

MINUTES
SENATE FINANCE COMMITTEE
December 09, 2003
9:12 AM

TAPES

SFC-03 # 110, Side A
SFC-03 # 110, Side B
SFC-03 # 111, Side A

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 9:12 AM in Anchorage.

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Ben Stevens
Senator Donny Olson

Also Attending: SENATOR FRED DYSON; JOHN R. SNODGRASS, JR., Attorney, General Computer Sales, Inc.; JOHN POWERS, President, Government Computer Sales, Inc.; MIKE MILLER, Commissioner, Department of Administration; RAY MATIASHOWSKI, Deputy Commissioner, Department of Administration; VERN JONES, Chief Procurement Officer, Department of Administration; BRUCE JAMIESON, CEO, Government Computer Sales, Inc.; MARY VERDURMEN, Account Manager for Alaska, Dell Computers; JOHN LAVORATO, Attorney, Dell Computers; BART MAULDIN, Chief Procurement Officer, Municipality of Anchorage

Attending via Teleconference: ROBERT CARRIER, Contracts Management Specialist, State of Arizona

SUMMARY INFORMATION

The Committee conducted an informational meeting concerning the State of Alaska's procurement code regarding computers and computer accessories and the five-percent local bidders preference regulations. No formal action was taken.

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Senate Finance Committee Hearing

Anchorage, Alaska

"What's the Cost of doing Business Locally?"

Co-Chair Wilken stated that, while this is a formal Committee hearing, no action would be taken as the meeting is being conducted during the interim between the First and Second Sessions of the Twenty-Third Alaska State Legislature.

Co-Chair Wilken read a prepared statement, dated December 9, 2003 [copy on file] as follows.

WHAT'S THE COST OF DOING BUSINESS LOCALLY?

The purpose of the Senate Finance Committee convening on December 9th, 2003 is to publicly discuss the State of Alaska's new procurement method for purchasing computers and computer accessories. This hearing will continue what has become a year of dialogue between a Fairbanks \$20M Technology Solutions business, the State of Alaska, and Senator's Therriault and Wilken's office.

The remedy sought as a result of this hearing is: (1) a one year extension to the existing contract between the local company and the State of Alaska, and (2) a bid/purchase record be established for the purpose of review and analysis on November 15, 2004. The purpose of this review is to answer the question, "What's the cost of doing business locally?"

Since 1992 Government Computer Sales (GCS) has won, through competitive bids, the right to sell Dell and Gateway computers to the State of Alaska. Additionally, GCS has made these contract prices available to all Alaskan municipalities, school districts, and the University of Alaska.

In 1998 the Western States Contracting Alliance (WSCA) was created by the State of New Mexico in an attempt to lower the prices of product purchases by combining the purchasing power of several states to get large quantity discounts. WSCA is a non-profit agency based out of New Mexico with all administrative functions assumed by the National Association of State Procurement Officials (NASPO). In return for bargaining and administrative expenses NASPO receives a one-tenth of one percent of the gross revenue from all WSCA purchases. As of June 30, 2003 WSCA has sold \$3,948,191,809 worth of products for a fee of \$3,948,191 paid to NASPO.

In November 2000 the State put WSCA in direct competition with GCS and other resellers. Applying the 5% Alaska bidders preference to GCS's proposal, GCS was the lowest qualified bidder and was issued a non-mandatory contract to supply both Dell and Gateway computers to the State and all political subdivisions throughout the state.

In October of 2002 the State sent a notice to GCS that their contract was to expire on November 16, 2002 and that the State did not plan to renew it. The intention of the State was to go direct to the manufacturer using the WSCA contract, thereby avoiding the 5% local bidders preference and putting 70% of GCS's business in jeopardy. This loss of business would force the loss of 7 jobs at GCS in Fairbanks and Anchorage, as well as several jobs in other Alaskan based technology companies that support GCS. Senator Therriault and Senator Wilken were contacted to ask why an Alaskan company, that has historically provided services to the State, was not allowed to participate in bidding on any future State technology business through competitively awarded State contracts.

In November of 2002, Senators Therriault and Wilken contacted the Department of Administration to request documentation of the analysis that led to the decision to exclude an Alaskan company from bidding on the contract. The Department of Administration, Division of General Services (DGS) supplied Senators Therriault and Wilken a spreadsheet of their cost-benefit analysis of WSCA vs. GCS prices and provided GCS with a one-year extension of their contract to directly compete against WSCA. The analysis was flawed (Ex. A) and a request was made of Governor Murkowski to allow further analysis and an explanation.

DGS then provided the Governor's Legislative Director, Mike Tibbles, an analysis that showed additional savings above and beyond that of the previous analysis. Once again this analysis (Ex. B) was questionable and the savings could not be substantiated. Senators Therriault and Wilken then requested newly appointed Commissioner Miller to step in and provide them with an accurate analysis and explanation.

In June of 2003 DGS provided another analysis (Ex. C) of the benefits of the WSCA contract that again was built on questionable data. After three separate analyses, DGS has not been able to provide a valid analysis of the savings of WSCA despite repeated suggestions of possible ways to accurately analyze the situation. After a year of discussion, we remain unable to answer the basic question: *"What does it cost us to*

recognize the 5% local bidders preference in the purchasing of personal computers?"

I respectfully request the Department of Administration to extend the current contract (currently under a one month extension and due to expire December 15, 2003) until November 15, 2004 and to put in place a simple method by which the bidding and the purchasing of personal computers by the State of Alaska can be tracked and analyzed.

Co-Chair Wilken communicated that the State would be purchasing approximately \$15 million worth of computers and computer related equipment in FY 04, which, he calculated, equates to an expenditure of approximately \$80,000 per week. He voiced that, in addition to being a significant expenditure of money by the State, it also represents a significant amount of business for local Alaskan companies who have been able to compete for this business under the auspice of the five percent local bidders preference regulations. He declared that the Legislature, rather than a State agency, should address the decision of whether or not "to acknowledge" the local five percent bidders preference statute. He furthered that were the entire \$15 million spent, the cost to the State for utilizing the five percent local bidders preference would be between zero dollars and \$750,000. He opined that were the bidders preference negated in this case, out-of-state information technologists (IT) and service bundlers, rather than local contacts, would be providing the front-end consultation and service endeavors. The end result of this scenario, he attested, would be a web-based relationship. He contended that, while out-of-state support service might be acceptable when dealing with one or two computers, the magnitude of the purchases in this case, would require local support. Moreover, he stated that removal of the Alaska bidders preference would result in "a fight for life" situation for GCS and its eight employees in Fairbanks and its two employees in Anchorage. He stated that the negative affect this action would have on a business in his hometown of Fairbanks is of concern to him.

Co-Chair Wilken assured that while the State would never disallow out-of-state companies such as Dell Computers from doing business in the State, he declared that the State has the right to support local businesses by continuing to advocate the five percent local bidders preference. He asserted that the State could inform Dell that a local representation would be desirable.

Co-Chair Wilken communicated that the three goals of conducting State business are: to get the best total value for the State, to avoid fraud and corruption, and to assist local economies and jobs opportunities. He stated that these are issues that should be

considered today.

Co-Chair Wilken referred the Committee to a December 8, 2003 Memorandum [copy on file] he had received from Rob Carpenter, Fiscal Analyst, Division of Legislative Finance, that was developed in response to a question regarding the potential fiscal impact that the elimination of approximately seven to ten jobs might incur in Anchorage and Fairbanks. He stated that the memorandum indicates that the elimination of these jobs could result in an annual economic loss of between \$975,000 and \$1.35 million, dependent upon which economic multiplier is used. He characterized the issue being discussed today, and the subsequent decision regarding it, as very important due to the potential loss of jobs and the corresponding fiscal impact.

Co-Chair Wilken noted that the Members' packets include three different economic impact analyses, referenced as Analysis "A," "B," and "C" [copies on file]. He noted that these analyses do not provide "an obvious consensus." He also noted that he, Senate President Gene Therriault, and the Department of Administration Commissioner Mike Miller and Department staff have reviewed the summaries at length. He voiced that the summaries are important as they would become part of the documentation regarding the issue of the State's "contact and preference" bidding policy. He defined "contact" as meaning that local people must be contacted and "preference" as meaning that some sort of monetary preference must be given to local Alaskan businesses. He stated that other factors that should be considered would include the level of service that would be provided as well as the cost to the State. He reiterated that this cost could range between zero dollars and \$750,000.

Co-Chair Green asked for further clarification regarding the word "contact."

Co-Chair Wilken responded that, in this process, it means that a company, or in this case, the State, would be required to contact local companies, such as GCS, to provide a service.

Co-Chair Wilken communicated that the statutes applicable in this case, as referenced in the letter [copy on file] to the Committee from the Department of Administration Commissioner Mike Miller, dated December 5, 2003, and the letter [copy on file] from Marjorie Vandor, Assistant Attorney General, Department of Law to Commissioner Mike Miller, are State Procurement Code Statutes Sec. 36.30.700 and Sec. 36.30.710 that read as follow.

Sec. 36.30.700. Cooperative purchasing authorized.

A public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, professional services, or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between public procurement units and open-ended state public procurement units contract that are made available to local public procurement units.

Sec 36.30.710. Sale, acquisition, or use of supplies by a public procurement unit.

(a) A public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement activity independent of the requirements of AS 36.30.060 and 36.30.100 - 36.30.260.

(b) A public procurement unit may enter into an agreement, independent of the requirements of AS 36.30.060 and 36.30.100-36.30.260, with another public procurement unit or external procurement activity for the cooperative use of supplies or services under the terms agreed upon between the parties.

Co-Chair Wilken stated that the question is "under what statute does the Administration believe that they have the ability to just go to WSCA (Western States Contracting Alliance)... and not recognize the bidder's preference." He stated that WSCA is a buyers' cooperative. He stated that the aforementioned letters appear to have "a difference of opinions" as to which Statute is applicable. He stated that contrary to the Administration's position which "hinges on" AS 30.710, he suggested that AS 30.700 rather than AS 30.710 applies to WSCA, as he argued, AS 30.700 "does not acknowledge, as 710 does, that there is an exemption from the local bidders preference."

Co-Chair Wilken stated that, at his request, John Snodgrass, the attorney representing GCS, would further explain these two statutes.

JOHN R. SNODGRASS, JR., Attorney, Government Computer Sales, Inc. expressed that the phrase "independent of the requirement of AS 36.30.060 and 36.30.100-36.30.260" as written in AS 36.30.710(a) and, in particular, AS 36.30.710(b) that Ms. Vandor repeatedly refers to in her Attorney General opinion, is "the exemption from the public procurement law, basically, and in particular, 170(b) the local bidders preference." Continuing, he stated that these "magic words" provide the exemption from the local bidders regulation, AS 36.30.170, which reads as follows.

Sec. 36.30.170. Contract award after bids.

(a) Except as provided in (b)-(h) of this section, the procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

(b) The procurement officer shall award a contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent, an Alaska products preference as described in AS 36.30.322 - 36.30.338, and a recycled products preference under AS 36.30.337 have been applied. In this subsection, "Alaska bidder" means a person who...

Mr. Snodgrass reiterated that when reviewing AS 36.30.710(b), which "Ms. Vandor relies upon consistently," it is stated that the public procurement unit (PPU) "may enter into an agreement, independent of the procurement code." He declared that this Statute language is followed by the phrase "for the cooperative use of supplies." He declared that these are "the magic words that she [Ms. Vandor] fails to argue." Therefore, he opined that the only thing that AS 36.30.710(b) "provides for is the cooperative use of supplies," as he noted, is substantiated in footnote number one in Ms. Vandor's memorandum.

Mr. Snodgrass continued that, were the State of Alaska cooperatively using a computer with, for instance, the State of New Mexico, then AS 36.30.710(b) would come into play and the local bidders preference regulation could be avoided. However, he attested that were this cooperative use not occurring, then 710(b) could not be used. Continuing, he stated that Ms. Vandor could also have used 710(a) as an argument in that "a PPU may sell, acquire from, or use any supplies belonging to another PPU or external procurement activity" ... "independent of the requirements of 36.30; however, he pointed out that the problem there is that WSCA does not own the computers or in other words, "these computers do not belong to WSCA or New Mexico." Therefore, he concluded that 710(a) would not be applicable.

Mr. Snodgrass continued that because neither AS 36.30.710 (a) or (b) are applicable, Ms. Vandor argues that AS. 36.30.700 provides the exemption, even though, he noted, she specifies that "if the State sponsors or administers a cooperative purchase agreement, that it must comply with 36.30, including, 36.30.170(b), the bidder's preference." He opined that, "this is correct, because the magic words, 'independent of 36.30,' do not exist in 700."

Mr. Snodgrass stated, therefore, that while the State could acquire computers under AS 36.30.700, that purchase would be subject to the State's procurement code including the local bidder's preference. He stated therefore, that Ms. Vandor's letter is "flawed."

Mr. Snodgrass furthered that, separate from and not addressed in Ms. Vandor's memorandum, is Commissioner Miller's reference to AS 36.30. 850(c), which Mr. Snodgrass opined, does not apply to this situation. He stated that 850(c) specifies that, "this chapter does not apply to contracts between two or more agencies, DOT and DOA, between the State and its political subdivisions, the State and Anchorage, or the State and other governments, Alaska and New Mexico." He stated that no language in 850(c) specifies that this language would apply to the State and Dell or any private company. Therefore, Mr. Snodgrass concluded that, "Section 850(c) does not exempt the State, in its dealings with Dell, from the local bidder's preference."

Co-Chair Wilken interpreted Mr. Snodgrass's comments to imply "at least the strong suggestion that what's being done here is outside the State statutes;" notwithstanding, he continued, the Attorney General's opinion and the Department of Administration's response to these comments.

MIKE MILLER, Commissioner, Department of Administration, voiced being "uncomfortable" responding to Mr. Snodgrass's comments without having a Department of Administration attorney present.

Co-Chair Wilken understood the Department's position and communicated that he had solicited Mr. Snodgrass's "help" in further explaining the Statutes.

Co-Chair Wilken noted that the Executive Session as noted on the agenda would not be conducted.

JOHN POWERS, President, Government Computer Sales, Inc., read the following prepared statement [copy on file] to the Committee.

Honorable Members of the Senate Finance Committee.

My name is John Powers and I am the President of Government Computer Sales, Inc., a Fairbanks and Anchorage based computer technology supplier. We have been serving the technology needs of state and local governments and educational institutions since 1989. We currently hold the State Micro Computer Contract. We are the largest supplier of technology to the state of Alaska, and we provide, directly and indirectly, many

well-paying Alaska jobs.

Senator Wilken asked the question, what's the cost of doing business locally? The flip side of that question is, what's the cost of NOT doing business locally? This second question is very real to us because we are in danger of being forced out of business by the Division of General Services (DGS). DGS wants to terminate our competitively bid contract in favor of a contract direct with our vendors, through the Western States Contracting Alliance (WSCA). WSCA provides no Alaska jobs.

DGS claims our termination will result in lower prices to the State, but DGS has repeatedly failed to show any concrete evidence that WSCA's prices are lower than ours. As Senator Wilken stated, DGS's cost/benefit analysis is "flawed." The cost/benefit analysis is flawed for two main reasons. Second, it fails to show a real benefit. First, it fails to show the real cost. Some of the costs to Alaska include the termination of our business and all of our direct jobs. Added to all of our lost jobs are the economic multiplier effect on the economy and other lost jobs.

A more technical question for this hearing is whether the Legislature will allow DGS to avoid both Alaska competition and the Alaska preference law for the computer contract. DGS wants to purchase computers solely under the contract through WSCA with no Alaska competitive bid and no Alaska preference. When the Dell and Gateway computer contracts were competitively bid out subject to local preference, we won and WSCA lost.

We understand that the State's Chief Procurement Officer is currently negotiating with Dell directly without competition and without any notice to Alaska bidders. Why would the Chief PO want to avoid competition? Why would he want to take away local jobs and to favor a WSCA bidder. Could the fact that he is the national Chairman of WSCA be a reason? It seems unfair to us that the Chairman of WSCA terminates our State contract and then commits the State to a WSCA contract with no competition or notice to Alaska bidders.

In November 2000, we were awarded the contract for Dell and Gateway products in a competitive bid against other resellers and WSCA. Our contract was for one year, with three additional one-year options. The State extended the contract for the first year of the option period. Then, in November 2002, DGS notified us of termination. At that time, DCS apparently interpreted AS 36.30.700 to allow it to contract directly with

our vendors through WSCA. This reading of Section 700 allows DGS to bypass both Alaska competition and the Alaska bidders preference. DGS's new reading is wrong because Section 700, unlike 710, does not exempt cooperative purchasing from the Code's competitive requirements set out in AS 36.30.100 - 260. Similarly, unlike Section 710, Section 700 does not exempt cooperative purchases from the local bidders preference in 36.30.170.

To the manufacturers, DGS's new reading means that the State of Alaska wants to bypass local business and wants to deal direct with outsiders. This interfered with out 12-year reseller relationships with Dell and Gateway. We protested DGS's termination. DGS eventually agreed to extend our contract, but only on the condition that it could add the Dell and Gateway contracts through WSCA to the State Contract with equal standing to us. We capitulated and agreed. While DGS's actions have hurt us, we have continued to provide most of the computers to the State.

During this last year, agencies were not required to contact us or to document any purported savings that DGS claims by purchasing through WSCA instead of us. DGS has refused to provide any meaningful analysis of purchases during the period when we and WSCA both supplied Dell and Gateway products, even though repeatedly asked to do so by Senators Wilken and Therriault. We request that our contract be extended and an actual price comparison be mandated.

The damage to our relationship with our manufacturers can be reversed only by a strong response from the Legislature. We request that agencies be required to contact the Alaska vendor where one exists, and apply the Alaska bidder preference in determining the best price.

WHAT BROUGHT US HERE TODAY:

During the mid-1980's governments and educators across Alaska started to realize the benefits that PCs could provide, but the normal bid process was too cumbersome for the rapidly changing computer industry. Computer specifications were often obsolete by the time the procurement was completed. Also, many of the machines the State bought in this manner met all the specification, but were no equivalent to the leading brands in quality or compatibility. Realizing that it was not getting what it wanted through a standard competitive process, the State of Alaska decided to hold a competitive bid process among suppliers of a few brands of computers that had

demonstrated long term total value.

In the early 1990's the State introduced a contracting process which allowed resellers and manufacturers to competitively bid for the right to supply a specific brand PC product line to the State for a given period of time. The contract would tie the provider to a published price list (e.g., manufacturer's retail) so that when products or prices changed, the contract holder would pass the benefit to the State. These contracts were typically for a year or two at a time with optional renewals at the State's discretion. They were re-bid periodically, again providing all certified resellers and manufacturers an opportunity to bid for the right to supply the brand specified on the contract. We have held successive versions of this form of State contract for over ten years.

The last time the State re-bid the micro computer contracts in the summer of 2000, GCS won the right to hold the contracts for both Dell and Gateway products. The contract allowed only one provider per manufacturer. The contracts were for one year with three additional one-year options. The competitive bid process in 2000 contained a caveat that if no bidder could offer a price better than that offered through WSCA for a brand, that the State reserved the right to make an award and to sign on to the contract through WSCA for those brands. Our prices were lower than WSCA after applying the Alaska bidder preference and we got the contract for Dell and Gateway.

As noted earlier, on November 15th, 2002, DGS notified us that it was terminating our contract. We expected DGS would then re-bid the contracts, allowing Alaskan technology providers like us an opportunity to compete for the State's PC business. We were informed that there was no intention to re-bid the contract. Instead, DGS decided to use cooperative agreements, thereby trying to evade both competitive bidding and local bidder's preference asset out in AS 36.30.100 - 260.

As justification, DGS claimed Alaskan providers offered little or no value to the public sector, and argued that our prices were much higher than WSCA offered for the same products. However, as Senator Wilken stated, and I quote, DGS's "analysis was flawed," "the savings could not be substantiated," and DGS has not been able to provide a detailed analysis of the savings of WSCA."

In November 2002, DGS extended our contract for one more year under significant pressure from many of our public sector customers around the State. Most of them spelled out the value

that we provided in the form of competitive prices, great service and overall value. However, in its extension notice, DGS required us to accept without protest the State's simultaneous use of the WSCA agreements.

DGS has taken the position that a cooperative purchasing agreement is exempt from procurement procedures, and can be used, essentially, as a sole source provider. We requested that DGS provide instructions to users of the WSCA agreements that would require agencies to contact the Alaska vendor for comparative pricing, and apply the 5% Alaska bidder preference. DGA refused, thereby effectively annulling the statutory preference that the Legislature has required for Alaska bidders and Alaska jobs under AS 36.30.170(b). As further evidence of DGS's anti-Alaska bias, the DGS procurement manual (AAM 81.060) states "Cooperative Purchasing Agreements: Competitive quotes, bids or proposals are not required for goods or services under AS 36.30.700-730." While the procurement manual may show DGS's interpretation of the statutes and may be correct for Section 710, it is wrong for Section 700 and WSCA. Further, DGS's manual does not carry the weight of law because AS 36.30.870 requires that real regulations "shall be adopted in accordance with" the Administrative Procedure Act, which the manual was not.

In November 2003, DGS again notified us that it would terminate our contract. Once again, it was not going to re-bid, and it intended to use the contracts through WSCA. Avoiding a re-bid of our contract, of course, evades Alaska competition and the Alaska bidder preference.

Apparently DGS simply assumes that because WSCA negotiates with the manufacturers on behalf of several states, its prices must be the lowest available. We have asked DGS to have procurement officers document the prices they are quoted through WSCA, as well as our prices offered and the comparative retail list price at the time of purchase. We believe DGS has refused to do this because it would provide hard evidence that in-state providers like us are in fact competitive within the statutory 5% preference. Real-time documentation is the only way for the State to know for sure what type of discounts it is actually receiving on purchases.

I am almost finished, but I have one more point before my short conclusion. The State's Chief Procurement Officer/WSCA Chairman is negotiating on behalf of the State with Dell. It is our understanding that the negotiations require the State have a sole source deal with Dell. BY contract then, the State

would eliminate us. This means that the State will have even less ability to tell what pricing it is receiving. Further, the agreement would require Dell to give us worse pricing than it gives the State. We do not understand why anyone would want that provision. In addition, we understand that the State must keep all pricing information confidential. This requirement is far removed from fair and open competition, and may violate public disclosure laws. It seems unlikely to us that this secret-pricing term is in any real WSCA contract because if it were, no other state would know the price terms of the cooperative agreement. In short, this new secret deal with Dell would not be a cooperative purchasing agreement. Thus, even if the State could buy computers through cooperative purchasing, the State could not buy them under this agreement.

The question again is, why would the State's Chief Procurement Officer get this type of deal for the State. We can understand why the Chairman of WSCA may like this secret deal, but we do not understand why the State's Chief Procurement Officer would make a deal like this.

CONCLUSION:

We support the State's desire to find budget savings by providing the most effective procurement methods. However, we believe that DGS must follow existing laws, which support Alaska bidders and Alaska jobs. Our reseller agreements with manufacturers are based on the expectation that we will effectively market their products in Alaska. By its recent actions, DGS appears to be telling Dell and Gateway that Alaska vendors are no longer preferred. Logically, manufacturers have a vested interest in minimizing their costs and they may decide to cut us out of the distribution chain. The end result will be secret contracts, the loss of local support services, and the loss of Alaska jobs.

To make it redundantly clear to DGS, we ask the legislature to amend AS 36.30.700 of the Procurement Code to expressly require contact with Alaskan businesses that offer the same products, and applications of the Alaska bidder preference in determining the best price.

We also ask the State to exercise the third extension option of our Micro Computer Contract for Dell and Gateway products through November 15, 2004. The extension will allow DGS time to do a real comparison of actual prices on actual purchases. On the other hand, if DGS terminates our contract, then we will lose the Number One priority set out in the Christmas

Speech by Governor Murkowski, ALASKA JOBS.

Thank you. Do you have any questions?

SENATOR FRED DYSON asked GCS whether the computer products involved in a large supply contract would be shipped directly to the consumer or to GCS.

Mr. Powers responded that shipping arrangements are on a case-by-case basis; however, he allowed that orders are predominantly shipped to the customer to expedite the customer's receipt of the product. He stated that products are shipped directly to GCS when such things as advance configurations must be installed.

Senator Dyson asked the value of the contract that GCS has had with the State.

Mr. Powers responded that the annual value of the contract with the State has ranged between eight to ten million dollars. He furthered that purchases from other public municipalities and education institutions that can tie in with the State contract would bring the total amount to approximately \$20 million.

Senator Dyson asked the total number of GCS employees.

Mr. Powers stated that GCS has ten employees.

Co-Chair Green asked whether this situation has resulted in an "antagonistic" or "controversial climate" between GCS and its suppliers, Dell and Gateway.

Mr. Powers responded that, "the imposition of the WSCA contract in direct competition with our State contract has hurt us to the tune of about 30 to 40 percent of our business."

BRUCE JAMIESON, CEO, Government Computer Sales, Inc. noted that GCS's "very good" eleven-year vendor relationship with both Dell and Gateway has been affected by the State's decision to further a direct contract with those suppliers, in direct competition with GCS.

Commissioner Miller commented that, "the question is where do we go from here." He avowed that the Department has been charged with saving money and operating more efficiently. He stated that, in this process, the Department identified Information Technology (IT) as an area in which further efficiencies and savings could be developed. As part of the process, he continued, a consultant was hired to assist in the development of an integrated IT plan for the

State. One part of that plan, he continued, is to further efficiencies by using four or five types of computers from a single system vendor. He attested that this approach would provide significant savings.

Commissioner Miller deferred to the Attorney General's opinion on the bidder preference regulations concerning WSCA. He stated that, in moving forward, a few issues should be remembered; one being that the Governor has been "crystal clear" that only a certain amount of money would be spent in the budget cycle. He continued that, as policy makers, the Legislature is dealing with "tough times" and would have to make "tough decisions." He contended however, that these decisions must be made within the overall context of the State budget. He stated that, "if you, as policy makers, believe that we should be buying computers through a third party vendor, and should be paying up to five percent more, lets say \$50,000... that is your decision to make." In that case, he continued, this would be \$50,000 that would be unavailable to be spent on some other government service. He stated that were this to be the decision that the Legislature makes, then the Legislature must also decide what other services would be reduced or unfunded. He stated that rather than being an issue to circumvent GCS, the issue is to provide the State with "the best service to the State of Alaska at the best price." He stated that were GCS able to provide computers at a cheaper price, the Department would buy from them, as he asserted that the Department is charged with saving the State money.

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Commissioner Miller continued, therefore, that the Legislature would be required to make the "policy call" regarding whether the State should spend more than the Department's specified "x" amount for these services.

Co-Chair Wilken commented that Commissioner Miller, as a small business owner, is aware of "what is at stake here."

VERN JONES, Chief Procurement Officer, Department of Administration, stated that contrary to previous testimony, computer price analyses have been conducted and indicate, were a WSCA agreement in place, savings ranging from 6.5 to 10.5 percent. Furthermore, he informed the Committee that the State belongs to a variety of cooperative consortiums in addition to WSCA, and has been using cooperative procurements, "legally for many years" to purchase, for example, hospital supplies, industrial tools, and

laboratory supplies. He stated that this is a long established practice.

Mr. Jones communicated that were the Alaska bidders preference required to be applied to every cooperative procurement transaction conducted by the Division of General Services, the process of acquiring a quote and applying the five-percent Alaska bidders preference would result in an extra 28,000 to 30,000 transactions per year, which he asserted is a "very impractical situation." Therefore, he attested that in addition to providing the State with lower product prices, which saves the State millions of dollars a year, cooperative agreements reduce the labor demands placed on the Department. He stated that every state uses similar cooperative agreements to save funds, and he "advocated that it would be a bad idea to take that tool away"

Co-Chair Green inquired as to the level of estimated savings that result from these cooperative procurements.

Mr. Jones replied that it ranges between three and four million dollars each year.

RAY MATIASHOWSKI, Deputy Commissioner, Department of Administration, expanded on Commissioner Miller's comments by noting that the State has reviewed the status quo procurement procedures and has determined, in this "new period of time," the importance of standardizing desktops and other IT applications. He stated that the goal of this standardization process is to purchase large volumes of products and get further price reductions.

Mr. Jones stated that the Department, upon the advice of the consultants, has determined that the IT procurement methods must change. He noted that, in addition to standardizing desktops, efforts are being made to standardize brands and models of computers within that brand in order to receive the "greatest price reduction" as a result of volume purchases. He stated that this process is continuing, and he assured the Committee that no secret deals are being conducted, and that no commitment has been made to keep this process confidential.

Senator Dyson, noting that he had arrived after the meeting started, asked whether legal opinions had been discussed prior to his arrival.

Co-Chair Wilken stated that applicable statutes were discussed, and that Mr. Snodgrass, representing GCS, inferred that the process might "be outside the statutes." He continued that "the Administration choose to not comment on that." He noted that a copy

of Mr. Snodgrass's interpretation of the applicable State statutes [copy on file] is included in the Members' packets.

Mr. Jones or Mr. Matiashowski [speaker unidentified] commented that the Member's packets also contain an opinion from the Attorney General's office that expresses the Administration's position on the statutes and the legality of the Department's actions.

MARY VERDURMEN, Dell Account Manager for Alaska, informed the Committee that documentation [copy not provided] has been provided to the Committee that explains Dell Computer, Inc.'s business model. She voiced appreciation for the business that the State of Alaska has conducted with Dell. She characterized Dell as "a very unique" \$40 billion corporation that maintains WSCA contracts with 27 states, as a vehicle to address State and local government computer needs, and she clarified that these 27 states purchase directly from Dell. She noted that Dell Computers strives for "the highest level of customer satisfaction" and a direct access relationship with the customer, even when a Dell product is purchased through a local vendor. She stressed that good service and good price are important to the company. Furthermore, she stated that Dell provides a single point of accountability to customers for such things as warranty and installation services. She attested that in its endeavor to be a low cost leader, Dell uses industry standard technology as well as standards and long-term product life cycles. She noted that Dell also offers the State a zero percent leasing program and computer recycling program.

JOHN LAVORATO, Attorney, Dell Computers, stated that Dell has no issue with GCS and that no adversarial tone exists. He stressed that Dell focuses on serving its customers who, in this case is the State of Alaska. He acknowledged that while Dell does not currently have any employees in the State, it is considering the possibility of placing employees here and is also contemplating working with Alaskan Native companies "in a sense that the federal government has incentive programs for vendors who basically have relationships with" Alaskan Native companies. He noted that, "it would be factual" that its "break-fix-warranty third party providers are employees of other companies in Alaska." He stated that because Dell is a global company, numerous Dell computer components are manufactured in the Far East and as part of its logistical network, these components are transported through Alaska.

Mr. Lavorato specified that from the Dell perspective, cooperative purchasing agreements allow for reduced procurement cycles, reduced administrative costs, aggregate buying power for both large and small governments, and market-driven prices as opposed to arbitrary prices points. He noted that computer prices are continuing to

decrease. Furthermore, he stated that Dell's broad offerings of services adequately address customers' specific computer needs, and he stated that all these factors support Dell's business model. He declared that this "global company" is market driven and enjoys competing for business on a daily basis.

Mr. Lavorato summarized that Dell strives to provide its IT customers with "the best customer experience with lowest total cost of ownership." He stated that Dell supports and embraces State and federal policies pertaining to socioeconomic programs, and he assured that there is no secret deal, and he furthered that, from a legal and corporate perspective, one of Dell's "basic tenants is to win with integrity."

Senator Dyson asked whether Dell or GCS personnel currently supply hardware technical support to the State's staff and employees.

Mr. Powers replied, both.

Ms. Verdurman noted that because GCS is currently supplying the equipment, they should respond to the question.

Mr. Powers stated that GCS supplies technical support to its customers. He noted that GCS provides its Alaskan customers with "localized support layered onto the world-class service that Dell provides direct."

Ms. Verdurman stated that Dell provides a lifetime warranty on its systems, and that technical support is provided direct from Dell 24 hours a day, seven days a week.

Senator Dyson asked whether GCS provides telephone help desk technicians.

Mr. Powers responded yes.

Co-Chair Wilken opined that Dell, as the manufacturer, might provide GCS, the reseller, with a "better price" than Dell would provide to the State because, by providing the front-end sales, end-product determination, and technical contact to the customer, GCS's contribution eliminates a service that Dell would otherwise be required to provide. He asked whether the local providers' front-end contribution is recognized and, as such, is provided "a deeper discount" than the retail price than Dell would charge the State were Dell to absorb that responsibility.

Mr. Lavorato voiced understanding of the concept being presented by Senator Wilken, and stated that price considerations are dependant

on the effort expended by the third party vendor, as exemplified by whether the end user would be ordering a standard IT system or a more complicated system. He informed the Committee that Dell does regularly "team" with big companies to develop the end-product needs.

Ms. Verdurman assured the Committee that Dell staffers currently travel to Alaska, do consult with Alaskan customers, and, in addition, consult with GCS on complicated projects, as she noted, "their customers are our customers." She noted that Dell recognizes the value of growing its business in Alaska.

Mr. Lavorato observed that sometimes projects get "derailed" when a lot of people are involved in a process.

Senator Olson assumed that State Government is Dell's biggest customer in Alaska.

Mr. Lavorato understood that to be the case.

Senator Olson asked whether Dell has encountered this type of situation before.

Mr. Lavorato responded that, although it has not been a problem, those of the 27 WSCA states that have considered contracting with Dell to be their sole IT provider, have worked through the competitive and socioeconomic issues that Alaska is now addressing. In addition, he stated that these issues have also arisen in regard to federal General Services Administration procedures.

Co-Chair Wilken asked how many of the 27 states have contact and/or preference provisions.

Mr. Lavorato was unsure.

Co-Chair Wilken referred the Committee to the resume of Robert Carrier [copy on file], a former Alaska Department of Transportation and Public Facilities Southeast Region Chief Procurement Officer, who is now employed in a similar capacity in the State of Arizona.

Co-Chair Wilken asked Mr. Carrier his opinion regarding the Administration's position that establishing a system and tracking real-time purchasing data would be "a big project."

ROBERT CARRIER, Contracts Management Specialist III, Department of Economic Security, State of Arizona, testified via teleconference from Phoenix, Arizona, and responded that, in his experience with

the Alaska Department of Transportation and Public Facilities (DOT) "that it would not be a problem to create the data showing configuration and the price that was paid for the machine, and who the vendor was." He surmised that while it might not be a major undertaking, on a statewide basis, it might require the Division of General Services' (DGS) involvement to consolidate the information. He noted that DGS acts in this capacity on other reporting issues. He opined that it is do-able and would not impose undue hardship either on the agencies and/or DGS.

Co-Chair Wilken asked Mr. Carrier whether he had ever participated in a process of this type.

Mr. Carrier stated that when he worked at DOT, "this information was available at the touch of a button." He noted that it is not unrealistic to obtain more than one quote for comparison purposes. He acknowledged that acquiring multiple quotes would be more work, but he stated that it would be do-able.

Mr. Carrier voiced that he perceives this issue to not be exempt from competition under State statute; however, he continued that regardless of whether something is exempt or not exempt from Statute, the awareness must be maintained that the "responsibility to the public is reasonable and adequate." He voiced uncertainty as to whether the WSCA contract is reasonable and adequate; however, he stressed that it is not a mandatory contract. He exemplified that other states, such as New Mexico, have additional contracts beyond the WSCA agreement that allows businesses to sell computers.

Co-Chair Wilken asked Mr. Carrier if he is aware of other states that have contact and/or preference regulations pertaining to computer sales through a WSCA agreement.

Mr. Carrier responded that New Mexico and Arizona do; however, he noted that Arizona also maintains computer sales independent of its WSCA agreement.

Co-Chair Wilken asked for clarification regarding whether the states' regulations specify contact or contact/preference language.

Mr. Carrier responded that he is unsure; however, he stated that the contract language in New Mexico's agreement specifies that the agreement is applicable to New Mexico resellers. He opined that this could be classified as preference language.

Mr. Carrier reiterated that WSCA is not a mandatory contract. He suggested that one option that might occur is that Dell could designate GCS as a reseller, and thereby resolve "a lot of the

issues" being raised as this, he continued, would allow the "information that must be gathered to be gathered." He stated that another, less desirable, option could be "that the State could negotiate a permissive agreement with GSC" to provide that service. He noted that this is a less desirable option because he understood that these services are limited to \$5,000. He stated that rather than a WSCA agreement, other options are available.

Mr. Carrier commented that the direct purchase agreement that is outlined in the Memorandum [copy on file] from Dell Computer to Vern Jones, dated October 30, 2003 identifies Dell as a "sole source supplier" in its comments. However, he pointed out that sole source agreement language is not a WSCA requirement. He voiced confusion as to how Dell or perhaps the State "jumped from a WSCA contract to a sole source" or single source agreement. He stressed that a WSCA price agreement that might be signed, "is just that;" that a product price would be specified. Furthermore, he noted that the Dell memorandum includes caveats such as that the State would be required to spend a minimum of \$15 million with Dell each year. Furthermore, he stated that \$15 million is double the amount that the State has traditionally spent with Dell on an annual basis. He questioned the penalty that might arise were this level not spent. He reiterated that there are other options to consider.

Co-Chair Wilken commented that both the GSC and WSCA agreements extend the State's pricing structure to the University of Alaska, municipalities, and school districts.

BART MAULDIN, Chief Procurement Officer, Municipality of Anchorage, informed the Committee that, during his 23-years with the Municipality of Anchorage, he has had numerous opportunities to work with cooperative agreements. He attested that, at the local level, the City does attach or "piggyback" onto state contracts as he attested the City is extended that right as a political subdivision. He exemplified that, in addition to computer purchases with GCS, Dell, Compact, and IBM, this procedure has been used approximately 25 times in a variety of instances such as the leasing and purchasing of vehicles, highway paint and salt supplies, and road graders. He stated that this arrangement is attractive and has high value to the City because, in addition to the pricing being "advantageous," it allows the municipality to forego such things as the procurement cycle. He allowed that, while the pricing might not be the lowest, the benefits that are provided are great.

Co-Chair Wilken asked whether this issue is of concern to the City.

Mr. Mauldin replied that while computer purchasing is the largest

component of this arrangement, concern arises from the fact that were an agreement not in place, the City would either be required to carefully watch what the State does in various regards or pursue its own agreements. He noted that the City's participation in the program is not mandatory. Therefore, he concluded that the agreement is only disruptive if a State contract is not in place.

Co-Chair Wilken reminded that the Committee would not be conducting an Executive Session, as specified on the agenda.

Co-Chair Green inquired as to the types of cooperative agreements that the State has participated in under the two statutes in question.

Mr. Jones responded that the State has, for a long time, secured a cooperative agreement to purchase, on an annual basis, approximately \$3 million in pharmaceuticals/health care supplies. He noted that the Alaska Pioneers Home has piggybacked on this cooperative agreement. He stated that other WSCA cooperative agreements include laboratory and scientific supplies, tools, paper products, and airfares. He noted that the State has a long history of cooperative agreements.

Senator Dyson asked the level of human resources that GCS provides.

Mr. Powers responded that GCS predominantly deals with the public sector, and maintains two full-time first level technical support staff to assist local governments, schools and State employees. He stated that, in situations requiring a higher level of technical assistance, GCS and Dell work together to provide the assistance required.

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Mr. Powers stated that beyond the service provided to governments, GCS has established a joint partnership with Mercury Data Group and other local small service and technical support providers to establish an entity known as Alaska Technology Services (ATS). He stated that five seats of the professional service contract group that was formed to assist the State in its endeavors to further its new IT plan were members of ATS. He noted that there is in excess of fifty people who could provide on-site service support to the two individuals who man the GCS help desk.

Senator Dyson asked for confirmation that these services are free to GCS equipment purchasers.

Mr. Powers clarified that additional costs are levied for services "over and beyond" contract warranty conditions.

Senator Dyson asked whether the assistance of the two staffers who man the help desk is free of charge.

Mr. Powers confirmed that this service is free.

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 10:46 AM