

**STATE  
PROCUREMENT  
PROCEDURES  
12/9/03,  
ANCHORAGE**

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Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### LIST OF ATTENDEES

Senate Finance Committee Hearing  
December 9, 2003

#### Office of the Governor

Mr. Dennis DeWitt, Special Staff Assistant

#### Department of Administration

Mr. Mike Miller, Commissioner

Mr. Ray Matiashowski, Deputy Commissioner

Mr. Vern Jones, Chief Procurement Officer

#### Government Computer Sales

Mr. Bruce Jamieson, CEO

Mr. John Powers, President

#### Dell

Ms. Mary Verdurmen, Dell Account Manager for Alaska

#### Invited Guests

Mr. Robert Carrier, Contracts Management Specialist, State of Arizona

Mr. Bart Mauldin, Chief Procurement Officer, Municipality of Anchorage

Mr. John R. Snodgrass, Jr., GCS Legal Counsel

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- 3) **Economic Impact Analysis**
- 4) **Summary of Department of Administration Analyses**
- 5) **Applicable Statutes**
- 6) **12/04/03 Letter from Senator Wilken to Commissioner Miller**
- 7) **12/05/03 Response Letter from Commissioner Miller to Senator Wilken**
- 8) **10/30/03 Letter from Dell to Vern Jones**
- 9) **12/05/03 Legal Opinion prepared by AG’s office for Commissioner Miller**
- 10) **12/08/03 Legal Opinion prepared by John. R. Snodgrass, Jr. for GCS**
- 11) **Description of Western States Contracting Alliance (WSCA)**



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### Senate Finance Hearing

December 9, 2003  
Anchorage, Alaska

#### WHAT'S THE COST OF DOING BUSINESS LOCALLY?

The purpose of the Senate Finance Committee convening on December 9<sup>th</sup>, 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.

WHAT'S THE COST OF DOING BUSINESS LOCALLY?

Senate Finance Committee Hearing

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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.

Gary Wilken  
State Senator - Fairbanks

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE



### Division of Legislative Finance

P.O. Box 113200  
Juneau, AK 99811-3200  
(907) 465-3795  
FAX (907) 465-1327

### MEMORANDUM

**DATE:** December 8, 2003  
**TO:** Senator Gary Wilken  
**FROM:** Rob Carpenter  
Fiscal Analyst  
**THRU:** David Teaken  
Legislative Fiscal Analyst  
**SUBJ:** Economic impact of lost jobs

You asked for a quantitative analysis of the potential economic impact to Fairbanks and Anchorage given the loss of 10 jobs totaling approximately \$750,000 in salaries (not including benefits). Eight of these employees reside in Fairbanks and 2 reside in Anchorage.

Every dollar spent in an economy has both a direct and indirect economic effect. The direct impact of the loss of 10 jobs is the \$750,000 that will no longer be spent by the employees for goods and services. The indirect impact is the loss of jobs and income to others as less money circulates through the economy. This indirect effect can be measured and is defined by a term called the "Economic Multiplier".

Alaska's larger communities have a multiplier ranging from 1.3 to 1.8<sup>1</sup>. That is, every dollar spent has an economic impact ranging from \$1.30 to \$1.80. Therefore, the loss of \$750,000 in salaries would have a total economic impact ranging from \$975,000 to \$1,350,000. Given the 10 employees on average make \$75,000 each, the approximate loss to Fairbanks would range from \$780,000 to \$1,080,000. The approximate loss to Anchorage would range from \$195,000 to \$270,000.

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<sup>1</sup> Information from the Institute of Social and Economic Research (ISER) provides a range of 1.3 to 1.6. ("Expanding Job Opportunities for Alaska Natives." Goldsmith, Scott, Institute of Social and Economic Research. Nov. 1998 <<http://www.iser.uaa.alaska.edu/publications/client/afniobs/afniobs.htm>>). Information from Northern Economics provides a range of 1.4 to 1.8 ("The Value of Ports and Harbors." Burden, Patrick, Northern Economics. October 2002 <<http://www.alaskaharbors.com/resources/harborecon.ppt>>).

**SUMMARY OF EXHIBITS A, B, AND C**

**THREE ATTEMPTS BY THE DEPARTMENT OF  
ADMINISTRATION TO ANALYZE SAVINGS**

## Analysis A (October 2002)

- Analysis was conducted by taking the contract discounts (10% off retail for WSCA and 2.8%-3.5% off retail for GCS) and comparing them side-by-side according to the total dollar volume of sales for each product. Basically stating that there is a 6.4% savings through WSCA applied to the total sales of computer sales with Dell. This analysis resulted in a purported savings to the state of \$538,711 with Dell products by going through WSCA. The same approach was taken to Gateway and IBM resulting in savings of \$80,804 and \$2,848 respectively.

### Flaw in the analysis

This analysis does not take into account the fact that the percentage off retail for GCS is a ceiling price and GCS usually negotiates lower prices with each individual order. It was stated by Vern Jones that WSCA has the ability to do the same thing. Due to the quality of reporting it is not clear that WSCA has ever offered lower than WSCA prices to state agencies.

## Analysis B (January 30, 2003)

- Analysis was done by stating that if each procurement of computers required contacting both WSCA and GSC it would require 6,974 additional procurement actions by state workers in the purchasing of computers at a cost of \$1,431,046 to the state. This analysis was completed by Vern Jones to answer the question "what would it cost the State if we were to remove the cooperative agreement language in Statute?"

### Flaw in the Analysis

No complete explanation of how these numbers were arrived at was provided to Senator Therriault and Senator Wilken. It appears that they used the price savings in Analysis A and added an amount to compensate for all of the additional procurement actions needed by State workers.

## Analysis C (July 16, 2003)

- Analysis was completed by taking 31 orders that GCS filled for State agencies and submitted them to Dell to ask what they would have charged for the same orders. This analysis concluded that the State would save 10.26% on Dell orders resulting in annual savings on Dell products of \$913,532.

### Flaw in the analysis

This analysis was basically taking Dell's word on the prices without stating whether this pricing strategy was in accordance with the WSCA discount schedule. Even Dell representative Debi Castro agreed by stating "the only way that we can definitively give our price is at the moment in time we give our quote."

JOHN R. SNODGRASS, JR.  
Attorney at Law

840 South Colony Way #250  
Palmer, Alaska 99645-6990  
(907) 745-4278

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December 8, 2003

John Powers, President  
Government Computer Sales, Inc.  
794 University Ave. Suite 108  
Fairbanks, AK 99709

Re: Ms. Vandor's Memo re Alaska Bidder's Preference  
and Cooperative Purchasing.

Dear Mr. Powers:

This opinion letter responds to your request for a review of Ms. Vandor's memo dated December 5, 2003, regarding whether the Alaska bidder's preference applies when cooperative purchasing agreements are used. Her reasoning shows that the bidder's preference would apply to cooperative purchasing agreements for computers.

Ms. Vandor's memo relies upon the express exemption in AS 36.30.710(b) as the linchpin for her reasoning. The third sentence of her memo states:

"AS 36.30.710(b) specifically provides that when the state participates in a cooperative purchasing agreement, the state may enter into the agreement independent of the requirements of AS 36.30.060 and 36.30.100 - 36.30.260, thus the state is also exempt from applying the Alaska bidder's preference, AS 36.30.170(b), when it joins in a cooperative purchase with another public procurement unit." (Emphasis added.)

It is true that Section 710(b) does exempt some cooperative activities from Alaska competition and the Alaska bidder's preference. This exemption is shown by the first group of emphasized words in the statute, which reads as follows:

(b) A public procurement unit may enter into an agreement, independent of the requirements of AS 36.30.060 and 36.30.100 - 30.30.260, 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.

However, as shown by the second group of emphasized words, the 710(b) exemption covers only "the cooperative use of supplies or services." This limited exemption for "cooperative use" should be contrasted with the broad scope of cooperative agreements covering "the procurement of supplies, services, professional services, or construction . . ." contained in Section 700.

Section 700 contains no exemption from the requirement of Alaska competition and the Alaska bidder's preference, both of which are included in AS 36.30.100 - .260. Ms. Vandor acknowledges that State activities under Section 700 would be subject to these Alaska requirements.

Mr. John Powers  
December 8, 2003  
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In sum, Ms. Vandor's memo is correct in those limited circumstances regarding the cooperative use of supplies. In that instance, the Alaska bidder's preference would not apply because of the express exemption.

However, where the State is entering into a cooperative agreement for the purchase of supplies, such as computers, no express exemption exists. Therefore, the Alaska competition and the Alaska bidder's preference provisions would apply.

If you have any questions, please call.

Sincerely,

*John R. Snodgrass, Jr.*

John R. Snodgrass, Jr.

AS 36.30.700 states as follows:

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 the agreement entered into between the participants. Cooperative purchasing may include joint or multi-party contracts between public procurement units and open-ended state public procurement units contracts that are made available to local public procurement units.

Unlike Section 710(b), Section 700 does not contain the exemption phrase "independent of the requirements of AS 36.30.060 and 36.30.100 - 30.30.260."



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
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Juneau, Alaska 99801-1182

### State Procurement Code Statutes

Senate Finance Committee Hearing

December 9, 2003

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

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 the participants. Cooperative purchasing may include joint or multi-party contracts between public procurement units and open-ended state public procurement units contracts 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.

Sec. 36.30.790. Definitions

In AS 36.30.700 - 36.30.790

(1) "cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement activity;

(2) "external procurement activity" means a buying organization not located in this state that, if located in this state, would qualify as a public procurement unit; an agency of the United States is an external procurement activity;

(3) "local public procurement unit" means a municipality or other subdivision of the state or other entity that expends public funds for the procurement of supplies, services, professional services, and construction, and any nonprofit corporation operating a charitable hospital;

(4) "public procurement unit" means either a local public procurement unit or a state public procurement unit;

(5) "state public procurement unit" means the Department of Administration and any other contracting agency of the state.

Sec. ~~36.30.850~~. Application of this chapter.

(c) Except for AS 36.30.085 and 36.30.700 - 36.30.790, this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.

# MEMORANDUM

## State of Alaska Department of Law

To: The Honorable Mike Miller  
Commissioner  
Department of Administration

Date: December 5, 2003

File No.: 663-04-0028

Tel. No.: 465-3600

Re: Alaska Bidder's Preference



Marjorie Vandor  
Assistant Attorney General  
Labor & State Affairs - Juneau

You have asked for an opinion as to whether the Alaska bidder's preference, AS 36.30.170(b), applies when the state participates in a cooperative purchasing agreement authorized under AS 36.30.700 - 36.30.790. In brief, the answer is no. AS 36.30.710(b)<sup>1</sup> specifically provides that when the state participates in a cooperative purchasing agreement, the state may enter into the agreement independent of the requirements of AS 36.30.060 and 36.30.100 - 36.30.260,<sup>2</sup> thus, the state is also exempt from applying the Alaska bidder's preference, AS 36.30.170(b), when it joins in a cooperative purchase with another public procurement unit. However, when the State of Alaska administers a cooperative purchasing agreement, meaning, Alaska is the sponsor or initiates the cooperative purchase agreement under AS 36.30.700 *et seq.*, then the Alaska bidders' preference requirements will apply along with the competitive solicitation requirements in AS 36.30.100 - 36.30.260. Our legal analysis follows.

<sup>1</sup> AS 36.30.710(b) provides as follows:

- (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.

<sup>2</sup> AS 36.30.060 concerns "specifications" for supplies, services, professional services, and construction. AS 36.30.100 - 36.30.260 set out the requirements of competitive sealed bidding and competitive sealed proposals.

The Honorable Mike Miller  
A.G. file no: 663-04-0028

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Under the State Procurement Code, AS 36.30, cooperative purchases agreements are governed by Article 9, AS 36.30.700 - 36.30.790.<sup>3</sup> Article 9 is modeled after the American Bar Association (ABA) *Model Procurement Code for State and Local Governments*, Article 10, Intergovernmental Relations (1979).<sup>4</sup> The provisions of AS 36.30.700 - 36.30.790 apply when the state (a public procurement unit), a local public procurement unit, or external public procurement unit, elects to conduct or join with another local or external public procurement unit to procure or jointly use personnel or property through cooperative purchasing.<sup>5</sup> Cooperative purchasing<sup>6</sup> is conducted as a competitive procurement process by the initiating public procurement unit that sponsors the procurement.<sup>7</sup>

<sup>3</sup> AS 36.30.850(c) requires the state to comply with the terms of AS 36.30.700 - 36.30.790 when participating in a cooperative purchasing agreement. AS 36.30.850(c) reads:

Except for AS 36.30.085 [lease purchase agreements] and 36.30.700 - 36.30.790, this chapter [AS 36.30] does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.

<sup>4</sup> According to the overview of the ABA Model Procurement Code, the provisions for intergovernmental agreements are "... designed to facilitate cooperative procurement among the various units of government. It permits standardization of specifications for use by several jurisdictions, joint use of real and personal property, and sharing of personnel among local governments and between a state and its political subdivisions. The Article also provides that a state, at the request of other jurisdictions, may provide procurement information and technical services to those jurisdictions."

<sup>5</sup> Cooperative purchasing is deemed to be a cost-savings measure, a "...major innovation, the feature of cooperative purchasing to be utilized: (a) by purchasing units in a state, acting together; (b) by local units acting with agencies of the United States; and (c) by and among the various states." *Public Contract Law Journal*, Winter 1996, *A Personal History of the Model Procurement Code*, F.T. Vom Baur.

<sup>6</sup> Under AS 36.30.790(1), "cooperative purchasing" means procurement conducted by or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement activity.

<sup>7</sup> An example of a cooperative purchase solicitation (i.e., a request for proposals) is found on the Western States Contracting Alliance website: <http://www.state.nm.us/spd/WSCAmain.html>. New Mexico is the sponsor-state for the solicitation of a cooperative purchase agreement for certain computers.

The Honorable Mike Miller  
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Under AS 36.30.700, a public procurement unit, which, by definition, includes all contracting agencies of the State of Alaska,<sup>8</sup> is authorized to either participate in, sponsor, conduct, or administer a cooperative purchasing agreement with one or more public procurement units or external procurement activities<sup>9</sup> under agreement of the parties. Under the cooperative purchasing statutes, the state is authorized to join in a cooperative purchase agreement initiated by another public procurement unit or an external procurement activity. When joining in a cooperative purchase agreement, the sponsoring state conducts the procurement under its own competitive rules and procedures (i.e., through an invitation to bid or a request for proposals) and participating states are deemed to have complied with their own competitive laws through the sponsoring state's competitive process. AS 36.30.170(b) specifically provides that the state may participate in such cooperative agreements "independent of the requirements of AS 36.30.060 and 36.30.100 - 36.30.260." Because the sponsoring public procurement unit's (other state's) competitive solicitation laws and procedures govern the cooperative purchase, Alaska is exempted from the requirements in AS 36.30 as specified in AS 36.30.710 when joining a cooperative purchase.

When the State of Alaska initiates or is the sponsor of a cooperative purchase in which other public procurement units will join, Alaska is considered the administering public procurement unit and conducts the competitive solicitation under Alaska's procurement laws.<sup>10</sup> When Alaska conducts a cooperative purchase, the Alaska bidders preference would apply as it is part of the state's competitive solicitation process, (AS 36.30.100 - 36.30.260). Statutes governing bid protests and contract controversies also would apply. See AS 36.30.750.<sup>11</sup>

<sup>8</sup> Under AS 36.30.720(4), a "public procurement unit" means either a local public procurement unit or a state public procurement unit. Under AS 36.30.790(5) "state public procurement unit" means the Department of Administration and any other contracting agency of the state.

<sup>9</sup> Under AS 36.30.790(2), an "external procurement activity" means a buying organization not located in this state that, if located in this state, would qualify as a public procurement unit; an agency of the United States is an external procurement activity.

<sup>10</sup> It is our understanding that Alaska has not been the sponsor of a cooperative purchase agreement with other states, but Alaska has participated in cooperative purchase agreements sponsored by other states.

<sup>11</sup> AS 36.30.760(a) reads:

(a) Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with As 36.30.560 - 36.30.699.

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Under the ABA Model Procurement Code, and Alaska statutes, when a participating public procurement unit joins in a cooperative purchase solicitation conducted by the sponsor state, then that public procurement unit is deemed to have fulfilled its own competitive solicitation requirements. And, the cooperative purchasing agreements entered into by Alaska with other public procurement units or external procurement activities have been specifically exempted from the competitive solicitation requirements of the code, AS 36.30.100 - 36.30.260.

Even though AS 36.30.710 allows the state to participate in cooperative agreements independent from Alaska's competitive solicitation laws, cooperative purchase agreements are still competitive procurements. The initiating public procurement unit conducts the competitive solicitation under its own laws and other public procurement units join in the solicitation for the goods or services. As stated earlier, when the State of Alaska participates in a cooperative purchase agreement, it may do so "independent of the requirements of AS 36.30.060 and 36.30.100 - 36.30.260." AS 36.30.710(a) and (b). Thus, the Alaska bidders' preference is not applicable, nor could it be imposed, when the state joins in a cooperative purchase agreement sponsored and conducted by another public procurement unit or external procurement activity. The Alaska bidders' preference "does" apply if Alaska is the sponsor state for solicitation of goods or services under a cooperative purchase agreement.

We hope this adequately answers your question. Please contact this office if further assistance is needed on this issue.

MLV/sto

cc: Vern Jones, Chief Procurement Officer  
Division of General Services

# STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

## DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

P.O. BOX 110200  
JUNEAU, ALASKA 99811-0200  
PHONE: (907) 465-2200  
FAX: (907) 465-2135

December 5, 2003

The Honorable Gary Wilken  
Alaska State Senator  
119 N. Cushman, Suite 101  
Fairbanks, Alaska 99701

Dear Senator Wilken:

This is in response to your letter dated December 4, 2003, in which you provide a list of questions to be answered in advance of the Senate Finance Committee hearing. In the letter you mention that the purpose of the hearing is to discuss the State of Alaska's new microcomputer procurement method. As a point of clarification, I would like to mention that the state has been purchasing microcomputers and related equipment under a WSCA computer contract for over three years.

The responses to your questions are as follows:

- Question #1:
- a) Can a state agency buy a computer from Dell under the Western States Contracting Alliance (WSCA) without obtaining any other bids or quotes and without contacting the Alaska vendor of Dell products?
  - b) If yes, can a state agency do so without applying the 5% Alaska Bidder Preference?
  - c) AS 36.30.700 authorizes use of cooperative purchase agreements, but where does it exempt purchases under these agreements from the rest of the procurement statutes? What specific statute do you rely on to make the determination that the usual competitive bid (AS 36.30.170) or small procurement (AS 36.30.320) statutes do not apply?

*In response to questions 1(a) and (b), the answer is yes. State agencies may purchase computers directly from Dell under the Western States Contracting Alliance (WSCA) contract without contacting the Alaska vendor of Dell products, or applying the 5% Alaska Bidder Preference.*



*Regarding question 1(c), the state's participation in the WSCA Dell contract is through a cooperative purchase authorized under Article 9 of the state procurement code, AS 36.30.700 – AS 36.30.790. Further, AS 36.30.850(c) exempts cooperative purchasing from other sections of the procurement code, including the requirements under AS 36.30.170 and AS 36.30.320.*

**Question #2:** What opportunity will Alaska computer vendors have to compete for State microcomputer business in the future?

*The Department of Administration is currently involved in an enterprise integration IT planning project that will likely cause us to alter the way the state procures its computers and related equipment. We have not finalized our procurement strategy, but intend to follow the state's procurement code as we fulfill the state's future microcomputer needs.*

**Question #3:** Since WSCA price lists are controlled by the manufacturer, how can Alaska's procurement officers be sure they are receiving the contracted discounts from retail that they are supposed to get?

*Under the WSCA/Dell contract, state agencies receive a predetermined discount off of the retail price list. Agencies can confirm the retail prices online. WSCA computer contracts are utilized by 15,000 governmental entities in 40 states who also ensure that the manufacturers provide the correct contract pricing.*

**Question #4:** Previously, Senators Wilken and Therriault asked that you require Dell to provide periodic reports of purchase activity through WSCA. Why do reports for the past year show only summaries and not detailed information to verify purchases by State agencies?

*See below response to question #5.*

**Question #5:** Senators Wilken and Therriault asked that you require State agencies to capture real-time pricing data and feed this into a database so the Legislature can develop a perspective on the actual price difference between the Alaska Microcomputer Contract, WSCA, and retail. What obstacles have prevented this from being done?

*Dell provides periodic summary reports of state purchasing activity in accordance with the terms and conditions of the WSCA contract and has provided more detailed information regarding individual orders as requested by the state. Government Computer Sales (GCS), the in-state provider of Dell products, also provides periodic reports of state purchases.*

*We have analyzed the pricing and savings data multiple times. Each analysis confirms that the WSCA pricing is consistently below that offered by GCS, well in excess of the 5% Alaska Bidder Preference.*

*The state calculated average savings of 10.26% under the WSCA Dell contract after benchmarking 31 separate orders hand-picked by GCS. It is appropriate to note that Dell confirmed the retail and WSCA pricing for this sample, and concurs with the state's findings. This was the last of several cost comparisons the state had conducted. Those comparisons documented that the WSCA Dell contract offered significant savings to the state.*

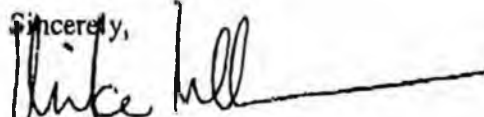
*If we applied the 10.26% average savings to the GCS yearly sales of Dell computers to the state (\$8,905,512 in 2002), the state would have realized an approximate savings of over \$900,000 by using the WSCA Dell contract instead of the contract with GCS.*

*The state has spent months of staff time benchmarking the price differences and savings between the WSCA Dell contract and the Dell contract with GCS. We believe it would be extremely expensive and unproductive to continue to track and analyze over \$8 million dollars worth of annual computer equipment purchases, in excess of 2,000 individual orders, especially since results are already known, have been documented multiple times and confirmed by Dell – the manufacturer.*

I hope my responses adequately address your questions, and look forward to attending the Senate Finance Committee meeting next week.

As you know, we believe the WSCA computer contracts generate substantial volume-based savings due to the combined purchasing power of multiple states and political subdivisions. Since October 1, 1999, the WSCA computer contracts have generated a cumulative volume of approximately \$4 billion dollars. Dell will account for over \$1.5 billion in sales this calendar year alone. I remain confident that it is in the state's best interest to continue utilizing these cost-effective contracts.

Sincerely,

A handwritten signature in cursive script that reads "Mike Miller". The signature is written in black ink and extends to the right with a long horizontal stroke.

Mike Miller  
Commissioner

cc: Ray Matiashowski  
Deputy Commissioner

Vern Jones  
Chief Procurement Officer

## GARY WILKEN

SENATOR  
Fairbanks

*Interim:*  
1851 Fox Ave.  
Fairbanks, Alaska 99701  
Tel: 451-5501 (from Fbks)  
Tel: (907) 465-3709 (outside Fbks)  
Fax: (907) 465-4714



*During Session:*  
State Capitol Building  
Juneau, Alaska 99801-1182  
Tel: 451-5501 (from Fbks)  
Tel: (907) 465-3709 (outside Fbks)  
Fax: (907) 465-4714  
Website: [www.garywilken.com](http://www.garywilken.com)  
E-Mail: [Senator.Gary.Wilken@legis.state.ak.us](mailto:Senator.Gary.Wilken@legis.state.ak.us)

December 4, 2003

Mr. Mike Miller, Commissioner  
Department of Administration  
P.O. Box 110200  
Juneau, AK 99811-0200

Dear Commissioner Miller,

Thank you for your willingness to attend the Senate Finance Committee hearing scheduled for December 9, 2003 at the Anchorage Legislative Information Office from 9:00 am to 11:00 am. As you know, the purpose of this hearing is to discuss the State of Alaska's new microcomputer procurement method. In an effort to ensure an open and candid discussion on this issue, I have prepared a list of questions for your consideration. If time allows, please respond in writing prior to the start of the meeting.

- Question #1: a) Can a state agency buy a computer from Dell under the Western States Contracting Alliance (WSCA) without obtaining any other bids or quotes and without contacting the Alaska vendor of Dell products?
- b) If yes, can a state agency do so without applying the 5% Alaska Bidder Preference?
- c) AS 36.30.700 authorizes use of cooperative purchase agreements, but where does it exempt purchases under these agreements from the rest of the procurement statutes? What specific statute do you rely on to make the determination that the usual competitive bid (AS 36.30.170) or small procurement (AS 36.30.320) statutes do not apply?

Question #2: What opportunity will Alaska computer vendors have to compete for State microcomputer business in the future?

Question #3: Since WSCA price lists are controlled by the manufacturer, how can Alaska's procurement officers be sure they are receiving the contracted discounts from retail that they are supposed to get?

Proudly Representing the Golden Heart of Alaska

Question #4: Previously, Senators Wilken and Therriault asked that you require Dell to provide periodic reports of purchase activity through WSCA. Why do reports for the past year show only summaries and not detailed information to verify purchases by State agencies?

Question #5: Senators Wilken and Therriault asked that you require State agencies to capture real-time pricing data and feed this into a database so the Legislature can develop a perspective on the actual price difference between the Alaska Microcomputer Contract, WSCA, and retail. What obstacles have prevented this from being done?

If you need clarification on any of the above questions, please don't hesitate to contact myself or my staff at your convenience. Thank you for your attention to this matter. I look forward to receiving your response.

Sincerely,

*Gary Wilken*  
DP

Gary Wilken  
State Senator - Fairbanks

2003 OCT 30 PM 1 18  
DIVISION OF GENERAL  
SERVICES & SUPPLY

October 30, 2003

Mr. Veri Jones  
Chief Procurement Officer  
Dept of Administration  
State of Alaska  
Division of General Services  
PO Box 110210  
Juneau, AK 99811-0210

Dear Mr. Jones:

Dell appreciates the opportunity to establish a direct relationship with the State of Alaska's Executive Branch and provides you with the following offer regarding Dell Marketing L.P.'s ("Dell") discounted pricing for the State of Alaska's Executive Branch and related agencies.

**Price Discounts:** The State of Alaska's Executive Branch may purchase mutually agreed upon Category A Standard Configuration System Products from Dell in the United States at the following discounts from Dell's published list price ("Price Discounts").

OptiPlex Desktops	19%
Latitude Notebooks	12%
PowerEdge Servers	19%

**Commitment:** Dell's pricing above is contingent on the State of Alaska Executive Branch's commitment to purchase all of their desktop, laptop, and server needs for the term of the contract on a sole source basis from Dell (estimated to be at least fifteen million (\$15M) dollars worth of products per year). The discounts set forth above are subject to change (i) in the event of structural or significant changes in the way Dell develops its list pricing; (ii) in the event that key vendors to Dell, significantly change their pricing structure to Dell; or (iii) if State of Alaska's Executive Branch does not meet its obligations under the Agreement.

**Quarterly Reviews:** Once the State of Alaska's Executive Branch decides to enter into a direct relationship with Dell, we will endeavor to provide you with not just aggressive pricing discounts, but also great products and a great customer experience. In order to achieve this goal, Dell will review the prices for these systems each quarter to ensure that State of Alaska's Executive Branch is receiving at least this discount level. In the event


that a standard configuration price is found to be above the appropriate discount amount during the review, Dell will revise the price for subsequent orders. Any changes in the price of standard configuration will only apply to orders received after the effective date of the price change. This pricing commitment is effective for the term of the contract is confidential to Dell and the State of Alaska's Executive Branch.

**Product Transition:** Additionally, Dell will work with you to ensure a lower total cost of technology ownership. If a mutually agreed upon Standard Configuration System has reached the end of its life cycle, Dell will work with the State of Alaska's Executive Branch to develop a plan for a smooth transition to a new configuration. As part of this plan, Dell will make a good faith effort to help the State of Alaska's Executive Branch transition to a new Standard Configuration at a point in the product life cycle where the price of the new system is comparable to the price of the prior system.

**Resellers:** Dell agrees that the pricing to the State of Alaska's Executive Branch will be better than pricing that Dell provides to any reseller related to the same opportunity that the reseller may be bidding on in the State of Alaska. This statement applies only to the State and Local Government space.

This letter, and all sales and purchases by and between Dell and the State of Alaska's Executive Branch will be governed by the WSCA terms and conditions as currently agreed upon by both parties. The State of Alaska's Executive Branch further agrees and acknowledges that all product purchases made outside of the mutually agreed upon standard configurations will be priced according to the WSCA category discounts as agreed upon by Dell and the State of Alaska.

Sincerely,



Ajay Patel  
Contract Manager  
Dell Marketing, L.P.

# ROBERT L. CARRIER

## SUMMARY

A professional procurement administrator and manager experienced in purchasing and contracting of human services; supplies, services and equipment for construction, heavy equipment, and automotive industries; and warehousing and inventory control. Worked in both private and public sectors. Able to lead and direct employees to achieve organizational goals and highest levels of customer satisfaction. Extensive experience analyzing, developing and implementing purchasing methods and procedures, and utilizing purchasing and inventory software. Excellent negotiator and communicator.

## WORK EXPERIENCE

State of Arizona, Dept. of Economic Security (DES), Phoenix, AZ 2002-Present  
Contracts Management Specialist III

- Reduced the cost of mandated legal notices for solicitations by developing a new format;
- Serves as liaison to assigned administrations within DES;
- Provides technical assistance and training to Department personnel in contract management policies, development of scopes of work, special terms and conditions, operating procedures, and standards;
- Reviews Requests for Proposals, Intergovernmental Agreements, and Contracts for accuracy, clarity, and conformance to State Procurement Code.

State of Alaska, Dept. of Transportation (DOT) Juneau, AK 1990-2002  
Southeast Region Chief Procurement Officer (1998-2002)

- Administered the DOT Southeast Region Procurement Department. Led, trained, evaluated, coached, and counseled all employees to achieve superior customer satisfaction;
- Evaluated, developed the specifications, purchased and implemented on a statewide basis, centralized procurement software. Increased overall efficiency and reduced procurement cost by eliminating duplication;
- Directed the Southeast Region DOT and the Alaska Marine Highway System (AMHS) Procurement section. Had unlimited purchasing authority, for negotiating and establishing contractual commitments for technology purchases, construction supplies and services, and vessel construction, repairs, and maintenance;
- Developed complex scopes of work for supplies, equipment and services;
- Reviewed, negotiated, approved various competitive solicitations to obtain best price, quality, and delivery to meet or exceed customer expectations, while adhering to the Procurement Code;
- Reviewed and approved various competitive solicitations in order to obtain the best price, quality and delivery;
- Managed the Southeast Region maintenance and construction supply purchases, and warehouse inventory. Established and maintained vendor relations in order to achieve prompt and reliable delivery at a competitive price;
- Administered the AMHS procurement program. Provided oversight of AMHS vessel procurements, shore-side facility procurement, contract initiation, management and monitoring for compliance, warehousing supplies and equipment in two warehouses;
- Reviewed methods of procurement, assigned priorities and deadlines, provided oversight of all phases of contracting and purchasing to ensure accuracy and statutory compliance.

3143 NORTH 155<sup>TH</sup> LANE, GOODYEAR, AZ 85338  
PHONE: 623-536-1847 FAX: 623-536-2606 EMAIL: BOBANDHOLLY@COX.NET

**Robert L. Carrier**

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**Procurement Specialist III (1995-1998)**

- Led, trained, evaluated, coached, and counseled employees to achieve objectives of Section;
- Improved end-user relations by implementing regular on-site problem solving sessions;
- Supervised and developed the preparation of specifications and solicitations of informal bids; awarded bids for purchasing and leasing of supplies, repair parts, equipment, and materials; preparation of Purchase Orders;
- Established and maintained vendor relations to assure uninterrupted operation of the AMHS Southeast and Southwest vessels and shore-side operations.

**Procurement Specialist I (1992-1995)**

- Prepared specifications and solicitations of informal bids, awarded bids for purchasing and leasing supplies, repair parts, equipment, and materials; prepared Purchase Orders;
- Expedited delivery to assure uninterrupted operation of the AMHS Southeast and Southwest vessels and shore-side operations.

**Supply Technician I (1990-1992)**

- Prepared specifications and solicitation of informal bids, awarded for purchasing and leasing of supplies, repair parts, equipment, and materials; prepared Delivery Orders;
- Developed and implemented requisition and purchase order tracking system to assure follow-up and prompt delivery.

**OTHER EXPERIENCE:**

Held a variety of management and supervisory positions in the automotive, construction, and heavy equipment industries.

**EDUCATION:**

University of Alaska/Southeast, Juneau, Alaska

Bachelor of Business Administration - Management Degree

Associate of Arts Degree

Hinds Junior College, Raymond, Mississippi

General Education

**CERTIFICATION:**

State of Alaska Level III Certification

NIGP Certification anticipated January 2004

**OUTSIDE AFFILIATIONS:**

- Served on Board of Directors for Juneau (Alaska) Receiving Home, a juvenile placement facility.
- Served as Treasurer and Board Member for Juneau, Alaska homeless shelter (The Glory Hole).

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PHONE: 623-536-1847 FAX: 623-536-2606 EMAIL: BOBANDHOLLY@COX.NET

# Western States Contracting Alliance

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## WELCOME

The Western States Contracting Alliance (WSCA) was formed in October 1993 by the state purchasing directors from fifteen western states. The primary purpose of WSCA is to establish the means by which participating states may join together in cooperative multi-State contracting in order to achieve cost-effective and efficient acquisition of quality products and services.

Membership consists of the principal procurement official that heads the state central procurement organization, or designee for that state, from the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming.

All governmental entities within WSCA states are welcome to use the approved agreements as well as authorized governmental entities in non-WSCA states. Everyone benefits from cumulative volume discounts.

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Official Business

# Alaska State Senate

## Senate Finance Committee

Mall Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FACSIMILE

To: *Mindy + Robin*  
Fax #: *465-2187*  
From: *Darwin*  
Date: *12-8-03*  
Pages (including cover): *2*  
Regarding: *List of Attendees*

*Ladies,*

*Here's a list of attendees. Committee members present will be Wilken, Green, B. Stevens, Dyson and Hoffman.*

*I sent an extra packet to you and I'll send the tapes down after the meeting.*

*Thanks -*

*Darwin*



# Alaska State Senate

## Senate Finance Committee

Official Business

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### LIST OF ATTENDEES

Senate Finance Committee Hearing  
December 9, 2003

#### Office of the Governor

Mr. Dennis DeWitt, Special Staff Assistant

#### Department of Administration

Mr. Mike Miller, Commissioner

Mr. Ray Matiashowski, Deputy Commissioner

Mr. Vern Jones, Chief Procurement Officer

#### Government Computer Sales

Mr. Bruce Jamieson, CEO

Mr. John Powers, President

#### Dell

Ms. Mary Verdurmen, Dell Account Manager for Alaska

#### Invited Guests

Mr. Robert Carrier, Contracts Management Specialist, State of Arizona

Mr. Bart Mauldin, Chief Procurement Officer, Municipality of Anchorage



# Alaska State Senate

## Senate Finance Committee

Official Business

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FACSIMILE

To: *Robin*  
Fax #: *465-2187*  
From: *Darwin*  
Date: *12-9-03*  
Pages (including cover): *5*  
Regarding: *John Powers testimony*

**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 costs. 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 DGS 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 our 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 specifications, but were not 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 no 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 15<sup>th</sup> 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 as set 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. DGS 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 application 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 all lose the Number One priority set out in the Christmas Speech by Governor Murkowski, ALASKA JOBS.

Thank you. Do you have any questions?

**Subject: Re: todays' SFC meeting**

**Date:** Tue, 09 Dec 2003 11:30:10 -0900

**From:** Darwin Peterson <Darwin\_Peterson@Legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Robin Paul <Robin\_Paul@Legis.state.ak.us>

Robin,

Thanks. The attorney from Dell's name is John Lavorato. I was able to put the tapes in the pouch before it went out today, so you should be receiving that tomorrow. There was teleconference difficulties during the meeting, so we don't know if the tapes recorded the testimony. I didn't want to listen to the tapes because if the testimony wasn't recorded, I don't want to know about it. :) Barbara, here at the LIO, said the testimony should be available on the internet??? I will fax you a copy of John Powers' speech now.

Darwin

Robin Paul wrote:

- > Hey Darwin!
- > Good Job!
- > Thanks for the fax....the only person I couldn't really id was the
- > gentleman from Dell, but I bet you have his name etc.
- > Did you wear your cape?
- > Robin
- >
- > Can't wait the get the packet. I bet it has the whole speech that Mr.
- > Powers gave, right?