, efficiency, and accountability. Although Idaho has much of the best practices framework in place for the development and award of contracts, Idaho Code and Administrative Code are silent on the role of contract monitoring as a tool to protect the state's interests. For Idaho to make any significant improvements to its contract monitoring structure at the state level, the Division of Purchasing would need to increase its capacity and develop stronger working relationships with agencies. In addition, agencies may need to expand or standardize their training programs for contract administration, including contract monitoring.

As noted in chapter 1, not all agencies are subject to division requirements as they develop and award their contracts. Policymakers should consider whether all agencies, regardless of whether they are subject to the division's purchasing requirements, should be subject to statewide monitoring requirements for high risk or high dollar contracts.

### **Idaho Code and Administrative Code Are Silent on Contract Monitoring**

Effective contract management relies on quality contract monitoring. Contract monitoring involves assigning a contract manager with the authority, resources, and time to adequately monitor the project. Each agency should ensure its manager possesses the skills and training to manage the contract and is able to track budgets and invoices and compare them with the contract terms and conditions. If necessary, proper monitoring allows the agency to withhold any payments until deliverables are accepted.

In extreme circumstances, agencies may be able to adjust payment when performance falls short of the contract terms. For example, following the release of our 2011 report on delays in Medicaid claims processing, the Department of Health and Welfare used our recommendation criteria to negotiate lower payment terms for several deliverables. Because of specific issues with system performance, the department reduced overall payments by \$2.7 million.

As discussed in chapter 2, the role of the Division of Purchasing is primarily advisory throughout the request-for-proposal development and contract award.<sup>1</sup> Agencies are responsible for developing their own specifications and scope of work. After the contract is awarded, the agency is responsible for all elements of the contract, regardless of what role the division played in the development and award. As shown in 3.1, roles and responsibilities for contract monitoring can vary according to the contract type.

When we compared Idaho’s structure for contract management with the best practices outlined in chapter 1, we found that Idaho Code and Administrative Code provide guidance for the development and award of contracts but are silent on the process for contract monitoring and contract closeout, which is the final component of best practices. According to the Division of Purchasing, the division has not issued rules for contract monitoring because it does not have the capacity to implement them. Given the importance of contract monitoring to ensure terms and deliverables are met, a lack of statutory framework may create challenges for agencies that are unsure about monitoring requirements or how to identify risks throughout the life of a contract.

**EXHIBIT 3.1 ROLES AND RESPONSIBILITIES FOR CONTRACT MONITORING**

Contract Type	Agency Responsibility	Division of Purchasing Responsibility
Agency contract issued by the agency (within delegated authority)	Administer contract, including monitoring for compliance and performance	Consult when requested
Agency contract issued by the Division of Purchasing (for agencies with limited or no delegated authority)	Administer contract; monitor for compliance and performance Keep division informed of serious disputes	Enforce contract compliance in cases of unresolved disputes, cure notices, liquidated damages, and breach of contract
Statewide open contracts issued by the Division of Purchasing	Manage account and minor disputes with suppliers; report unresolved disputes to the division	Monitor agency contract usage, monitor and enforce supplier compliance

Source: Idaho Division of Purchasing.

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<sup>1</sup> The initial role of the division can vary based on the agency and type of contract. For large contracts or contracts that exceed an agency’s delegated authority, contracts are issued by the division on behalf of the agency.

## Division of Purchasing Guidelines on Contract Monitoring Are Limited

We reviewed Division of Purchasing guidelines to determine whether the division provides any additional guidance to agencies. We found that the division guidelines references monitoring as one of the requirements for delegated authority but does not address how or when that process should occur, nor does it require training for those who serve as contract managers or monitors. Division staff noted that they do provide some training to agencies about how to properly monitor contracts. As noted in chapter 2, however, only 27 percent of survey respondents have taken advantage of training through the division.

Through the course of our evaluation, we located an additional division document—*Contract Administration, Guide to Roles and Responsibilities* which outlines division and agency responsibilities once the contract is issued. The document, which is not part of the division’s purchasing guide, provides some clarity on the roles and responsibilities of each entity depending on the contract type. Although this document is brief, it currently serves as the state’s only formal guidance on contract management. To provide agencies with better access to this document, the division agreed to relocate the document on the division’s website, and it is now more prominently placed.

Only 27 percent of survey respondents have taken part in Division of Purchasing training.

As part of our survey, we asked agencies whether they had created their own contracting policies and procedures. Nearly half of respondents (46 percent) indicated their agency or division had created policies and procedures specifically addressing contract monitoring. Several agencies provided us with their internal documents; of the documents we reviewed, we generally found them to be detailed and specific. Our review suggests that these agencies understand the importance of a strong purchasing system and have taken steps to build on a framework that meets their contracting needs.

## Risk Reports Can Help Identify Contract Problems Sooner

In an ideal setting, contracts would be rarely amended. Contracts would be well written and the goods or services would be provided as outlined. In reality, contracts are subject to a wide range of issues that could affect their success, including budget problems, quality of deliverables, and delays. When these issues arise, the agency can request an amendment to the contract, which allows the agency and the vendor to continue working together under a modified agreement.

We reviewed the list of all active contracts that are maintained through the Division of Purchasing to identify any patterns with amendments. Of the 693 active contracts, 94 had been amended at least once and 235 had been renewed. According to the division, a single amendment is common and not generally cause for concern. Stronger indicators of potentially significant issues are amendments that have been written five or more times for the same contract. In our review, 25 contracts have been amended at least 5 times, some as many as 15 times. For example, the contract with Molina Healthcare, Inc. has been modified 12 times since its inception in 2007.

Amended contracts were housed in a number of agencies and varied by contract type and dollar amount. The smallest contract was valued at less than \$50,000, while the largest contract was more than \$140 million; the contract types ranged from professional services to software maintenance and upgrades. According to NIGP: The Institute for Public Procurement, certain types of contracts are more likely to suffer from specific problems. As shown in exhibit 3.2, nearly all types of contracts are at risk for delays, which then often leads to contract amendments.

Guidelines, manuals, and training can significantly improve an agency’s ability to manage a contract and clearly communicate with the vendor. However, the agency is only part of the equation. With any contract, the vendor also has a responsibility to communicate with the agency. Using risk reports as a contract

**EXHIBIT 3.2 CONTRACT ADMINISTRATION PROBLEMS RELATED TO SPECIFIC TYPES OF CONTRACTS**

General Contract Type	Wrong Product	Delays	Definition of Acceptance	Change Order	Conflict	Other Sources	Poor Performance	Risk of Failure/Terminate	Subcontractors	Cost
Supplies and small purchases	x	x								
Capital Outlay	x	x						x		x
Professional services (e.g., architects)		x	x	x	x	x				
Contracted services (e.g., custodial)			x	x	x		x	x	x	
Software	x	x	x			x	x	x	x	
Leases				x	x	x	x			
Construction		x		x	x	x		x	x	x

Source: NIGP: The Institute for Public Procurement.

monitoring tool helps agencies and vendors stay informed about the status of a contract and identify any factors that have the potential to put the success of the project at risk, such as deadlines, deliverables, or costs. Depending on the type of contract, risk reports may vary in their content, frequency, and level of formality. Agencies and vendors can then use the report information to reduce the risk and take corrective action.

In our 2006 report on the failed Idaho Student Information Management System (ISIMS), vendors referred to “go” or “no go” decisions that had to be made at critical points throughout the project. Several vendors noted that decisions were often made in silos and that no one had all of the necessary information to move forward. Regularly submitted risk reports among the Department of Education, the J. A. and Kathryn Albertson Foundation, and the vendors would have helped ensure that all parties were well informed about potential issues.

The Division of Purchasing recommends in its contract management training that agencies use risk reports, but agencies are not required to do so. The use of risk reports accomplishes two things. One, the division is able to provide insight or suggestions on risks that the agency may not have identified. Two, the agency is able to keep the division informed on the status of a contract before problems have escalated. Staff at the Transportation Department, which currently uses risk reports for some contracts, noted that not all contracts warrant formal reports; in some instances, weekly calls have been sufficient to keep the project on track.

## **Statewide Contract Monitoring Would Require Additional Staff**

As part of our evaluation, we surveyed the division’s eight purchasing officers about their work with agencies throughout the contracting process. Officers reported that the top three contract elements most likely to create challenges for agencies were

- monitoring contractor performance during the life of a contract (n=5);
- complying with state contract laws and rules (n=5); and
- writing requests for proposals (n=4).

Most officers indicated agencies were at least somewhat likely to reach out to division staff for assistance. The idea that agencies are reaching out to the division for assistance is encouraging but creates potential challenges for the division. First, agencies are solely responsible for the day-to-day management of their contracts; reaching out to purchasing staff may be an indication that not all agencies are well trained in their monitoring duties. Second, the division’s eight purchasing officers are already responsible for a large number of contracts.<sup>2</sup>

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<sup>2</sup> For fiscal year 2014, the Division of Purchasing has requested an additional FTE for a purchasing officer position that has been vacant since fiscal year 2011.

According to the division, each officer is currently responsible for an average of 90 contracts. Division of Purchasing officials expressed concerns that officers are spread too thin to add more duties. According to our survey results, officers reported being currently responsible for as few as 8 contracts to as many as 450. The number of contracts per officer varies according to the agencies that are assigned to the officer and according to the type(s) of contract each officer oversees. For example, one officer is assigned all IT service contracts while another handles all vehicle contracts. As a result, an officer's workload cannot be measured solely by the number of contracts he or she is responsible for.

A potential solution to this concern would be the creation of dedicated contract monitors within the Division of Purchasing, assigned to specific agencies or specific contracts that have been identified as high risk or high dollar amount. The division staff would then work in a support capacity with agencies to help

Less than 20 percent of survey respondents said they use tools such as risk reports.

identify and resolve potential issues. When applicable, agencies would submit risk reports to the division to keep them informed and allow the division to track trends in contracting challenges within and among agencies. Of those who responded to our survey of agency contract staff, just 19 percent indicated they currently use tools such as risk reports to keep others apprised of the contract status.

Although survey respondents identified contract monitoring as a challenging element of the contracting process, many also expressed concerns that working with the division slows their procurement process and can make working with vendors difficult. Statewide contract monitors, who serve in an advisory role rather than in an enforcement capacity, can better support agencies that may otherwise be hesitant to acknowledge contract issues as they arise.

Statewide contract monitoring could also benefit agencies that are exempt from division requirements. Currently, when an exempt agency has an issue with a contract or a vendor, it is solely the responsibility of the agency to resolve the issue. By formally working with the division to monitor contracts, exempted agencies would have access to contract professionals and would be better equipped to hold the vendor accountable for contract performance.

## Recommendations

**Recommendation 3.1:** In light of the concerns agencies expressed about providing adequate contract monitoring, the Division of Purchasing should consider creating positions to perform statewide contract monitoring for high risk or high dollar contracts. Staff in these positions would provide support and guidance to agencies throughout the life of a contract. As part of the monitoring process, division staff should require agencies to submit regular risk reports for contracts that have been identified as high risk or high dollar.

Recommendation 3.2: The Division of Purchasing should formalize its contract monitoring role in Administrative Code and its purchasing reference guide.

Recommendation 3.3: The Legislature should consider amending Idaho Code to require all state agencies, regardless of whether they are subject to Division of Purchasing requirements, be subject to statewide monitoring for high risk or high dollar contracts.



# **Appendix A**

## **Project Scope**

### **May 2012**

Idaho, like many states, contracts with vendors for a wide range of goods and services. In fiscal year 2011, Idaho issued over \$300 million in contracts, ranging from the purchasing of vehicles to the development and implementation of IT systems. In the past ten years, Idaho has experienced challenges with several large-scale contracts. These challenges have included implementation delays, unsatisfactory deliverables, and contract terminations.

As a result of these challenges, questions have been raised about Idaho's approach to managing IT and other large-scale contracts. On March 12, 2012, the Joint Legislative Oversight Committee directed OPE to conduct a study of best practices in contract management; legislators expressed concerns that Idaho does not have sufficient mechanisms in place to ensure that contracts are properly developed and managed and deliverables are adequately monitored. Currently, more than 100 contracts are in place statewide with individual values at \$1 million or more, and several agencies plan to award a number of large contracts within the next year.

A better understanding of current roles and responsibilities among vendors, the contracting agency, and the Division of Purchasing (within the Department of Administration) will shed light as to how, or whether, Idaho needs to make improvements to its contracting process.

This study of contract management in Idaho is designed to answer the following questions:

1. What are the current roles and responsibilities of the contracting agency, the vendor, and the Division of Purchasing throughout the contracting process?
2. How does Idaho compare with other states in terms of its contracting structure? How does Idaho's approach to contract management align with best practices?
3. What additional policies or guidance, if any, could improve the management, accountability, and oversight of state contracts in Idaho?

4. What changes, if any, to Idaho Code or Administrative Code could improve the contracting process?

To maintain a manageable scope, this study will neither look at construction contracts through the Division of Public Works nor be an evaluation of individual contracts.

Projected completion date: December 2012

## **Appendix B**

# **Best Practices Checklist from the National Contract Management Association**

The National Contract Management Association (NCMA) is focused on advancing the contract management profession, partly by defining the standards and the body of knowledge for the contract management profession. To help reach that goal, NCMA has created a checklist of tips.<sup>1</sup>

### **Checklist of Tips for Successful Contract Administration**

- Develop and implement a project management discipline to ensure on-time delivery and flawless execution.
- Comply with contract terms and conditions.
- Maintain effective communications.
- Manage contract changes with a proactive change management process.
- Resolve disputes promptly and dispassionately.
- Use negotiation or arbitration, not litigation, to resolve disputes.
- Develop a work breakdown structure to assist in planning and assigning work.
- Conduct pre-performance conferences or a project kick-off meeting.
- Measure, monitor, and track performance.
- Manage the invoice and payment process.
- Report on progress internally and externally.
- Identify variances between planned versus actual performance—use earned value management.

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<sup>1</sup> National Contract Management Association, *Contract Management*, July 2007. Used with permission of the NCMA, December 2012.

- Be sure to follow up on all corrective actions.
- Appoint authorized people to negotiate contract changes and document the authorized representatives in the contract.
- Enforce contract terms and conditions.
- Provide copies of the contract to all affected organizations.
- Maintain conformed copies of the contract.
- Understand the effects of change on cost, schedule, and quality.
- Document all communication—use telephone, faxes, correspondence logs, and e-mails.
- Prepare internal and external meeting minutes.
- Prepare contract closeout checklists.
- Ensure completion of work.
- Document lessons learned and share them throughout your organization.
- Communicate, communicate, communicate.

## **Appendix C**

# **Best Practices Checklist from the National State Auditors Association**

The National State Auditors Association (NSAA) was created to provide opportunities for the exchange of information on state, federal, and local levels. While the steps outlined may not apply to all contracting situations in Idaho, each step can provide agencies with opportunities to strengthen their decision making and safeguard against missing critical steps throughout the life of a contract.<sup>1</sup>

### **Purpose**

The Performance Audit Committee of the National State Auditors Association developed this document as a tool for audit organizations and government agencies to use in identifying and evaluating best practices in contracting for services. Although it was intended to address many of the best practices that could apply in these situations, it should not be considered all-inclusive. Further, the practices listed here may not be applicable in all situations, and other practices may accomplish the same things. However, this document can be extremely helpful as a starting point for both agency managers and auditors in deciding what types of practices are more likely to result in an efficient, effective, and accountable service procurement process.

### **Planning**

Proper planning provides the foundation for contract awarding and monitoring. Planning identifies what services are needed and when, how they should be provided, and what provisions should be in the contract. Planning also helps ensure proper information is collected to effectively structure a request for proposal (RFP). As a public entity, the agency must know the state's bidding and contracting laws, other relevant state laws as well as any procedural guidelines the agency is obligated to follow. Timely planning is crucial in all procurements, but especially in procurements involving RFP's that can take a lot of time to execute.

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<sup>1</sup> National State Auditors Association, *Best Practices in Contracting for Services*, June 2003. Used with permission of the NSAA, December 2012.

## **Decision to Contract**

First, the agency needs to determine whether or not to contract for the service. To make this decision the agency should:

1. Analyze its business needs, goals, objectives, and services and determine whether or not the service is necessary.
2. Conduct a cost/benefit analysis and evaluate options, such as whether contracting is more or less expensive than using agency staff.
3. Determine whether state law either prohibits contracting for services or requires the agency to demonstrate its need to contract.

## **Performance Requirements**

Once the decision to contract has been made, the agency should develop performance requirements that will hold vendors accountable for the delivery of quality services. Performance requirements should:

1. Clearly state the services expected.
2. Clearly define performance standards and measurable outcomes.
3. Identify how vendor performance will be evaluated.
4. Include positive or negative performance incentives.
5. Identify the staff that will be responsible for monitoring vendor performance. Ensure that sufficient staff resources are available to handle vendor/contract management properly.
6. Clearly define the procedures to be followed if, during the course of the performance of a service contract, unanticipated work arises that requires modification to the contract.

## **Request for Proposal Process**

The decision to employ a Request for Proposal commits an agency to a formal process based on fair and open competition and equal access to information. This decision allows the agency to systematically define the acquisition process and the basis on which the proposals will be assessed. The RFP itself provides a standardized framework for vendor proposals and highlights the business, technical, and legal issues that must be included in the final contract.

The RFP should:

1. Clearly state the performance requirements and the scope of services that are to be provided.
2. Include a statement of work that flows from the business needs analysis, and should present a logical plan to address the stated needs.
3. Identify constraints, schedules, deadlines, mandatory items, and allowable renewals.
4. Specify required deliverables, reporting obligations, and payment terms.
5. Clearly state pricing requirements and bid submission expectations, including closing time, date, and location. A standard bid price form is helpful to ensure an “apples to apples” cost comparison.
6. Clearly state the evaluation criteria and weighting factors for scoring proposals.
7. Allow sufficient time for vendors to prepare good proposals.
8. Avoid specifications that favor a particular bidder or brand.
9. Specify the qualifications for the company and/or personnel who would be assigned to the project.
10. Identify federal and state requirements that govern the contracting process and the delivery of services.
11. Outline all procurement communication devices to ensure all appropriate bidders or potential bidders have access to the same information, i.e., pre-bid conferences, Q&A’s, whom to contact with questions, etc.

## **Award Process**

Although evaluation methods vary, the contract award process should ensure vendor proposals are responsive to the agency’s needs, consistently and objectively evaluated, and contracts are awarded fairly to responsible vendors. Without proper awarding practices, there is little assurance an agency is selecting the most qualified vendor at the best price. Furthermore, contracting decisions may not be defensible if challenged.

## Award Decision

When making an award decision, the agency should:

1. Have appropriate procedures for handling late or incomplete proposals.
2. Ensure that an adequate number of proposals were received.
3. Use an evaluation committee, comprised of individuals who are trained on how to score and evaluate the proposals and who are free of impairments to independence.
4. Use fixed, clearly defined, and consistent scoring scales to measure the proposal against the criteria specified in the RFP.
5. Carefully check vendor references.
6. Document the award decision and keep supporting materials.
7. Carefully control bids upon receipt to ensure that bids are not opened prematurely to give late bidding vendors confidential pricing information, bids are not accepted after the due date, inferior bids are not given extra opportunity to cure deficiencies, etc.

## Contract Provisions

Contracts for the purchase of services must be formal, written documents. Contracts should (1) protect the interests of the agency, (2) identify the responsibilities of the parties to the contract, (3) define what is to be delivered, and (4) document the mutual agreement, the substance, and parameters of what was agreed upon. Specifically, the contract should:

1. Clearly state and define the scope of work, contract terms, allowable renewals, and procedures for any changes.
2. Provide for specific measurable deliverables and reporting requirements, including due dates.
3. Describe the methods of payment, payment schedules, and escalation factors if applicable.
4. Limit the state's liability for work performed either before or after the contract's scope.
5. Contain performance standards, performance incentives and/or clear penalties and corrective actions for non-performance, with a dispute

resolution process. The contract also should include a requirement for a performance bond when appropriate.

6. Contain inspection and audit provisions.
7. Include provisions for contract termination.
8. Include provisions for contract renegotiation and/or price escalations if applicable.
9. Tie payments to the acceptance of deliverable or the final product, if possible.
10. Contain all standard or required clauses as published in the RFP. The contract may also incorporate the RFP itself. Order of precedence should be addressed in case of a discrepancy between the RFP and the body of the contract for example.
11. Contain appropriate signatures, approvals, acknowledgements, or witnesses.
12. As necessary, allow for legal counsel's review of the legal requirements for forming the contract, which may include a review of the contracting process; legal sufficiency of the contract; the contract terms; etc.

## **Monitoring**

Contract monitoring is an essential part of the contracting process. Monitoring should ensure that contractors comply with contract terms, performance expectations are achieved, and any problems are identified and resolved. Without a sound monitoring process, the contracting agency does not have adequate assurance it receives what it contracts for.

To properly monitor a contract, the agency should:

1. Assign a contract manager with the authority, resources, and time to monitor the project.
2. Ensure that the contract manager possesses adequate skills and has the necessary training to properly manage the contract.
3. Track budgets and compare invoices and charges to contract terms and conditions.
4. Ensure that deliverables are received on time and document the acceptance or rejection of deliverables.

5. Withhold payments to vendors until deliverables are received.
6. Retain documentation supporting charges against the contract.
7. After contract completion the agency evaluates the contractor's performance on this contract against a set of pre-established, standard criteria and retains this record of contract performance for future use. If agencies do maintain a record of contractor past performance, it has the potential use as an evaluation element under "Award Decision."

## **Appendix D**

# **Contract Closeout Checklist from NIGP: The Institute for Public Procurement**

NIGP: The Institute for Public Procurement recommends that agencies address several key issues as part of closing out a contract.<sup>1</sup>

### **General Checklist**

As a project nears completion, agencies should begin closing out the contract. The process may vary according to the type of contract and the total cost, and may vary according to the staff assigned to monitor or manage different elements of the contract. This step not only helps ensure all of the deliverables have been met, but also provides the agency and vendor with an overall assessment of the project and any areas for future improvement.

### **Administrative Issues**

- Is the central contract file complete, and does it conform to regulations governing contract administration as specified by the public agency?
- If the central contract file consists of multiple files, have they been sequentially numbered and identified?
- Does the central file include the file of the Contracting Officer and the Contracting Officer's Representative?
- Did the contract specify a period of performance; and, if yes, has that period of performance ended?
- Have all file documents been signed with original signatures? This would include invoices/vouchers, letters to contractor, memoranda, official correspondence, etc.
- Has the de-obligation of funds been accomplished, if required?

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<sup>1</sup> NIGP: The Institute for Public Procurement, *Contract Administration, 2004*. Used with permission of the NIGP, December 2012.

- Have all change orders been defined and included in the central file?
- Have all final determinations been completed?
- Have all optional provisions expired?
- Are there any time extensions pending?
- Have all modification documents been signed?

### ***Deliverables***

- Is the final Receiving Report signed and dated?
- Did the Contracting Officer Representative certify that all deliverables have been received and accepted?

### ***Payments and Invoices***

- Have all disallowed payments, performance, deliverables, or suspended costs been resolved?
- Has all reconciliation been completed in conjunction with a financial report to verify that all payments have been paid?
- Have any refunds, rebates, and/or credits been annotated in the file?
- Have all excess funds, such as un-liquidated obligations, been verified and submitted to the Finance Department?

### ***Property***

- Has the property inventory been received from the contractor?
- Has there been an accounting of all Government-owned property, real or personal, either furnished by the Government or acquired by the contractor for the account of the Government?
- Has appropriate disposal action been taken upon physical completion of the contract/delivery order?
- Has there been a final disposition of Government-furnished property?

## **Contract Administration Analysis**

The final step in the contract management cycle is to conduct an analysis of the contract administration process. After the contract has been closed out, the documentation compiled during the contract administration phase should be reviewed to determine if any changes to the contract administration process would be beneficial to future contracts. The contractor and the end-user should complete a contract analysis report card. The following areas of the process should be reviewed:

### ***Contract Development***

- Were the contract goals adequate?
- Are there any changes that could be made in the contract document to better handle the agency's needs such as additional contract clauses or different language?

### ***Contract Administration***

- Did the contract administration team require additional training?
- Did any unanticipated problems occur?
- What could be done differently or better?

Incorporating these changes into the next contract management cycle and updating the general contract types and clauses is an important final step of contract administration.



## ***Appendix E***

# **Survey Results for Agency Staff Involved in Contract Management**

To gain a better understanding of contracting practices throughout the state, we asked agencies to provide contact information for individuals who are involved in at least some aspect of contract management. We sent out 353 e-mails and received responses from 220 individuals representing 33 agencies.

*The results of the survey are provided on the following pages. Percentages within the reporting tables may not sum to 100 because of rounding or because respondents could often select multiple options.*

Office of Performance Evaluations

Please describe the general role you play in managing contracts for goods and services within your agency: (Select all that apply.) (N=219)

	Responses	Percentage of Respondents
Monitor contracts to ensure terms such as timelines and budget are being met	178	81.3
Provide input for initial decisions to enter into a contract	173	79.0
Assist in developing any invitations to bid or RFPs (as applicable), evaluating proposals, and awarding contracts	165	75.3
Assist in developing contract performance metrics	160	73.1
Monitor contracts and review deliverables through inspections and audits	153	69.9
Close out contracts upon completion	142	64.8
When necessary, work with the vendor and the Division of Purchasing to make any changes or settle disputes	111	50.7
Use tools such as weekly risk reports to keep others apprised of contract status	41	18.7
Other	19	8.7

Of the contracts you are currently managing, are they generally (N=213)

	Responses	Percentage of Respondents
A mix of both small and large contracts	98	46.0
\$100,000 or less (small contracts)	82	38.5
More than \$100,000 (large contracts)	31	14.6
Don't know	2	0.9

Of the contracts you are currently managing, are they generally contracts for (N=217)

	Responses	Percentage of Respondents
Services	193	88.9
Goods/property	11	5.1
Don't know	1	0.5
Other	12	5.5

If you generally manage service contracts, are they (N=215)

	Responses	Percentage of Respondents
Primarily non-IT contracts	175	81.4
Primarily IT contracts	30	14.0
I do not manage service contracts	8	3.7
Don't know	2	0.9

Approximately how long have you been managing contracts? (N=216)

	Responses	Percentage of Respondents
Less than one year	19	8.8
One to five years	101	46.8
More than five years	96	44.4

In addition to Division of Purchasing guidelines, has your agency developed its own policies and procedures for the contracting process in any of the following areas? (Select all that apply.) (N=198)

	Responses	Percentage of Respondents
None	96	48.5
Monitoring contract performance	91	46.0
Writing invitations to bid, RFPs, or contracts	64	32.3
Evaluating contractor performance at the end of a contract	56	28.3
Assessing the need for a contract	49	24.7
Selecting contractors	50	25.3

What training have you had to help prepare you to manage contracts? (Select all that apply.) (N=219)

	Responses	Percentage of Respondents
In-house agency training	152	69.4
Idaho Division of Purchasing classes	58	26.5
College-level courses	46	21.0
None	30	13.7
National Institute of Governmental Purchasing	21	9.6
Institute for Supply Management	6	2.7
National Contract Management Association	4	1.8
Other	24	11.0

Office of Performance Evaluations

As a result of your training, which certification or designations have you attained? (Select all that apply.) (N=214)

	Responses	Percentage of Respondents
None	205	95.8
CPM: Certified Purchasing Manager	1	0.5
CPPB: Certified Professional Public Buyer	1	0.5
CPPO: Certified Public Procurement Officer	1	0.5
CPIM: Certified Production and Inventory Management	0	0.0
CPP: Certified Purchasing Professional	0	0.0
CPPM: Certified Professional Purchasing Manager	0	0.0
CPSM: Certified Supply Chain Manager	0	0.0
CPCM: Certified Professional Contracts Manager	0	0.0
Other	8	3.7

Please select the areas of contract management that you think are *most* likely to create challenges for your agency throughout the life of a contract. (Select up to three.) (N=216)

	Responses	Percentage of Respondents
Writing requests for proposals (RFPs)	62	28.7
Selecting contractors based on their "best value"	55	25.5
Resolving problems with contractors	44	20.4
Writing contracts	40	18.5
Monitoring contractor performance during the life of a contract	40	18.5
Training agency staff in the contracting process	38	17.6
Training agency staff in contract management responsibilities	37	17.1
Justifying the need for single-source contracts	31	14.4
Estimating contract costs	30	13.9
Complying with state contract laws and rules	27	12.5
Don't know	19	8.8
Evaluating contractor performance at the end of a contract	16	7.4
Justifying the need for emergency contracts	13	6.0
We do not experience challenges	12	5.6
Assessing the need for contracts	5	2.3
Other	21	9.7

Please select the areas of contract management that you think are *least* likely to create challenges for your agency throughout the life of a contract. (Select up to three.) (N=212)

	Responses	Percentage of Respondents
Assessing the need for contracts	107	50.5
Complying with state contract laws and rules	56	26.4
Don't know	37	17.5
Writing contracts	33	15.6
Monitoring contractor performance during the life of a contract	31	14.6
Evaluating contractor performance at the end of a contract	31	14.6
Estimating contract costs	30	14.2
Selecting contractors based on their "best value"	29	13.7
Writing requests for proposals (RFPs)	28	13.2
Justifying the need for single-source contracts	27	12.7
Training agency staff in the contracting process	19	9.0
Justifying the need for emergency contracts	18	8.5
Resolving problems with contractors	17	8.0
Training agency staff in contract management responsibilities	12	5.7
Other	7	3.3

When your agency obtains outside support or assistance, who or where do you generally seek it from? (Select all that apply.) (N=216)

	Responses	Percentage of Respondents
The Division of Purchasing	145	67.1
Office of the Attorney General	49	22.7
Other state agencies	39	18.1
Independent consultants	20	9.3
We do not seek outside assistance	22	10.2
Other	41	19.0

Using your own experiences, please rate how much your agency relies on Division of Purchasing *staff* in each of the following areas: 1=needs no assistance, 2=needs very little assistance, 3=needs some assistance, 4=needs significant assistance, 5=relies completely. (N=192)

	Responses				
	1	2	3	4	5
Assessing the need for contracts	94	58	28	6	5
Writing requests for proposals (RFPs)	40	40	58	39	15
Selecting contractors based on their "best value"	48	47	51	30	13
Justifying the need for single-source contracts	55	48	39	28	19
Justifying the need for emergency contracts	67	49	32	17	17
Estimating contract costs	80	60	32	11	5
Writing contracts	57	38	53	30	14
Complying with state contract laws and rules	35	49	61	27	20
Monitoring contractor performance during the life of a contract	88	59	36	8	1
Training agency staff in the contracting process	53	46	42	35	10
Training agency staff in contract management responsibilities	63	43	44	30	7
Resolving problems with contractors	58	56	62	12	2
Evaluating contractor performance at the end of a contract	83	57	33	11	4

Using your own experiences, please rate how much your agency relies on Division of Purchasing *documents* in each of the following areas: 1=needs no assistance, 2=needs very little assistance, 3=needs some assistance, 4=needs significant assistance, 5=relies completely. (N= 187)

	Responses				
	1	2	3	4	5
Assessing the need for contracts	90	41	40	9	6
Writing requests for proposals (RFPs)	44	33	44	43	23
Selecting contractors based on their "best value"	54	42	51	25	14
Justifying the need for single-source contracts	58	37	49	22	18
Justifying the need for emergency contracts	69	41	39	16	14
Estimating contract costs	85	49	39	10	4
Writing contracts	50	36	57	29	15
Complying with state contract laws and rules	43	32	61	28	23
Monitoring contractor performance during the life of a contract	78	45	44	15	4
Training agency staff in the contracting process	64	40	48	24	9
Training agency staff in contract management responsibilities	67	43	43	21	9
Resolving problems with contractors	69	48	53	12	1
Evaluating contractor performance at the end of a contract	81	44	40	14	6

Using your own experiences, please rate how useful Idaho Code and Administrative Code are in providing information in each of the following areas: 1=not at all useful, 2=not very useful, 3=useful, 4=very useful, 5=extremely useful. (N=176)

	Responses				
	1	2	3	4	5
Assessing the need for contracts	55	46	55	10	9
Writing requests for proposals (RFPs)	42	49	53	18	13
Selecting contractors based on their "best value"	54	43	61	6	8
Justifying the need for single-source contracts	39	44	66	9	14
Justifying the need for emergency contracts	42	41	65	9	13
Estimating contract costs	71	53	40	2	8
Writing contracts	54	43	50	11	16
Complying with state contract laws and rules	22	30	60	28	36
Monitoring contractor performance during the life of a contract	57	49	54	8	5
Training agency staff in the contracting process	59	42	50	15	8
Training agency staff in contract management responsibilities	62	42	48	14	8
Resolving problems with contractors	56	53	50	9	6
Evaluating contractor performance at the end of a contract	69	49	41	5	7

In your opinion, which entity is primarily responsible for ensuring that contract terms and scope of work are clear, comprehensive, and accurate? (N=219)

	Responses	Percentage of Respondents
The agency	180	82.2
The Division of Purchasing	26	11.9
The contractor/vendor	1	0.5
Other	12	5.5

In your opinion, which entity is primarily responsible for monitoring contracts, including timelines, deliverables, and budgets? (N=219)

	Responses	Percentage of Respondents
The agency	205	93.6
The Division of Purchasing	2	0.9
The contractor/vendor	2	0.9
Other	10	4.6

In your opinion, which entity is primarily responsible for closing out the contract, such as reviewing the overall performance of the contractor and compiling any lessons learned? (N=217)

	Responses	Percentage of Respondents
The agency	196	90.3
The Division of Purchasing	9	4.1
The contractor/vendor	2	0.9
Other	10	4.6

### Open-Ended Comments

What aspects of Idaho’s contracting process work well for your agency? (Responses=125. Some responses were classified in more than one category.)

	Responses
Other or unspecified staff	27
Working with the Division of Purchasing	20
Department of Health and Welfare Contract Management Unit	20
Clarity of consistency in processes	19
Standardized templates and forms	13
Contract monitoring	10
State contracts	8
Request for proposals process	7
Writing contracts	7
Don't know	7
Other	29

What aspects of Idaho’s contracting process do not work well for your agency? (Responses=125. Some responses were classified in more than one category.)

	Responses
Slow or cumbersome process	23
Working with the Division of Purchasing or other contract experts	17
Lack of flexibility	16
None	14
Contract management or monitoring	13
Selecting vendors	12
Statewide contracts	11
More training needed	10
Conflicting advice or inconsistent practices	7
Changing rules and procedures	5
Don't know	4
Other	20

What changes would you suggest to improve Idaho's contracting process? (Responses=126.  
Some responses were classified in more than one category.)

	Responses
More training	31
Flexibility or streamlining	26
Provide helpful staff	16
None	15
More standard procedures or templates	11
Better monitoring and evaluation of contracts	10
Involve agency personnel	7
Improve vendor selection	6
Don't know	4
More or clearer guidance	3
Other	21



## *Appendix F*

# **Survey Results for Purchasing Officers**

We surveyed all eight purchasing officers within the Division of Purchasing to better understand their roles and responsibilities as well as some of the contracting elements most likely to create challenges for agencies.

The results of the survey are provided on the following pages.

Office of Performance Evaluations

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Please describe the general role you play in working with agencies throughout the contracting process. (Select all that apply.) (N=8)

	Responses
Provide input for initial decisions to enter into contracts	7
Assist in developing any invitations to bid or RFPs (as applicable), evaluating proposals, and awarding contracts	8
Assist in developing contract performance metrics	8
When necessary, amend contracts or settle disputes	8
Review closed contracts	7
Use tools such as weekly risk reports to keep others apprised of contract status	6
Monitor contracts and review deliverables through inspections and audits	5
Monitor contracts to ensure terms such as timelines and budgets are being met	4
Other	3

Note: "Other" included training, general assistance

Approximately how long have you been a purchasing officer? (N=8)

	Responses
Less than one year	1
One to five years	1
More than five years	6

Approximately how many contracts are you currently responsible for? (N=8)

Number of Contracts
450
200
200
100
95
50
40
8

Using your own experiences, please select the areas of contract management that you think are *most* likely to create challenges for agencies throughout the life of a contract. (Select up to three.) (N=8)

	Responses
Complying with state contract laws and rules	5
Monitoring contractor performance during the life of a contract	5
Writing requests for proposals (RFPs)	4
Training agency staff in contract management responsibilities	3
Training agency staff in the contracting process	2
Justifying the need for emergency contracts	1
Writing contracts	1
Resolving problems with contractors	1
Assessing the need for a contract	0
Selecting contractors based on their "best value"	0
Justifying the need for multiple award contracts	0
Estimating contract costs	0
Evaluating contractor performance at the end of a contract	0
Don't know	0
Other	2

Note: "Other" included agencies lack procurement professionals

Using your own experiences, please select the areas of contract management that you think are *least* likely to create challenges for agencies throughout the life of a contract. (Select up to three.) (N=8)

	Responses
Assessing the need for a contract	4
Justifying the need for multiple award contracts	3
Evaluating contractor performance at the end of a contract	3
Justifying the need for emergency contracts	2
Estimating contract costs	1
Monitoring contractor performance during the life of a contract	1
Resolving problems with contractors	1
Writing requests for proposals (RFPs)	0
Selecting contractors based on their "best value"	0
Writing contracts	0
Complying with state contract laws and rules	0
Training agency staff in the contracting process	0
Training agency staff in contract management responsibilities	0
Don't know	0
Other	2

## Office of Performance Evaluations

Using your own experiences, please rate how much you believe agencies rely on Division of Purchasing *staff* for assistance in each of the following areas: 1=needs no assistance, 2=needs very little assistance, 3=needs some assistance, 4=needs significant assistance, 5=relies completely. (N=8)

	Responses				
	1	2	3	4	5
Assessing the need for a contract	0	4	2	2	0
Writing requests for proposals (RFPs)	0	0	1	4	3
Selecting contractors based on their "best value"	0	0	0	5	3
Justifying the need for multiple award contracts	0	1	2	2	3
Justifying the need for emergency contracts	0	1	2	3	2
Estimating contract costs	0	3	1	4	0
Writing contracts	0	1	0	4	3
Complying with state contract laws and rules	0	0	1	2	5
Monitoring contractor performance during the life of a contract	0	2	2	4	0
Training agency staff in the contracting process	0	0	2	3	3
Training agency staff in contract management responsibilities	0	0	2	2	4
Resolving problems with contractors	0	0	3	3	2
Evaluating contractor performance at the end of a contract	0	1	3	2	2

Using your own experiences, please rate how much you believe agencies rely on Division of Purchasing *documents* for assistance in each of the following areas: 1=needs no assistance, 2=needs very little assistance, 3=needs some assistance, 4=needs significant assistance, 5=relies completely. (N=8)

	Responses					Don't Know
	1	2	3	4	5	
Assessing the need for a contract	1	2	0	2	1	2
Writing requests for proposals (RFPs)	0	0	1	4	2	1
Selecting contractors based on their "best value"	0	0	1	4	2	1
Justifying the need for multiple award contracts	0	0	3	2	2	1
Justifying the need for emergency contracts	0	0	2	2	3	1
Estimating contract costs	2	1	2	2	0	1
Writing contracts	0	1	1	2	3	1
Complying with state contract laws and rules	0	1	1	1	4	1
Monitoring contractor performance during the life of a contract	1	2	2	1	1	1
Training agency staff in the contracting process	1	0	2	2	2	1
Training agency staff in contract management responsibilities	1	1	1	2	2	1
Resolving problems with contractors	1	3	1	0	2	1
Evaluating contractor performance at the end of a contract	1	3	0	1	2	1

Using your own experiences, please rate how useful Idaho Code and Administrative Code are in providing information in each of the following areas: 1=not at all useful, 2=not very useful, 3=useful, 4=very useful, 5=extremely useful. (N=8)

	Responses				
	1	2	3	4	5
Assessing the need for a contract	2	0	2	2	2
Writing requests for proposals (RFPs)	0	3	1	1	3
Selecting contractors based on their "best value"	0	4	3	1	0
Justifying the need for multiple award contracts	0	1	1	2	4
Justifying the need for emergency contracts	0	0	3	3	2
Estimating contract costs	4	4	0	0	0
Writing contracts	4	1	1	2	0
Complying with state contract laws and rules	0	0	2	2	4
Monitoring contractor performance during the life of a contract	5	1	0	2	0
Training agency staff in the contracting process	4	0	2	2	0
Training agency staff in contract management responsibilities	5	0	1	2	0
Resolving problems with contractors	4	2	1	1	0
Evaluating contractor performance at the end of a contract	5	2	1	0	0



# **Responses to the Evaluation**





C. L. "BUTCH" OTTER  
GOVERNOR

January 8, 2013

Director Mohan,

Thank you for sharing your report on *Strengthening Contract Management in Idaho*. I appreciate the opportunity to respond.

I recognize the opportunity for both the Department of Administration and the agencies involved to enhance their ability to manage contracts.

The responsibility of managing any particular contract on a daily basis should rest with the agency contracting for the good or service. Identifying those tools necessary to enable our agencies in this effort is vital.

Thank you again for your office's hard work and research regarding this important matter. The thoughtful work done by OPE is appreciated.

As Always – Idaho, "Esto Perpetua"

A handwritten signature in black ink that reads "C.L. Butch Otter".

C.L. "Butch" Otter  
Governor of Idaho

CLO/sp





# State of Idaho

## Department of Administration

C.L. "BUTCH" OTTER  
Governor  
TERESA LUNA  
Director

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January 8, 2013

Rakesh Mohan, Director  
Office of Performance Evaluations  
954 W. Jefferson St.  
Boise, ID 83720

Dear Mr. Mohan,

Thank you for the opportunity to respond to the Office of Performance Evaluation's study on Strengthening Contract Management in Idaho. Your report is of the utmost importance to the economy of our state in ensuring that as stewards of taxpayer dollars, we are using those funds responsibly and prudently.

The Department of Administration, Division of Purchasing is committed to seeking out opportunities for improved contract administration as well as providing support and training to the purchasing professionals in agencies across the state.

The following are the Department's responses to the recommendations given in the execution section of the report concerning the Division of Purchasing.

### Chapter 1: Best Practices Framework

**Recommendation 1.1:** The Division of Purchasing should develop and then formally incorporate a best practice checklist and a closeout checklist into its training materials. The division should distribute its checklists to all agencies as a reference tool when making contracting decisions and as a tool to ensure contracts are properly closed out. The development of the checklists should happen in conjunction with the training and monitoring recommendations outlined in chapters 2 and 3.

**Recommendation 1.2:** The Legislature should consider whether to require agencies, including agencies that are exempt from complying with Division of Purchasing procurement requirements, to incorporate a best practice checklist into their contracting process.

**Recommendation 1.3:** The Division of Purchasing should work with the Office of the Attorney General to review sections of Idaho Code and Administrative Code related to the procurement process. The review should identify any opportunities to reorganize and clarify existing language that will make it more accessible and user-friendly to agencies. The division should then consider whether any updates should be incorporated into its contracting guidelines.

**Department Response:**

The Department agrees with each of these recommendations for improving and implementing the Best Practice Framework. Implementation of these recommendations would require: (1) the addition of appropriate resources within the Division of Purchasing and (2) legislative mandates to require all agencies to incorporate the best practice checklists into their contracting processes.

Chapter 2: Contract Development and Award

**Recommendation 2.1:** To ensure all staff who are involved in the purchasing process be properly prepared before making contracting decisions, the Division of Purchasing should require relevant training for agency staff involved in various aspects of the contracting process. The basic training structure should be developed by the division and then modified according to agency need. Training could take place online, at the Division of Purchasing, or a combination of both, depending on the needs and capacity of the individual agency.

**Recommendation 2.2:** To increase agencies' capacity in making contracting decisions, the Division of Purchasing should create a full-time position dedicated to providing training. This position will provide statewide training and work directly with agencies to increase their procurement capacity. The creation of an additional position will also help to better balance the existing workload of division staff, as discussed in chapter 3.

**Department Response:**

The Department agrees that a greater emphasis on procurement training would be beneficial and that establishing a dedicated, full-time training position would aid in realizing that benefit. In reality, any expansion in the training program currently offered by the division would require more than one additional FTE be added to the division's current staff. Currently, several of the Purchasing Officers assist, to some extent, with training and other "outreach" efforts. Division administrative staff also dedicates time to updating and assembling training materials.

Additionally, the division can only require training for procurement staff in agencies that have been granted delegated authority. The division does not have statutory authority to require training for all procurement professionals in other agencies, to do so would require implementing a broader authority to expand "required" training.

Chapter 3: Contract Monitoring

**Recommendation 3.1:** In light of the concerns agencies expressed about providing adequate contract monitoring, the Division of Purchasing should consider creating positions to perform statewide contract monitoring for high risk or high dollar contracts. Staff in these positions would provide support and guidance to agencies throughout the life of a contract. As part of the monitoring process, staff should require agencies to submit regular risk reports for contracts that have been identified as high risk or high dollar.

**Recommendation 3.2:** In conjunction with implementing recommendation 2.2, the Division of Purchasing should formalize its contract monitoring role in Administrative Code and its purchasing reference guide.

**Recommendation 3.3:** The Legislature should consider amending Idaho Code to require all state agencies, regardless of whether they are subject to Division of Purchasing requirements, be subject to statewide monitoring for high risk or high dollar contracts.

**Department Response:**

The Department agrees that monitoring contracts is a critical component to increasing the success rate for high risk or high dollar contracts through the life of the contract. However, the Division of Purchasing does not have the resources or statutory authority to assume the responsibility for monitoring such contracts for all agencies.

Additionally, putting the monitoring of all high risk or high dollar contracts solely with the Division of Purchasing may not completely address the gap in contract monitoring and, in effect, doing so could actually create an additional gap by allowing an individual that lacks the underlying technology/service/product expertise to assess whether goods or services are being delivered in line with the contract. The Division of Purchasing maintains the expertise on procurement, but it is the agencies that have the technical expertise that is needed to monitor the day-to-day vendor performance and assess if goods or services are being delivered in line with the contract requirements.

Ultimately, we believe a cooperative approach to contract monitoring, including Division of Purchasing staff, agency procurement staff, and associated program manager expert that has been involved with the contract from solicitation to closeout, would be the best avenue for improved management. The agency would provide the technical contract monitoring expertise, while the Division of Purchasing should provide advice and direction regarding contractual issues i.e. options, how to proceed, how to enforce, remedies, etc...in consultation with the Attorney General's Office, when necessary.

The Division of Purchasing is expanding its requirements for vendors to provide on-going program progress reports for high risk and high dollar contracts. These reports should be submitted to the using agency and the Division of Purchasing by the vendor. The reports should be an indication of work performed and outline any changes in the scope of work as agreed to by the agency and the vendor. The contract/program manager should then be verifying these reports for progress against the contract, as part of the day-to-day contract monitoring process. The division would review the program progress reports at a higher level to stay in the information loop, which could provide an 'early alert' system for potential contract issues. The division would also be involved when contractual changes are required.

Thank you for all of you and your staff's work in preparing this report and for the opportunity to provide input on the final recommendations.

Respectfully,



Teresa Luna  
Director



## Office of Performance Evaluations Reports, 2010–Present

Publication numbers ending with “F” are follow-up reports of previous evaluations. Publication numbers ending with three letters are federal mandate reviews—the letters indicate the legislative committee that requested the report.

<b>Pub. #</b>	<b>Report Title</b>	<b>Date Released</b>
10-01	Operational Efficiencies in Idaho’s Prison System	January 2010
10-02	Increasing Efficiencies in Idaho's Parole Process	February 2010
10-03F	Use of Average Daily Attendance in Public Education	March 2010
10-04	Governance of EMS Agencies in Idaho	November 2010
10-05F	Governance of Information Technology and Public Safety Communications	November 2010
11-01	Distribution and Sale of Liquor in Idaho	January 2011
11-02	Coordination and Delivery of Senior Services in Idaho	February 2011
11-03F	Increasing Efficiencies in Idaho’s Parole Process	February 2011
11-04F	Idaho Transportation Department Performance Audit	March 2011
11-05	Delays in Medicaid Claims Processing	March 2011
11-06	Higher Education Funding Equity	November 2011
11-07	End-Stage Renal Disease Program	November 2011
11-08F	Distribution and Sale of Liquor in Idaho	November 2011
12-01	Reducing Barriers to Postsecondary Education	January 2012
12-02F	Delays in Medicaid Claims Processing	January 2012
12-03	Lottery Operations and Charitable Gaming	February 2012
12-04	Establishing an Efficiency Commission	February 2012
12-05F	Coordination and Delivery of Senior Services in Idaho	February 2012
12-06F	Operational Efficiencies in Idaho’s Prison System	February 2012
12-07F	Idaho’s End-Stage Renal Disease Program	March 2012
12-08F	Idaho Transportation Department Performance Audit	March 2012
12-09F	Delays in Medicaid Claims Processing	November 2012
12-10F	Increasing Efficiencies in Idaho’s Parole Process	November 2012
13-01	Workforce Issues Affecting Public School Teachers	January 2013
13-02	Strengthening Contract Management in Idaho	January 2013

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