





Pilot Program Review

- ✓ HB 313 passed 2003 Session
- ✓ Initial pilot agency: DOT/PF SER
- ✓ Competitive RFP, award on 3/19/2004
- ✓ Procurement ops began 7/2/2004
- ✓ Warehouse ops began 10/1/2004
- ✓ I.T. tools live 10/1/2004
- ✓ Staff and cost reductions delivered



Cost Savings Achieved

Savings Source	Amount
Personnel Costs	\$ 163,089
Goods: Catalog Purchases*	36,412
Total, Goods + Operations	\$ 199,501

**Based on current catalog only, 3% cost reduction per 2Q-3Q 2005 comparison of 972 catalog transactions, continued through 6/30/2006.*



Cost of Goods Comparison

	2004 Q4	2005 Q1	To Date
Total Lines	306	600	972
# Lines Price increase	149	319	507
# Lines Price decrease	75	189	283
# of distinct products	183	333	451
Total Spend - Actual	\$ 25,070.30	\$ 152,381.95	\$ 184,768.54
Total Spend - Baseline	\$ 24,280.43	\$ 157,032.13	\$ 188,415.19
\$ increase/decrease	\$ 789.87	\$ (4,650.18)	\$ (3,646.65)
% increase/decrease	3.3%	-3.0%	-1.9%

**Based on DOT/PF Southeast Region catalog transactions since web tools went live 10/1/2004.*



Historical “Firsts” Achieved

- First full cycle, full scope supply chain management privatization among state governments in U.S. (best of our knowledge)
- First e-Commerce PO issued on the Internet by State of Alaska
- First web based requisition approved on Internet by an SOA employee
- First web based receipt processed by an SOA employee
- First electronic catalog transaction by SOA



e-Commerce Numbers

Measurement	Value*
Nbr PO's Issued	1575
Nbr Requisitions Approved	2490
Nbr Vendors Transitioned	257
Nbr SOA Users Trained	112
Nbr Catalog Items Built	4940
Nbr Catalog Items Mapped	3769

**October 1, 2004 thru January 31, 2005*



Custom e-Commerce Functions

- ❖ SOA authentication, acct. creation
- ❖ Real-time stock data
- ❖ Real-time accounting codes
- ❖ PO & Recpt integration with SOA
- ❖ Synchronization of vendors, depts, etc.
- ❖ At-Sea catalogs, other legacy support
- ❖ Geographic dimension added
- ❖ Customer notification functions



Lessons Learned

- Consider location, labor force and season
- Size the engagement scope adequately:
 - Adequate management and planning resources
 - Avoid partial agency engagement
- Avoid disconnect between operations analysis and contractor
- Sequence milestones differently, if possible
- Importance of Agency change leadership



The Opportunity Ahead

- Much of the hard work already done
 - Tools, rules and structure in place
- In position for an orderly, statewide expansion with operations in:
 - S-Central
 - Fairbanks
 - Juneau
- Substantial cost savings possible



Policy Advantages of Senate Bill 160 “Procurement Modernization”

- ☺ Achieve sustainable, meaningful reductions in overhead costs!
- ☺ Consolidate purchasing between state agencies – better prices on goods and services
- ☺ Help State participate in U.S. productivity gains of past decade
- ☺ Shift funds from overhead functions to programs such as education, public safety
- ☺ Reduce future State retirement liabilities

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities
Office of the Commissioner

TO: Ray Matiashowski
Commissioner
Department of Administration

DATE: February 16, 2005

TELEPHONE NO: 465-3900
TEXT TELEPHONE: 465-3652
FAX NUMBER: 586-8365

FROM: Mike Barton *Mike*
Commissioner

SUBJECT: Audit Report of Alaska
Supply Chain Integrators

We have reviewed the first quarter (July 1 to September 30, 2004) Audit Report of Alaska Supply Chain Integrators outsourcing pilot. Enclosed you will find our department's comments and suggestions regarding this audit.

In an effort to reduce the processing time for the second quarter audit (October 1 to December 31, 2004), I would like to offer the assistance of our department's Finance and Internal Review sections. Please let me know if we can help.

Enclosure

cc: Cheryl Frasca, Director, Office of Management and Budget
Scott Hawkins, General Manager, Alaska Supply Chain Integrators
Michael Nizich, Deputy Chief of Staff, Office of the Governor
Mark O'Brien, Chief Contract Officer, DOT&PF
Gary Paxton, Southeast Regional Director, DOT&PF
Nancy Slagle, Director, Statewide Administrative Services, DOT&PF

**Department of Transportation & Public Facilities
Report on the Outsourcing Procurement Pilot
February 14, 2005**

Purpose: This report provides: 1) a summary of the February 4, 2005 Audit Report on outsourcing pilot program, 2) the department's comments on Audit Report, and 3) the results of a survey of Alaska Supply Chain Integrators' (ASCI) SmartTools users.

Background: Under contract for Procurement Services, Supply Chain Management and Electronic Tools, Alaska Supply Chain Integrators (ASCI) assumed responsibility for the duties of the Department of Transportation & Public Facilities (department), Southeast Region (SER) Procurement section on July 1, 2004. On October 1, 2004, ASCI assumed all duties of the Southeast Region Warehouse. The outsourcing pilot resulted in the layoff of the 10 department employees that previously staffed these functions.

ASCI's second quarter of operation under this contract concluded on December 31, 2004. An audit for the first quarter (July 1 to September 30, 2004) of ASCI's contract was conducted by the Department of Administration, Division of General Services (DGS) and is attached to this report as Attachment A.

The First Quarter Audit was released on February 4, 2005. A draft of the audit was provided to ASCI. With the exception of two comments regarding "Time to process" and "Responsibility for errors", ASCI is in agreement with the audit results as indicated in Attachment B.

Section One - Audit Summary

Time to process comparison:

- ASCI - 3.45 days
- SER - 2.96 days

There is no "time to process" improvement under ASCI management.

Cost of Goods:

By a process of random sampling, the audit determined the cost of goods purchased by ASCI (excluding orders less than \$100 and those placed under existing state contracts) increased an average of 1.1%. Applied to the total value of these orders, this is an estimated \$17,600 cost increase to the department for the first quarter of ASCI's contract.

Alaska Vendors:

- ASCI - 60% Alaska Vendors
- SER - 61% Alaska Vendors

Slightly fewer contracts have been awarded to Alaska vendors under ASCI management.

Workload Comparison

- ASCI process 17.3% fewer transactions, 12% fewer line items, and had a 11.6% overall decrease in total transaction dollars (dollar value of deliver orders increased by 36.4%) with a time to process equal to or longer than SER (see Time to process comparison, page 1).

Mistakes or Errors

- One specific error was found, but only resulted in an additional \$189.00. DGS will be sending ASCI a request for payment.
- The incorrect shipment of engine parts is still under investigation and no conclusions regarding this issue can be made at this time.

Section Two – Department's Comments on Audit

With the two exceptions previously noted, the audit has been accepted by both DGS and ASCI. The department also concurs.

It is clear from the audit conclusions that under ASCI management there has been no improvement in service and the cost of goods to the state have actually increased. Based on these findings we recommend that there be no expansion of the pilot until ASCI's performance demonstrates significant benefit to the state.

We also recommend that DGS modify its "Cost of Goods" sample size prior to completing the audit of the second quarter of ASCI's contract. Evaluation of 1% of the orders to determine the estimated change in the Cost of Goods may not be statistically sound.

In addition, based on concerns raised by ASCI's SmartTools users (see Attachment C) we recommend DGS test additional performance areas such as freight expenses, on-time delivery, and evaluate the additional department staff time required to implement this pilot.

As part of the next audit, we also request ASCI or DGS immediately undertake a more formal and thorough survey of users, vendors, and finance staff to identify the strengths and weaknesses of the current system and the successes and failures of the pilot thus far. The department would like to participate in the development of this survey to ensure it

covers the areas of concern identified in the informal survey as well as complaints received over the last several months. In addition to providing ASCI insight into the needs of its customer base, it will provide the state with feedback critical to ensure successful implementation of this pilot.

Section Three – SmartTools Survey

ASCI began training the majority of users of its SmartTools e-commerce software in January. In order to assess the efficiency and effectiveness of this new tool, we conducted an informal survey of the top ten users of the system. The results of this survey can be found in Attachment C.

The areas of needed improvement can generally be grouped into the following categories.

- Improve catalog navigation functionality to reduce search time.
- Modify the order tracking status function to provide current status and delivery date. Replacing descriptions such as "sourced out" with something like "quote date" will provide users with a better picture of order status. System generated tracking reports may assist users in tracking their outstanding orders.
- Improve order processing and warehouse inventory management to better respond to requested delivery dates and prevent expedited delivery charges.
- SmartTools automated notification system needs to be modified to reduce unwanted email notifications.
- Institute an internal ASCI order review process to improve order accuracy and to reduce returns, incorrect deliveries, delays and order errors.
- Develop an improved training program to reduce staff hour investment.
- Review ordering, receiving, tracking functions and develop strategies that avoid transferring additional work to the users.

Input from the SmartTools users confirm that there are improvements to be made to the system in order to realize maximum savings from this pilot.

ATTACHMENT A

MEMORANDUM
STATE OF ALASKA
Department of Administration
Division of General Services

Phone Number: 465-2250
FAX Number: 465-2189
TDD Number: 465-2205

TO: Walt Harvey
Contracting Manager

DATE: February 4, 2005

FROM: Charlie Deininger ^{CD}
Procurement Specialist

SUBJECT: Audit Report, First Quarter,
Contract No. 2004-9900-
4556 for Procurement
Services, Supply Chain
Management and Electronic
Tools

The attached audit report is submitted for your review and distribution.

The purpose of this review was to benchmark processes and assess for contract compliance with the terms and conditions of Contract No. 2004-9900-4556 for Procurement Services, Supply Chain Management and Electronic Tools between the State and Alaska Supply Chain Integrators, LLC (ASCI)

A copy of the completed report was provided to ASCI for review and comment. ASCI's comments are attached and made part of the final report.

Audit Report

First Quarter Audit of Procurement Services, Supply Chain Management and Electronic Tools Contract

Purpose

The purpose of this review is to benchmark processes and assess for contract compliance by Alaska Supply Chain Integrators, LLC (ASCI) with the terms and conditions of contract award 2004-9900-4556, Procurement Services, Supply Chain Management and Electronic Tools. A copy of contract award 2004-9900-4556 is available from the Division of General Services.

Objectives

The objectives of the audit were:

- benchmark and compare time to process transactions, workloads, cost of goods, and Alaska vendor utilization,
- assess for contract compliance, and
- audit for mistakes or errors that could result in additional costs to the state.

Scope

The evaluation covered the period of July 1, 2004 through September 30, 2004, or the first quarter of the current contract term. Beginning on July 1, 2004, ASCI assumed all procurement office duties and responsibilities. On October 1, 2004, (outside the scope of this audit) ASCI assumed all warehouse duties and responsibilities.

Methodology

In evaluating the performance of the contractor, it was necessary to develop methodology within the terms and conditions and requirements of the contract. Prior to starting, the Division of General Services (DGS) received guidance on audit methodology from Legislative Audit.

The following is an outline of the evaluation methodology:

ASCI data will be compared to previous Southeast Region (SER) data. The same three-month quarter will be used for items 1, 3 and 4 (i.e. SER 1st quarter FY04 vs. ASCI 1st quarter FY05, etc.) For item 2, SER 4th quarter procurements in FY04 will be compared to ASCI 1st quarter procurements in FY05 to allow for a more concise cost comparison. ASCI data during the 1st quarter FY05 will also be audited for mistakes or errors and compliance with procurement rules under item 5.

1. Time to Process:

Time to process comparison from receipt of requisition to issuance of delivery order. Transactions will also be audited for compliance with contractual procurement rules.

A random sample of 50 transactions will be audited. MS Excel will be used to generate the random sample pool.

2. Cost of Goods:

Cost of goods including freight (no change, decrease, or increase will be recorded).

Purchases from existing state contracts will be eliminated as well as transactions valued at \$100 and less. A random sample of 50 transactions from ASCI's first quarter procurements will then be generated. MS Excel will be used to generate the random sample pool. The cost of like items will be compared SER fourth quarter procurements. In addition, the PSV will include any known instances of significant price increases or decreases for like items and audit all procurements above \$150,000. ASCI will also be asked to provide any known instances of significant price increases or decreases.

3. Alaska vendors:

The total number and percentage of Alaska vs. non-Alaska vendors will be documented and compared.

4. Workload comparison:

The total number of delivery orders, Smart Tools orders, inventory issues, stock requests, line items and associated dollar values will be documented and compared.

5. Mistakes or errors:

Audit change orders. Eliminate transactions where change order did not result in additional costs and where the change order dollar value was \$100 or less. Audit the remaining change orders and document the cause of and responsibility for all increases.

The PSV will also audit any known potential instances of mistakes or errors that occurred during the reporting period. The cause of and responsibility for all increases will be documented.

Background Information

On July 1, 2003, HB 313 went into effect; this Act allowed the state to enter into a pilot program with a contractor to provide for the delivery of procurement services, supply chain management and electronic commerce tools to reduce state costs in a way that does not directly reduce program delivery.

Operational Analysis/Report: During September 2003, an operational analysis report was completed which served to document the environment, provide baseline data and identify the state employees to be displaced as a result of the pilot program.

January 28, 2004

November 1, 2004, DGS issued Request for Proposals No. 2004-9900-4556 for Procurement Services, Supply Chain Management and Electronic Commerce Tools.

On March 19, 2004, DGS issued Contract No. 2004-9900-4556 to ASCI. The period of performance for this contract is March 19, 2004 through June 30, 2006, with two each three year renewal periods. However, any contract renewals or extensions past June 30, 2006 will require an amendment to the law of the State of Alaska and approval by the department of Administration.

On July 1, 2004, ASCI assumed all procurement office duties and responsibilities. July 1, 2004 was also the last day of employment for the 7 SER procurement office positions affected by the contract award. Of the 7 state employees, 2 were laid off on July 1, 2004, 4 employees resigned their positions and accepted other jobs with the State of Alaska prior to their scheduled last day of employment of July 1, 2004 and one employee retired on June 30, 2004.

From July 1, 2004 through September 30, 2004, ASCI utilized SER's procurement database (BuySpeed) to process delivery orders and contracts. DOT/PF provided ASCI with training on SER's procurement database and processes.

On October 1, 2004, ASCI assumed all warehouse operations duties and responsibilities. October 1, 2004 was also the last day of employment for the 3 SER warehouse positions. Of the 3 positions affected by the contract award, 1 employee was laid off on October 1, 2004, 1 employee resigned his position and accepted another job with the State of Alaska prior to his scheduled last day of employment of October 1, 2004 and 1 employee retired on August 28, 2004.

Report Conclusions

1. Time to process comparison

For the purpose of this comparison, "time to process" is the elapsed time or number of days from receipt of a stock request (requisition) to the issuance of a delivery order.

MS Excel random number generator was used to determine a pool of 50 delivery orders to audit of all delivery orders issued by ASCI during the period of July 1, 2004 through September 30, 2004, this pool of orders was compared to all delivery orders issued by SER procurement office and warehouse during the period of July 1, 2003 through September 30, 2003.

Conclusion:

- ASCI time to process was 3.45 days (excluding delivery orders issued by SER warehouse staff)

January 28, 2004

- SER time to process was 2.96 days (including delivery orders issued by SER warehouse staff)
- The 50 delivery orders issued by ASCI were executed in compliance with contract procurement rules.
- For the test period, two delivery orders were greater than \$150,000. These procurements were issued in compliance with contract procurement rules.

Delivery Order No. 340273 / \$153,250

Delivery Order No. 340756 / \$202,250

Attachments: 1A, Audit Pool, SER
1B, Audit Pool, ASCI

Additional spreadsheets and backup documents required to calculate results are available upon request.

2. Cost of Goods including freight (no change, decrease, or increase will be recorded).

The total number of delivery orders issued by ASCI during the first quarter was 1,107

The number of delivery orders valued at \$100 or less, deducted from the total was 151

The number of delivery orders issued in accordance with existing state contracts, deducted from the total was 297

The number of delivery orders issued with federal funding, deducted from the total was 4 (these solicitations were reviewed and co-signed by the PSV)

	<u>No. of</u>	<u>Dollar value</u>
Delivery Orders	1,107	\$2,316,071.50
<u>Less (minus):</u>		
- Less than \$100:	151	\$7,265.69
- Contracts (state):	297	\$677,194.63
- Fed Funded:	4	\$31,640.00
	655	\$1,599,991.80

MS Excel random number generator was used to determine the pool of 50 delivery orders to audit from the 655 delivery orders above.

To evaluate the 50 delivery orders a search was performed in the BuySpeed database for previous purchases by the SER procurement office during the 4th quarter of FY

04. Searches were by part number, if no part number match was found a search for similar makes or models was conducted.

Conclusion for the 50 delivery orders evaluated:

- 4 delivery orders, there was no change in costs. The same vendors were used for exact item(s).
- 43 delivery orders, no comparisons for evaluation were found.

Of the 43 delivery orders with no comparisons;

- 24 delivery orders, no part number was located for comparisons, though, historically the same vendor was used for similar items,
- 8 delivery orders, service related with no comparisons,
- 10 delivery orders, no part number or vendor comparisons were found,
- 1 delivery order, hotel room rental for training,
- 1 delivery order had a cost decrease; one item decreased by 0.55%, historically the item was sourced from the same vendor.
- 2 delivery orders had a cost increase;
 - 1 delivery order, the unit cost increased by 37.8, and
 - 1 delivery order; the unit cost including freight increased by 9.3%.

Conclusion for Contracts and Contract Releases

No cost increases or decreases were found for delivery orders or contract releases issued in accordance with contracts for supplies, commodities or equipment. During the quarter, ASCI did not establish any new supplies, commodities, or equipment contracts and issued 297 delivery orders in accordance with existing state contracts for supplies, commodities, or equipment.

During the quarter, ASCI established 20 new contracts; all 20 were service related contracts. No exact comparisons were found, in some cases the contracts were single source and/or the scope of service is not exact to a previous or similar service contracts.

On December 30, 2004, ASCI was asked to provide any known instances of price increases or decreases, however none were provided.

See Attachment: 2A, Cost of Goods Comparison

Additional spreadsheets and documents required for this comparison are available on request.

3. Alaska Vendors

The total number and percentage of Alaska vs. non-Alaska vendors will be documented and compared.

ASCI and SER warehouse staff combined issued a total of 994 delivery orders to Alaska vendors, or 60%

SER and SER warehouse staff issued a total of 1,124 delivery orders to Alaska vendors, or 61%

Documents and spreadsheets required to determine results are available upon request.

4. Workload Comparison

The total number of delivery orders, Smart Tool orders, inventory issues, stock requests, line items and associated dollar values will be documented and compared.

Conclusion for Workload Comparison

The stock request line item is the most accurate way to measure incoming workload. A stock request line item will result in one of the following; an inventory issue, a delivery order, or a contract.

During the first quarter of FY 05;

- 12% less stock request line items were processed by ASCI compared to stock request line items processed by SER procurement office during the first quarter FY 04.
- 17% less delivery orders were issued by ASCI compared to delivery orders issued by SER procurement office during the first quarter FY 04.
- The dollar value of delivery orders issued by ASCI is 36.4% greater compared to the dollar value of delivery orders issued by SER procurement office during the first quarter FY 04.
- The total number of transactions (delivery orders, inventory issues and contracts established) decreased by 17.3% compared to the first quarter FY 04.
- The total transaction dollar value (delivery orders, inventory issues and contracts established) decreased by 11.6% compared to the first quarter FY 04.

See Attachment: 4A, Workload Comparison

5. Mistakes or Errors

Conclusion of Change Orders

The issuance of change orders is not uncommon. Change orders are issued for any type of change to the original delivery order after issuance. The following are examples of types of changes to a delivery order; description change, line item(s) added or canceled, unit cost adjusted up or down, freight costs added or adjusted up or down, unit quantity adjusted up or down, or destination changed.

During the first quarter FY 05, ASCI staff issued 135 change orders. Change orders reviewed were typical and common.

During the review of change orders, one mistake due to an ASCI employee error was found. Review of the file for delivery order 340882 indicated a typo was made by an ASCI buyer that resulted in an additional cost to the state in the amount of \$189.00. The item was custom made and could not be returned for credit. In accordance with their contract with the state, ASCI is responsible for this mistake.

Conclusion for known potential instances of mistakes or errors

On October 19, 2004, an email was sent to the contract administrator from the Kennicott Chief Engineer and Port Engineer that indicated delivery orders issued by ASCI for engine parts for the Kennicott engine overhaul were sent to Juneau and had to be air freighted to Cascade General Shipyard, Portland OR. The orders should have been shipped to Bellingham, WA warehouse to be staged for future delivery to the shipyard.

At this time, responsibility for the mistake is still being investigated. On completion of the investigation, this report will be appended with the findings.

See Attachment: 5A, Change Orders

On January 31, 2005, Scott Hawkins, ASCI, LLC reviewed this report and submitted comments. This memo is attached and made part of this report.

Attachment: ASCI Memo, dated January 31, 2005

First Qtr, Audit Pool, SER

Attachment 1A

RNG	PO No.	Rel.	SR Rcvd	Date Issued	WDTP	Buyer	Cost	Vendor
10	333688		07/01/03	07/01/03	0	Bill Adair	\$236.94	COSTCO WAREHOUSE - JNU
309	333987		07/11/03	07/16/03	3	Bill Adair	\$80.99	IKON OFFICE SOLUTIONS, INC.
655	334342		07/30/03	08/01/03	2	Bill Adair	\$143.54	OFFICE PLUS
701	334389		08/04/03	08/05/03	1	Bill Adair	\$55.98	OFFICE PLUS
832	334523		08/13/03	08/13/03	0	Bill Adair	\$800.00	Office Plus
3	333681		07/01/03	07/01/03	0	Bo McAdoo	\$808.40	TYLER RENTAL INC - JUNEAU
29	333707		07/02/03	07/02/03	0	Bo McAdoo	\$215.10	GRAINGER - SEATTLE
170	333848		07/08/03	07/09/03	1	Bo McAdoo	\$253.10	THE BUYING NETWORK
265	333943		07/14/03	07/15/03	1	Bo McAdoo	\$1,165.21	ANCHORAGE SAND & GRAVEL CO
964	334657		08/18/03	08/20/03	2	Bo McAdoo	\$2,108.00	Alaska Ship Chandlers
1059	334750		08/20/03	08/22/03	2	Bo McAdoo	\$685.69	MCMaster-CARR SUPPLY COMPANY
1085	334776		08/25/03	08/26/03	1	Bo McAdoo	\$955.00	PRIME MOVER CONTROLS
1127	334817		08/25/03	08/27/03	2	Bo McAdoo	\$1,067.60	VALLEY POWER SYSTEMS, INC.
1452	335166		09/05/03	09/15/03	6	Bo McAdoo	\$221.60	NC MACHINERY - JUNEAU
1527	335243		09/17/03	09/18/03	1	Bo McAdoo	\$766.88	THE BUYING NETWORK
1593	335315		09/19/03	09/22/03	1	Bo McAdoo	\$139.19	MCMaster-CARR SUPPLY COMPANY
1599	335322		09/19/03	09/23/03	2	Bo McAdoo	\$247.56	THE BUYING NETWORK
1624	335348		09/18/03	09/24/03	4	Bo McAdoo	\$176.35	NORTHERN SALES
222	333900		07/01/03	07/11/03	8	Cindi Brown	\$20.00	EAGLE ENTERPRISES INC.
308	333986		07/15/03	07/16/03	1	Cindi Brown	\$420.00	GLACIER TOWING
1038	334729		07/23/03	08/21/03	21	Cindi Brown	\$15,000.00	HOSE-MCCANN TELEPHONE CO., INC.
1716	335442		09/18/03	09/29/03	7	Cindi Brown	\$125.00	ALASKA SHIP & DRYDOCK
107	333785		07/08/03	07/08/03	0	JROGERS	\$638.99	GRAINGER - SEATTLE
359	334038		07/18/03	07/18/03	0	JROGERS	\$42.78	GRAINGER - SEATTLE
689	334376		08/04/03	08/05/03	1	JROGERS	\$990.00	Napa/Service Auto
953	334644		08/12/03	08/19/03	5	JROGERS	\$224.50	BECK ELECTRIC COMPANY
986	334677		08/12/03	08/21/03	7	JROGERS	\$938.48	MCMaster-CARR SUPPLY COMPANY
1230	334923		08/27/03	09/02/03	3	JROGERS	\$72.77	GRAINGER - SEATTLE
1661	335386		09/18/03	09/25/03	5	JROGERS	\$237.68	MCMaster-CARR SUPPLY COMPANY
1833	251S0315M	162	08/05/03	08/07/03	2	JROGERS	\$260.06	NC MACHINERY - JUNEAU
18	333696		07/01/03	07/02/03	1	Mindy Bugayong	\$252.00	JUNEAU ELECTRONICS
561	334245		07/15/03	07/29/03	10	Mindy Bugayong	\$58.80	WASTE MANAGEMENT
564	334248		07/28/03	07/29/03	1	Mindy Bugayong	\$48.00	ALLEN MARINE
650	334337		07/22/03	08/01/03	8	Mindy Bugayong	\$1,465.62	AMERICAN HOTEL REGISTER COMPANY
890	334581		08/13/03	08/15/03	2	Mindy Bugayong	\$1,370.75	LAB SAFETY SUPPLY
1116	334806		08/22/03	08/27/03	3	Mindy Bugayong	\$136.30	OLIVERS TROPHIES & ENGRAVING

First Qtr, Audit Pool, SER

Attachment 1A

1348	335053		09/08/03	09/09/03	1	Mindy Bugayong	\$58.00	ALASKA SAFETY INCORPORATED
1488	335202		09/11/03	09/16/03	3	Mindy Bugayong	\$519.12	Durable Corporallon
1502	335216		09/15/04	09/17/03	2	Mindy Bugayong	\$252.12	ALASKA INDUSTRIAL HARDWARE, INC. / JUNEAU
389	334070		07/11/03	07/22/03	7	Nick Cashen	\$63.50	ALASKA SAFETY INCORPORATED
437	334118		07/17/03	07/23/03	4	Nick Cashen	\$170.00	SURVEYOR'S EXCHANGE
827	334518		08/12/04	08/13/03	1	Nick Cashen	\$11.17	CAPITAL OFFICE SUPPLY
836	334527		08/11/03	08/13/03	2	Nick Cashen	\$158.20	ALASKA SAFETY INCORPORATED
1245	334736		08/21/03	08/22/03	1	Nick Cashen	\$2,882.00	XEROX CORP - SANTA FE SPRINGS
1126	334816		08/27/03	08/27/03	0	Nick Cashen	\$1,044.00	ALLEN MARINE
1318	335021		09/04/03	09/08/03	2	Nick Cashen	\$35.98	OFFICE PLUS
1772	250S0169M	40	08/12/03	08/12/03	0	Nick Cashen	\$103.60	K & L DISTRIBUTORS -ANC
274	333952		07/08/03	07/15/03	5	RENIERE	\$982.00	CAPITAL OFFICE SUPPLY
324	334003		07/10/03	07/16/03	4	RENIERE	\$446.68	BARGREEN ELLINGSON, INC.
1384	335094		09/08/03	09/10/03	2	RENIERE	\$116.70	DELTA ALASKA WHOLESALE

148 2.96

First Qtr, Audit Pool, ASCI

Attachment 1B

RNG	DO No.	Rel	SR Rcvd	Date Issued	WDTP	Buyer	Cost	Vendor
2	339995	0	07/16/04	07/20/04	2	Bill Fidler	\$67,644.00	Mercury Data Group Inc. - Anc
6	340052	0	07/21/04	07/22/04	1	Bill Fidler	\$29.00	Juneau Electronics
11	340229	0	07/28/04	07/30/04	2	Bill Fidler	\$99.30	Napa/Service Auto
18	340341	0	08/03/04	08/04/04	1	Bill Fidler	\$200.00	Risa Technologies
60	340575	0	08/13/04	08/17/04	2	Bill Fidler	\$77.86	Boomers Sewing
102	340657	0	08/20/04	08/23/04	1	Bill Fidler	\$478.00	Alfa Tech
133	340719	0	08/23/04	08/24/04	1	Bill Fidler	\$378.00	Juneau Electronics
158	340898	0	09/03/04	09/03/04	0	Bill Fidler	\$102.24	Grainger - Seattle
164	340966	0	08/30/04	09/09/04	8	Bill Fidler	\$1,270.83	Wartsila
184	341020	0	09/12/04	09/13/04	1	Bill Fidler	\$209.00	General Technology Inc
185	341057	0	09/14/04	09/14/04	0	Bill Fidler	\$579.00	Juneau Electronics
194	341131	0	09/13/04	09/17/04	4	Bill Fidler	\$886.00	Port Plastics
215	341232	0	09/23/04	09/25/04	2	Bill Fidler	\$570.00	Northern Communications Company
233	340617	0	08/19/04	08/19/04	0	Cyndi Brown	\$2,495.00	Fairhaven Shipyard
261	340816	0	08/17/04	08/30/04	9	Cyndi Brown	\$1,611.10	Best Access Systems
335	341050	0	08/27/04	09/14/04	12	Cyndi Brown	\$1,723.68	Abb Turbocharger
337	250S0246M	10	09/08/04	09/13/04	3	Cyndi Brown	\$11,500.00	Prime Mover Controls
388	339696	0	07/02/04	07/20/04	12	Faye Bain	\$171.00	Murray Pacific Supply Corp Ak
390	339863	0	07/02/04	07/15/04	10	Faye Bain	\$1,231.20	Aspen Hotel Soldotna
404	339954	0	07/09/04	07/19/04	6	Faye Bain	\$3,430.00	Lakeside Industries
419	340237	0	07/29/04	08/02/04	3	Faye Bain	\$745.74	Mcmaster-Carr Supply Company
494	340312	0	08/03/04	08/04/04	1	Faye Bain	\$4,275.00	Quadra Chemicals
500	340460	0	08/09/04	08/10/04	1	Faye Bain	\$2,000.00	Pacific Radar, Inc.
512	340472	0	08/10/04	08/10/04	0	Faye Bain	\$143.47	Boundtree Medical
532	340527	0	07/28/04	08/13/04	12	Faye Bain	\$352.48	Grainger - Anch
569	340579	0	08/16/04	08/17/04	1	Faye Bain	\$373.35	Gilson Company Inc
576	340628	0	08/19/04	08/19/04	0	Faye Bain	\$160.95	Forestry Suppliers, Inc.
589	340922	0	09/01/04	09/07/04	5	Faye Bain	\$36.72	Grainger - Anch
598	341081	0	08/23/04	09/15/04	17	Faye Bain	\$21.36	Mcmaster-Carr Supply Company
624	341137	0	09/16/04	09/20/04	2	Fred Sayre	\$2,426.79	Alfa Tech
633	339948	0	07/15/04	07/19/04	2	Joe Ahumada	\$439.92	Alfa Tech
648	339985	0	07/13/04	07/20/04	5	Joe Ahumada	\$821.30	Mcmaster-Carr Supply Company
677	340038	0	07/02/04	07/22/04	14	Joe Ahumada	\$3,932.79	Alfa Tech
673	339692	0	07/02/04	07/02/04	0	Judy Gustafson	\$1,285.67	Sperry Marine - Kent
673	340100	0	07/02/04	07/23/04	15	Judy Gustafson	\$21,000.00	Southeast Road Builders Inc
734	339709	0	07/06/04	07/06/04	0	Samantha Brown	\$251.20	Alaska Litho Inc.

First Qtr, Audit Pool, ASCI

Attachment 1B

787	339734	0	07/02/04	07/07/04	3	Samantha Brown	\$24.20	Captains Nautical
805	339795	0	07/09/04	07/13/04	2	Samantha Brown	\$48.40	Marine Exchange Of Alaska
827	339917	0	07/08/04	07/16/04	6	Samantha Brown	\$2,190.00	Hose-Mccann Telephone Co., Inc.
867	339986	0	07/20/04	07/20/04	0	Samantha Brown	\$736.00	Restaurant Appliances
889	340314	0	08/03/04	08/04/04	1	Samantha Brown	\$1,004.64	Powerhouse Diesel Inc.
895	340498	0	08/11/04	08/11/04	0	Samantha Brown	\$678.00	Juneau Electronics
911	340668	0	08/23/04	08/23/04	0	Samantha Brown	\$4,119.93	Acme Fence Company, Inc.
951	340684	0	08/23/04	08/24/04	1	Samantha Brown	\$297.86	Office Plus
955	340726	0	08/23/04	08/25/04	2	Samantha Brown	\$1,984.50	Us Filter - Electrocatalytic Products
970	340741	0	08/23/04	08/25/04	2	Samantha Brown	\$4,338.79	Raincountry Refrigeration
992	341163	0	09/21/04	09/21/04	0	Samantha Brown	\$1,601.00	Chris-Marine East Coast Inc.
1025	341187	0	09/15/04	09/22/04	5	Samantha Brown	\$2,269.63	Electro Tech Company, Llc
1058	341276	0	09/23/04	09/29/04	4	Samantha Brown	\$140.00	Skyriver Films
1094	340358	0	08/03/04	08/05/04	2	Scott Hawkins	\$130.00	Southeast Ocean Survival

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3.45

First Qtr, Cost of Goods Comparison

Attachment 2A

DO No.	DO Amount	Vendor / Contractor	City	State	Date	Cost +/-
340354	\$1,182.70	Electro Tech Company, Llc	Juneau	AK	08/04/04	Increase 37.8%
339944	\$225.08	Alaska Bearing, Inc.	Anchorage	AK	07/19/04	Increase 9.3%
339694	\$1,539.00	Anchorage Parking Authority	Anchorage	AK	07/05/04	No Change
340097	\$31,500.00	Pate Construction Company	Yakutat	AK	07/23/04	No Change
341009	\$705.66	Arctic Controls	Anchorage	AK	09/13/04	No Change
341061	\$1,906.00	Port Plastics	Tukwila	WA	09/14/04	No Change
339704	\$113.78	Hubert Company Llc	Harrison	CA	07/06/04	No Comparison
339707	\$107.84	Madison Lumber & Hardware, Inc	Ketchikan	AK	07/06/04	No Comparison
339725	\$160.63	Allen Marine Inc	Auke Bay	AK	07/07/04	No Comparison
339778	\$1,143.94	Mcmaster-Carr Supply Company	Los Angeles	CA	07/11/04	No Comparison
339850	\$132.76	Electrotech Company, Llc	Juneau	AK	07/14/04	No Comparison
339885	\$182.10	Global Industrial Equipment	Suwanee	GA	07/15/04	No Comparison
339952	\$4,756.00	Beck Electric	Seattle	WA	07/19/04	No Comparison
339982	\$4,421.16	Pine Instrument Company	Grove City	PA	07/20/04	No Comparison
339980	\$2,350.00	Fairhaven Shipyard	Bellingham	WA	07/20/04	No Comparison
339988	\$1,390.00	Beck Electric	Seattle	WA	07/20/04	No Comparison
340016	\$115.34	L.N. Curtis & Sons	Seattle	WA	07/21/04	No Comparison
340242	\$591.18	J A Sexauer Inc - Ny	White Plains	NY	08/02/04	No Comparison
340256	\$443.40	Mcmaster-Carr Supply Company	Los Angeles	CA	08/02/04	No Comparison
340328	\$389.70	West Marine Products Inc.	Bellingham	WA	08/04/04	No Comparison
340337	\$1,575.00	Engineered Equipment Company	Anchorage	AK	08/04/04	No Comparison
340370	\$333.45	Mcmaster-Carr Supply Company	Los Angeles	CA	08/05/04	No Comparison
340463	\$907.70	Beck Electric	Seattle	WA	08/10/04	No Comparison
340472	\$143.47	Boundtree Medical	Tempe	AZ	08/10/04	No Comparison
340484	\$877.43	L.N. Curtis & Sons	Seattle	WA	08/11/04	No Comparison
340521	\$2,559.62	Dli Engineering	Bainbridge Island	WA	08/13/04	No Comparison
340563	\$2,875.00	Paratex Pied Piper	Anchorage	AK	08/17/04	No Comparison
340573	\$236.00	Juneau Electronics	Juneau	AK	08/17/04	No Comparison
340600	\$1,315.00	Arctic Controls	Anchorage	AK	08/18/04	No Comparison
340614	\$294.00	Cascade Machinery	Seattle	WA	08/19/04	No Comparison
340638	\$609.60	Ajax Electric	Seattle	WA	08/20/04	No Comparison
340652	\$1,068.28	Temco Helicopters-Skagway	Skagway	AK	08/23/04	No Comparison
340667	\$719.95	Precision Fluid Power Inc	Okahoma City	OK	08/23/04	No Comparison
340686	\$15,926.41	MSC Industrial Supply Company	Elkhart	IN	08/24/04	No Comparison
340695	\$612.72	L.N. Curtis & Sons	Seattle	WA	08/24/04	No Comparison

First Qtr, Cost of Goods Comparison

Attachment 2A

340754	\$665.04	Brown's Electrical Supply Co., Inc.	Anchorage	AK	08/25/04	No Comparison
340791	\$271.92	J A Sexauer - Ak	Eagle River	AK	08/27/04	No Comparison
340870	\$360.94	Office Plus	Juneau	AK	09/01/04	No Comparison
340894	\$2,297.50	Pc Hydraulics	Ward Cove	AK	09/03/04	No Comparison
340939	\$750.00	Seattle Boiler Works	Seattle	WA	09/08/04	No Comparison
341037	\$1,579.00	Emi Engine Monitor Inc.	Harahan	LA	09/13/04	No Comparison
341044	\$11,746.22	Kaman Industrial Technologies Corporation	Seattle	WA	09/14/04	No Comparison
341122	\$2,075.20	Tacoma Screw Products	Tacoma	WA	09/17/04	No Comparison
341130	\$1,125.00	Aspen Hotel Soldotna	Soldotna	AK	09/17/04	No Comparison
341153	\$2,637.92	Mcmaster-Carr Supply Company	Los Angeles	CA	09/20/04	No Comparison
341172	\$1,524.00	Humming Bird Services	Ketchikan	AK	09/21/04	No Comparison
341217	\$5,500.00	Robert M. Keenholts, Inc	Seattle	WA	09/24/04	No Comparison
341244	\$6,867.96	Office Plus	Juneau	AK	09/27/04	No Comparison
341287	\$602.00	Juneau Electronics	Juneau	AK	09/29/04	No Comparison
340043	\$4,401.00	Beck Electric	Seattle	WA	07/22/04	See reason
	\$122,066.82					

July 1, 2004 through Sept. 30, 2004

Stock Requests

<u>ASCI Office</u>		
Documents	1,091	
Line Items	4,558	
<u>SER Warehouse</u>		
Documents	544	
Line Items	3,250	
<u>Total SR's</u>		
Documents	1,635	
Line Items	7,808	

Delivery Orders

ASCI Office	1,107	\$2,316,071
SER Warehouse	503	\$166,425

<u>Contracts</u>	20	\$431,319
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Warehouse

Inventory Issues	476	\$133,614
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Total

Transactions	2,106	-----
Dollar Value	-----	\$3,047,429

July 1, 2003 through Sept. 30, 2003

Stock Requests

<u>SER Office</u>		
Documents	1,155	
Line Items	5,136	
<u>SER Warehouse</u>		
Documents	675	
Line Items	3,560	
<u>Total SR's</u>		
Documents	1,830	
Line Items	8,696	

Delivery Orders

SER Office	1,295	\$1,697,478
SER Warehouse	558	\$189,521

<u>Contracts</u>	23	\$1,416,123
Revenue	1	---

Warehouse

Inventory Issues	594	\$96,860
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Total

Transactions	2,471	-----
Dollar Value	-----	\$3,399,982
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First Qtr. Change Orders

Attachment 5A

DO No.	Rel No.	CO No.	Date of DO	Date of C/O	Difference				Reason
1	50814	0 1	07/05/04	07/05/04	-7.82	0	0		Canceled
	50814	0 1	****	****	-23.4	0	0		****
2	337937	0 2	03/23/04	09/08/04	0	353.95	249		Vendor / Destination
	337937	0 2	****	09/08/04	0	353.95	79.95		****
3	337937	0 3	****	09/08/04	0	353.95	249		****
4	338459	0 1	04/24/04	08/10/04	-1511	2989	2989		Service / Actual Cost Adjustment
5	339099	0 1	06/03/04	08/04/04	0	3375.02	3375.02		Contract / Cost Adjusted Down
6	339099	0 2	****	08/04/04	-23.76	3375.02	3375.02		****
7	339101	0 1	06/03/04	08/04/04	-7.92	3068.78	3068.78		Contract / Cost Adjusted Down
8	339308	0 1	06/14/04	08/09/04	-2670.4	329.6	329.6		Unit Cost Adjusted Down
9	339596	0 1	06/24/04	08/10/04	750	2250	2250		Service / Unit Cost Adjusted Up
10	339600	0 1	06/24/04	08/09/04	478	978	978		Service / Unit Cost Adjusted Up
11	339705	0 1	07/06/04	07/07/04	140	4520	2160		Unit Cost Adjusted Up
	339705	0 1	****	07/07/04	140	4520	2360		****
12	339708	0 1	07/06/04	07/22/04	-97.3	0	0		Canceled
	339708	0 1	****	07/22/04	-706.9	0	0		****
	339708	0 1	****	07/22/04	-413	0	0		****
	339708	0 1	****	07/22/04	-180.55	0	0		****
13	339736	0 1	07/07/04	07/08/04	0	3000	3000		Description Changed
14	339748	0 1	07/08/04	07/13/04	800	941.25	841.25		Unit Cost Adjusted Up
15	339750	0 1	07/08/04	07/15/04	0	895.8	895.8		Destination Changed
16	339768	0 1	07/10/04	07/15/04	-13.65	0	0		Canceled
	339768	0 1	****	07/15/04	-5.85	0	0		****
	339768	0 1	****	07/15/04	-116.99	0	0		****
17	339769	0 1	07/10/04	07/12/04	-5.17	190.21	26.68		Unit Cost Adjusted Down
	339769	0 1	****	07/12/04	-1.2	190.21	12.82		****
	339769	0 1	****	07/12/04	0.45	190.21	16.92		****
	339769	0 1	****	07/12/04	-2.1	190.21	6.15		****
	339769	0 1	****	07/12/04	-9.86	190.21	26.56		****
	339769	0 1	****	07/12/04	-1.88	190.21	25.12		****
	339769	0 1	****	07/12/04	-3.69	190.21	35.01		****
18	339770	0 1	07/10/04	07/10/04	0	0	0		Canceled
	339770	0 1	****	07/10/04	0	0	0		****
	339770	0 1	****	07/10/04	0	0	0		****

First Qtr. Change Orders

Attachment 5A

	339772	0	1	07/15/04	07/21/04	155	997	500	Unit Cost Adjusted Up
19	339778	0	1	07/11/04	07/14/04	30.28	1143.94	50.28	Unit Cost Adjusted Up
	339778	0	1	***	07/14/04	-169.68	1143.94	330.32	Unit Cost Adjusted Down
	339778	0	1	***	07/14/04	35.96	1143.94	135.96	Unit Cost Adjusted Up
	339778	0	1	***	07/14/04	2.48	1143.94	67.48	Unit Cost Adjusted Up
	339778	0	1	***	07/14/04	30.12	1143.94	82.12	Unit Cost Adjusted Up
	339778	0	1	***	07/14/04	5.64	1143.94	55.64	Unit Cost Adjusted Up
20	339778	0	2	***	07/15/04	-1.86	1143.94	422.14	Unit Cost Adjusted Down
21	339785	0	1	07/12/04	07/12/04	-521.72	0	0	Canceled
22	339820	0	1	07/14/04	07/14/04	5	74.48	67	Unit Cost Adjusted Up
23	339843	0	1	07/14/04	07/15/04	-10.49	0	0	Canceled
	339843	0	1	***	07/15/04	-10.49	0	0	****
	339843	0	1	***	07/15/04	-9.99	0	0	****
	339843	0	1	***	07/15/04	-1.55	0	0	****
24	339846	0	1	07/14/04	07/16/04	0	150.96	3.76	Description Changed
25	339852	0	1	07/14/04	07/14/04	25	250.04	212.35	Shipping Changed
26	339853	0	1	07/15/04	08/13/04	177.2	765.2	715.2	Unit Cost Adjusted Up
	339853	0	1	***	08/13/04	30	765.2	50	Unit Cost Adjusted Up
27	339856	0	1	07/15/04	07/15/04	-51.1	190.8	119.3	Unit Cost Adjusted Down
28	339893	0	1	07/16/04	07/20/04	0	498.04	79.92	Dest. ation Changed
	339893	0	1	***	07/20/04	0	498.04	0.82	****
	339893	0	1	***	07/20/04	0	498.04	0.84	****
	339893	0	1	***	07/20/04	0	498.04	57	****
	339893	0	1	***	07/20/04	0	498.04	44.04	****
	339893	0	1	***	07/20/04	0	498.04	1.83	****
	339893	0	1	***	07/20/04	0	498.04	0.87	****
	339893	0	1	***	07/20/04	0	498.04	312.72	****
29	339927	0	1	07/19/04	08/23/04	233.12	233.12	233.12	Unit Cost Adjusted Up
30	339943	0	1	07/19/04	07/20/04	99.3	1728.25	198.6	Quantity changed
31	339949	0	1	07/19/04	07/21/04	6.5	82.25	6.5	Freight Added
32	339963	0	1	07/20/04	07/20/04	3	869.44	99.96	Freight Increased
33	339986	0	1	07/20/04	08/20/04	-64	736	716	Unit Cost Adjusted Down
	339986	0	1	***	08/20/04	-16.84	736	0	Unit Cost Adjusted Down
34	339988	0	1	07/20/04	07/21/04	-65	1390	1325	Freight Canceled
35	339989	0	1	07/20/04	07/23/04	-1064.16	1453.68	1064.16	Quantity changed
36	339995	0	1	07/20/04	07/21/04	0	67644	0	Line Item added
	339995	0	1	***	07/21/04	0	67644	0	****

First Qtr, Change Orders

Attachment 5A

37	339995	0	2	****	07/21/04	0	67644	0	****
	339995	0	2	****	07/21/04	0	67644	0	****
38	340007	0	1	07/21/04	07/27/04	-222.39	0	0	Canceled
39	340012	0	1	07/21/04	07/23/04	50	3449.96	50	Quantity changed
40	340048	0	1	07/22/04	07/22/04	0	160	160	Description Changed
41	340054	0	1	07/22/04	07/22/04	0	131.8	106.8	Description Changed
42	340056	0	1	07/29/04	09/21/04	230	7328	230	Freight Added
43	340119	0	1	07/23/04	07/26/04	-0.01	1091.78	15.96	Unit Cost Adjusted Down
	340119	0	1	****	07/26/04	-0.06	1091.78	24.21	****
44	340155	0	1	07/27/04	07/28/04	36	286	236	Unit Cost Adjusted Up
	340155	0	1	****	07/28/04	0	286	50	Freight Added
45	340155	0	2	****	07/28/04	50	286	50	****
	340155	0	2	****	07/28/04	0	286	0	Canceled
46	340156	0	1	07/27/04	07/28/04	-19.2	67.6	0	Line Item Canceled
47	340160	0	1	07/27/04	07/28/04	26.97	76.44	26.97	Unit Cost Adjusted Up
	340160	0	1	****	07/28/04	49.47	76.44	49.47	Unit Cost Adjusted Up
48	340207	0	1	07/29/04	07/29/04	-324.06	0	0	Canceled
	340207	0	1	****	07/29/04	-267.12	0	0	****
49	340247	0	1	08/02/04	09/22/04	-72	72	72	Quantity changed
50	340258	0	1	08/02/04	08/03/04	130	1387.29	130	Freight Added
51	340261	0	1	08/02/04	08/02/04	0	1904	650	Description Changed
52	340261	0	2	****	09/03/04	1254	1904	1254	Line Item added
53	340264	0	1	08/02/04	08/03/04	-1.34	224.26	62.06	Unit Cost Adjusted Down
	340264	0	1		08/03/04	-1.62	224.26	20.12	Unit Cost Adjusted Down
	340264	0	1		08/03/04	-8.34	224.26	97.98	Unit Cost Adjusted Down
	340264	0	1		08/03/04	-1.23	224.26	2.06	Unit Cost Adjusted Down
	340264	0	1		08/03/04	-3.08	224.26	42.04	Unit Cost Adjusted Down
54	340267	0	1	08/02/04	08/03/04	1242	1880	1242	Unit Cost Adjusted Up
	340267	0	1		08/03/04	638	1880	638	Unit Cost Adjusted Up
55	340279	0	1	08/03/04	08/03/04	0	744	744	Description Changed
56	340302	0	1	08/03/04	08/05/04	43.9	349.9	43.9	Freight Added
57	340309	0	1	08/04/04	08/04/04	0	9720	4860	Unit Cost Adjusted Up
	340309	0	1		08/04/04	0	9720	4860	Description Changed
58	340319	0	1	08/04/04	08/05/04	3014.33	5141.34	5141.34	Unit Cost Adjusted Up
59	340362	0	1	08/05/04	08/06/04	0	630	600	Description Changed
60	340382	0	1	08/05/04	08/05/04	-40.84	0	0	Canceled
61	340405	0	1	08/06/04	08/12/04	0	220	180	Destination Changed

First Qtr, Change Orders

Attachment 5A

62	340405	0	1	""	08/12/04	0	220	40	Destination Changed
63	340405	0	2	""	08/12/04	180	220	180	Unit Cost Adjusted Up
	340405	0	2	""	08/12/04	40	220	40	Freight Added
64	340417	0	1	08/06/04	08/16/04	539	722.56	539	Unit Cost Adjusted Up
	340417	0	1		08/16/04	158.56	722.56	158.53	Unit Cost Adjusted Up
65	340424	0	1	08/09/04	08/09/04	-34.68	0	0	Canceled
	340424	0	1	""	08/09/04	-5.72	0	0	Canceled
	340424	0	1	""	08/09/04	-8.24	0	0	Canceled
	340424	0	1	""	08/09/04	-51.04	0	0	Canceled
	340424	0	1	""	08/09/04	-8.72	0	0	Canceled
	340424	0	1	""	08/09/04	-6.96	0	0	Canceled
	340424	0	1	""	08/09/04	-124.48	0	0	Canceled
	340424	0	1	""	08/09/04	-224.94	0	0	Canceled
	340424	0	1	""	08/09/04	-97.65	0	0	Canceled
	340424	0	1	""	08/09/04	-97.65	0	0	Canceled
	340424	0	1	""	08/09/04	-8	0	0	Canceled
	340424	0	1	""	08/09/04	-5.12	0	0	Canceled
	340424	0	1	""	08/09/04	-5.12	0	0	Canceled
	340424	0	1	""	08/09/04	-130.12	0	0	Canceled
	340424	0	1	""	08/09/04	-232.92	0	0	Canceled
	340424	0	1	""	08/09/04	-22.62	0	0	Canceled
	340424	0	1	""	08/09/04	-22.62	0	0	Canceled
	340424	0	1	""	08/09/04	-152.6	0	0	Canceled
	340424	0	1	""	08/09/04	-8.88	0	0	Canceled
	340424	0	1	""	08/09/04	-90.66	0	0	Canceled
	340424	0	1	""	08/09/04	-62.24	0	0	Canceled
	340424	0	1	""	08/09/04	-72.12	0	0	Canceled
	340424	0	1	""	08/09/04	-27.92	0	0	Canceled
	340424	0	1	""	08/09/04	-51.04	0	0	Canceled
	340424	0	1	""	08/09/04	-51.98	0	0	Canceled
	340424	0	1	""	08/09/04	-46.78	0	0	Canceled
	340424	0	1	""	08/09/04	-64.32	0	0	Canceled
66	340462	0	1	08/10/04	08/17/04	564	11781.21	564	Freight Added
67	340470	0	1	08/10/04	08/13/04	-244.8	4542.8	92.8	Unit Cost Adjusted Down
	340470	0	1		08/13/04	0	4542.8	166.4	Description Changed
	340470	0	1		08/13/04	0	4542.8	95.2	Description Changed
	340470	0	1		08/13/04	0	4542.8	89.6	Description Changed

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	340497	0	1	08/11/04	08/13/04	3700	3700	3700	Unit Cost Adjusted Up
	340497	0	1		08/13/04	0	3700	0	Item Added
68	340505	0	1	08/12/04	08/12/04	160	14740	10240	Unit Cost Adjusted Up
69	340521	0	1	08/13/04	08/17/04	0	2559.62	385	Department Changed
	340521	0	1	""	08/17/04	0	2559.62	385	Department Changed
70	340522	0	1	08/13/04	08/16/04	100	3551.22	100	Freight Added
71	340529	0	1	08/13/04	08/16/04	-30.15	380.07	329.85	Unit Cost Adjusted Down
	340529	0	1		08/16/04	0.22	380.07	50.22	Unit Cost Adjusted Up
72	340530	0	1	08/13/04	08/13/04	57.22	552.22	532.22	Unit Cost Adjusted Up
73	340535	0	1	08/13/04	08/16/04	-219.99	0	0	Canceled
	340535	0	1	""	08/16/04	-54.95	0	0	Canceled
74	340544	0	1	08/16/04	08/17/04	-1531	0	0	Canceled
	340544	0	2	""	08/17/04	0	0	0	Canceled
75	340546	0	1	08/16/04	08/16/04	38	0	0	Canceled
76	340546	0	2	""	08/16/04	-127.59	0	0	Canceled
	340546	0	2	""	08/16/04	-38	0	0	Canceled
77	340555	0	1	08/16/04	08/30/04	-5729	0	0	Canceled
	340555	0	2	""	08/30/04	-5729	0	0	Canceled
78	340557	0	1	08/16/04	08/17/04	-19.2	172.8	0	Quantity changed
	340557	0	2	""	08/17/04	0	172.8	0	Canceled
	340557	0	3	""	08/17/04	0	172.8	0	Canceled
79	340582	0	1	08/17/04	08/17/04	-193.5	0	0	Canceled
	340582	0	1	""	08/17/04	-25	0	0	""
80	340607	0	1	08/18/04	08/24/04	0	1045	1045	Description Changed
81	340612	0	1	08/19/04	09/02/04	-1146	0	0	Items Canceled
	340612	0	1	""	09/02/04	-304	0	0	Items Canceled
	340612	0	1	""	09/02/04	-200	0	0	Items Canceled
	340612	0	1	""	09/02/04	-672	0	0	Items Canceled
82	340620	0	1	08/19/04	08/23/04	0	1498	1498	Description Changed
83	340639	0	1	08/20/04	08/23/04	0	3145.34	3145.34	Description Changed
84	340666	0	1	08/23/04	09/03/04	-874	11626	5626	Unit Cost Adjusted Down
85	340667	0	2	08/23/04	09/29/04	-1088	719.95	700	Unit Cost / Description Changed
	340667	0	2	""	09/29/04	-440.05	719.95	19.95	Freight Change
86	340672	0	1	08/23/04	08/23/04	4595.43	4595.43	4595.43	Unit Cost Adjusted Up
87	340690	0	1	08/24/04	08/30/04	-19.2	0	0	Canceled
88	340692	0	1	08/24/04	08/30/04	41.98	41.98	41.98	Unit Cost Adjusted Up
89	340727	0	1	08/25/04	08/25/04	-3.6	181	31.92	Unit Cost Adjusted Down

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	340727	0	1	""	08/25/04	-14.04	181	32.04	Unit Cost Adjusted Down
	340727	0	1	""	08/25/04	-1.8	181	15.72	Unit Cost Adjusted Down
	340727	0	1	""	08/25/04	-14.24	181	36.6	Unit Cost Adjusted Down
	340727	0	1	""	08/25/04	-28.32	181	64.72	Unit Cost Adjusted Down
90	34071	0	1	08/25/04	08/25/04	0.99	0.99	0.99	Unit Cost Adjusted Up
91	340812	0	1	08/30/04	08/30/04	-473.9	0	0	Canceled
	340812	0	1	""	08/30/04	-482.92	0	0	Canceled
	340812	0	1	""	08/30/04	-49	0	0	Canceled
	340812	0	1	""	08/30/04	-275.28	0	0	Canceled
92	340813	0	1	08/30/04	09/15/04	-363.6	96	96	Unit Cost / Quantity Changed
93	340845	0	1	08/31/04	09/01/04	72	9004.5	82.8	Unit Cost Adjusted Up
94	340879	0	1	09/02/04	09/02/04	-67.5	0	0	Canceled
	340879	0	1	""	09/02/04	-75	0	0	Canceled
	340879	0	1	""	09/02/04	-80.95	0	0	Canceled
	340879	0	1	""	09/02/04	-105	0	0	Canceled
95	340882	0	1	09/02/04	09/03/04	176	2664	58.61	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	132	2664	43.96	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	189	2664	62.94	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	88	2664	62.94	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	225	2664	74.93	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	85	2664	28.31	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	727.2	2664	242.16	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	676.8	2664	225.37	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	132	2664	43.96	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	132	2664	43.96	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	132	2664	44.09	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	189	2664	63.12	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	88	2664	63.12	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	727.2	2664	242.88	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	225	2664	75.15	Freight Added
	340882	0	1	""	09/03/04	85	2664	28.39	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	676.8	2664	226.05	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	176	2664	58.78	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	132	2664	44.09	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	132	2664	44.08	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	176	2664	58.61	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	189	2664	62.94	Unit Cost Adjusted Up

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	340882	0	1	""	09/03/04	132	2664	43.96	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	88	2664	62.94	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	225	2664	74.92	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	85	2664	28.3	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	727.2	2664	242.16	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	676.8	2664	225.38	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	132	2664	43.95	Unit Cost Adjusted Up
	340882	0	1	""	09/03/04	132	2664	43.95	Unit Cost Adjusted Up
96	340882	0	2	""	09/27/04	0	2664	62.94	Item Description Changed
	340882	0	2	""	09/27/04	0	2664	63.12	Item Description Changed
	340882	0	2	""	09/27/04	0	2664	62.94	Item Description Changed
97	340882	0	3	""	09/28/04	101	2664	62.94	Unit Cost Adjusted Up
	340882	0	3	""	09/28/04	101	2664	63.12	Unit Cost Adjusted Up
	340882	0	3	""	09/28/04	101	2664	62.94	Unit Cost Adjusted Up
98	340891	0	1	09/02/04	09/02/04	255	461.84	176	Unit Cost Adjusted Up
99	340891	0	2		09/03/04	-79	461.84	176	Unit Cost Adjusted Down
	340891	0	2		09/03/04	1.13	461.84	31.76	Unit Cost Adjusted Up
	340891	0	2		09/03/04	1.13	461.84	31.76	Unit Cost Adjusted Up
	340891	0	2		09/03/04	2.26	461.84	63.52	Unit Cost Adjusted Up
	340891	0	2		09/03/04	1.13	461.84	31.76	Unit Cost Adjusted Up
	340891	0	2		09/03/04	1.13	461.84	31.76	Unit Cost Adjusted Up
	340891	0	2		09/03/04	1.13	461.84	31.76	Unit Cost Adjusted Up
	340891	0	2		09/03/04	2.26	461.84	63.52	Unit Cost Adjusted Up
100	340896	0	1	09/03/04	09/03/04	-89.78	0	0	Canceled
	340896	0	1	""	09/03/04	-6.38	0	0	Canceled
	340896	0	1	""	09/03/04	-6.08	0	0	Canceled
101	340916	0	1	09/07/04	09/07/04	0	0	0	Description Changed
102	340916	0	2	""	09/07/04	-9700	0	0	Canceled
	340916	0	2	""	09/07/04	0	0	0	Canceled
103	340937	0	1	09/08/04	09/10/04	-1671.12	420.5	16.88	Quantity changed
104	341016	0	1	09/13/04	09/13/04	10.05	228.95	50	Unit Cost Adjusted Up
105	341018	0	1	09/13/04	09/22/04	40	102.68	72.68	Unit Cost Adjusted Up
106	341047	0	1	09/14/04	09/16/04	528.61	0	0	Unit Cost Adjusted Up
	341047	0	1	""	09/16/04	-25	0	0	Canceled
107	341047	0	2	""	09/16/04	0	0	0	Canceled
108	341056	0	1	09/14/04	09/22/04	2000	1000	1000	Unit Cost Adjusted Up
109	341056	0	2		09/22/04	0	1000	1000	Description Changed

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110	341076	0	1	09/15/04	09/15/04	61.32	61.32	61.32	Unit Cost Adjusted Up
111	341092	0	1	09/16/04	09/17/04	108	712.56	120.42	Unit Cost Adjusted Up
112	341093	0	1	09/16/04	09/16/04	1.5	105	73.5	Unit Cost Adjusted Up
113	341099	0	1	09/16/04	09/16/04	0	701.4	701.4	Description Changed
114	341105	0	1	09/16/04	09/21/04	230	3664	230	Freight Change
	341105	0	1		09/21/04	0	3664	0	Item Added
115	341155	0	1	09/21/04	09/21/04	0	660	660	Description Changed
	341155	0	2	"	09/21/04	330	660	660	Quantity changed
116	341201	0	1	09/24/04	09/24/04	499	1698	499	Quantity changed
117	341213	0	1	09/24/04	09/24/04	8.5	284.7	8.5	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	17	284.7	17	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	1.55	284.7	1.55	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	20	284.7	20	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	16	284.7	16	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	14	284.7	14	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	16	284.7	16	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	4.5	284.7	4.5	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	4.5	284.7	4.5	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	4.5	284.7	4.5	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	8	284.7	8	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	8.5	284.7	8.5	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	7.5	284.7	7.5	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	12.5	284.7	12.5	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	6.9	284.7	6.9	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	6.9	284.7	6.9	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	99.95	284.7	99.95	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	2.5	284.7	2.5	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	3.75	284.7	3.75	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	3.75	284.7	3.75	Unit Cost Adjusted Up
	341213	0	1	"	09/24/04	17.9	284.7	17.9	Unit Cost Adjusted Up
118	341217	0	1	09/24/04	09/24/04	0	5500	5500	Description Changed
119	341235	0	1	09/27/04	09/27/04	2520	1350	990	Unit Cost Adjusted Up
	341235	0	1	"	09/27/04	2700	1350	360	Item Added
120	341235	0	2	"	09/27/04	-2340	1350	990	Unit Cost Adjusted Down
	341235	0	2	"	09/27/04	-2340	1350	360	Unit Cost Adjusted Down
121	341269	0	1	09/28/04	09/28/04	-553.3	2964	553.3	Quantity changed
	341269	0	1	"	09/28/04	-1936.7	2964	1936.7	Quantity changed

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	341269	0	1	--	09/28/04	-434	2964	434	Quantity changed
122	341275	0	1	09/29/04	09/29/04	0	15427	15427	Description Changed
123	341282	0	1	09/29/04	09/29/04	0	1000	1000	Description Changed
124	341285	0	1	09/29/04	09/29/04	10	627.9	10	Item Added
	341285	0	1	***	09/29/04	0	627.9	0	Item Added
125	250S0036M	91	1		09/27/04	6500	6500	6500	Changed Qty from 0 to 1, 3 days
126	250S0048M	288	1		08/05/04	82.52	82.52	82.52	Cost Changed same day
127	251S0299M	84	1		07/22/04	0	42802.2	7133.84	Description Changed
128	251S0302M	72	1		09/01/04	-2000	0	0	Canceled
129	254S0708	0	3		07/28/04	0	814.67	282.87	Valued Increased
130	255S0778	0	1		08/24/04	0	24074.4	24074.4	Expiration Date Changed
131	255S0779	3	1		09/15/04	-110	0	0	Issued to wrong vendor
	255S0779	3	1		09/15/04	-25	0	0	Issued to wrong vendor
134	255S0792	0	1		09/10/04	0	5422.35	88	No reason
135	255S0798	0	1		09/27/04	0	2964	2964	Description Changed



MEMORANDUM

Date: January 31, 2005

TO: Charlie Deininger
Contract Administrator

FR: Scott Hawkins

RE: Audit Draft of January 28, 2005

Charlie, thanks for an opportunity to review the draft audit.

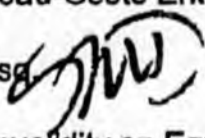
I have only two comments:

1. Time to process. SER procurement plus warehouse staff processed stock requests within an average 3.04 days in the first quarter of FY 2004 compared to 3.45 days for ASCI staff (excluding warehouse staff) in the first quarter of 2005. On this matter, I would like to offer some observations:
 - a. Comparing processing time *inclusive* of the warehouse for the pre-pilot period but *exclusive* of the warehouse for the post-pilot period may skew the comparison somewhat. Warehouse items are well specified with well established vendors, which makes them very easy to source. Non-warehouse items have a greater tendency to be poorly specified and/or to require more vendor research. These factors will tend to contribute to longer processing times.
 - b. ASCI's staff was in its first weeks and months of operation during FY 2005, as the audit report notes. Given the normal learning curve, the reduced staff resources compared to pre-pilot, and other start-up challenges, we are very encouraged by your findings, observation (a) above notwithstanding.
2. Responsibility for errors. While we have discussed this verbally in past monthly meetings, I would like to note for purposes of this audit that ASCI managers do not concur with SOA's stance that we are responsible for incidental errors made in the course of normal operations. We understood this language to apply to contractual disputes that may arise in the course of our contracting duties. We will explain our position further in separate correspondence.

Charlie, having offered my comments above, I would like to say that your audit seems straightforward and professional.

Suzanne M. Dallimore, P.C.
Attorney at Law
A Professional Corporation

MEMORANDUM

To: Mr. K. J. "Beau" Grant, Beau-Geste Enterprises, Incorporated
From: Suzanne M. Dallimore, Esq. 
Re: SB 160 – Constitutional Invalidity on Equal Protection Grounds
Date: April 8, 2005

Your firm has asked for a supplemental memorandum on the constitutional legal issues raised by SB 160, which proposes to privatize Alaska state procurement. This supplemental memorandum is based on my review of Alaska state court cases, Alaska Attorney General Opinions, and Ninth Circuit Court of Appeals and U.S. Supreme Court cases dealing with the standards for evaluating constitutional issues raised by an Alaska statute. Due to the press of time, I will here provide the analysis of only one of SB160's several possible constitutional infirmities, that it violates the equal protection clauses of the Alaska and United States constitutions. On equal protection grounds alone SB160 fails.

A. The Public Policy Purposes of the Procurement Statutes

Constitutional challenges always involve identifying the state interest involved in legislation. In this case, the expressed state interest for SB160, as expressed in the enabling 2003 legislation, HB 313, was "cost savings". However, whenever a procurement statute is at issue, the state interest in having competitive procurement laws is an interest of even greater weight.

In *Ruckle v. Anchorage School District, et al.*, 85 P.3d 1030 (Alaska 2004), the Alaska Supreme Court articulated the policy and purpose for Alaska's procurement statutes in a case raising the question of whether a taxpayer has standing to challenge those procurement practices. The *Ruckle* court reiterated the long-standing public policy set forth in *McBlimey & Associates v. State*, 753 P.2d 1132 (Alaska 1988) as follows.

[T]he purposes of the competitive public bidding system are to prevent fraud, collusion, favoritism, and improvidence in the administration of

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public business, as well as to insure that the [state] receives the best work or supplies at the most reasonable prices practicable. . . . The requirement of public bidding is for the benefit of property holders and taxpayers, and not for the benefit of the bidders; and such requirements should be construed with the primary purpose of best advancing the public interest.

Ruckle, 85 P.3d at 1034, (emphasis added)

Alaska's Attorney General agrees with the Supreme Court:

[T]he purpose of competitive bidding requirements is to foster honest competition in order to obtain the best product or service at the lowest possible price. Competitive bidding is for the benefit of the public and not for the bidders. See generally 1987 Inf. Op. Att'y. Gen. at 5 (Oct. 6; 663-87-0564).

. . . [C]ompetitive bidding is the preferred method of purchasing supplies and services for the state. AS 37.05.220. As explained in a 1985 opinion, competitive bidding is "a device used to guard against favoritism, improvidence, extravagance, fraud, or corruption in the award of public contracts." 1985 Op. Att'y Gen. No. 3 at 8 (July 2) (citations omitted).

. . . Competitive bid laws "are for the benefit of the taxpayers and not for the bidders; they should be construed with sole reference to the public good." *Edward D. Lord, Inc. v. Municipal Utilities Auth.*, 337 A.2d 621, 623 (N.J. 1975), quoting *Hillside Tp. v. Sternin*, 136 A.2d 265, 267 (N.J. 1957). See also *King v. Alaska State Housing Authority*, 633 P.2d 256, 260 (Alaska 1981); *Beaver Glass and Mirror Co., Inc. v. Bd. of Ed. of Rockford School Dist. No. 205*, 376 N.E.2d 377, 380 (Ill. App. 1978); *LeCeese Bros Contracting, Inc. v. Town Board of Williamson*, 403 N.Y.S.2d 950, 954 (N.Y. 1978); *Pioneer Company v. Hutchinson*, 220 S.E.2d 894, 900 (W. Va. 1976). See *Wester v. Belote*, 138 So. 721 (Fla. 1931).

Inf. Op. Att'y Gen. (April 25, 1988; 661-88-0419)

Thus the purpose of SB160 must be more than just cost savings. The purpose must be to effect cost savings consistent with the compelling state interest in honest competition. Saving money by inviting "collusion, favoritism, and improvidence" is not a legitimate state interest.

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B. SB 160 Denies Alaska Businesses and Individuals the Equal Protection of the Laws

Sometimes legislatures create statutory schemes that treat citizens, including businesses, differently. Here, SB160 creates several remarkable distinctions between groups of citizens. SB160 creates a new class of competitors for state business, those who are "privately procured" and whose "rules" are not those found in law that govern everyone else, but private "rules" set in their contract by the private procurement administrator proposed by SB160. The bill creates a second class of companies, those involved in the "sensitive" procurements that are still to be handled under the Alaska Procurement Code. SB160 creates a third classification of citizens, those whose contract terms are fixed by statute, and a fourth, those whose contract terms are fixed by private procurement vendor whim. The bill creates a fifth class of Alaska businesses, those whose procurements are for purchases, like public works, which must go through a separate statutory scheme requiring competitive bidding and having many rules. Finally, SB160 creates a vast, unknown number of new classifications of citizens from among and between those whose procurement "rules" are set differently by the procurement vendor from one contract to the next.

In some cases, legislatures have good reason to treat the same people differently. An example is a statute or rules permitting insurers to charge different insurance premiums to men than charge women. In that situation, a legislature may rely on hard actuarial data prove that women live longer and women have different health needs. There is simply no way to facilitate insurance firms' offering and pricing insurance products to all citizens if this real, economic and proved disparity is not recognized and resolved by permitting economic discrimination based on gender. The example explains why some unequal protection of the law is not only warranted, but also required by society for a public good.

Under SB160, however, the legislature has already determined there is only one justification for SB160, that being "cost savings". There is no data, no science, indeed not even any talk about what public good is served by creating the "rules" and "no rules" classifications of public contractors. But the constitution demands an answer to the question. Why are diverse classifications of contract bidders and contract holders necessary to save money? How would the Alaska legislative committee chairs argue to a judge that there is a legitimate or substantial state interest that is served by discriminating between Alaska companies in this way? How would they explain the discrimination to their constituents?

Suppose corporate citizen A, who sells bathroom fixtures, must go through a costly and rigorous IFB process with one agency and cannot obtain a contract term that does not require that he be insured and indemnify the state, because a state law says he has to do it in his contract. Then suppose that company B, who also sells bathroom fixtures, gets a no-bid contract from the private procurement administrator without having to have insurance or indemnify the state. Company A is burdened by the rules and the

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cost of compliance. Citizen B gets a free ride with no consideration back to the state.

To meet the equal protection requirement imposed by the state and federal constitutions, Alaska has to show that this difference was intended, and that it is necessary to affect the state's goal in SB 100. Even if the goal is only to save money, there is no rational way the new classification does that. It is not a "legitimate" public policy goal to protect some vendors from the rigors of bidding by the rules while giving others a free pass. There is no relationship of any kind between the means, discriminating between Alaska companies, and the end, saving money.

Under any equal protection analysis by any Alaska or relevant federal court, SB160 creates new classifications and denies the benefit of the new law to some, but not others, of citizens similarly situated. If the sponsors of SB 160 had any data, or the legislature any information, that showed how this disparity saves money, a further and deeper constitutional analysis might be required. Without that evidence and without evidence of a strong nexus between the rank commercial discrimination found in SB160 and the expressed cost saving public policy goal, this bill will not withstand equal protection scrutiny. And of course, corporate citizen A or one like him will eventually ask a court to throw the law out. And based on some very carefully reasoned Alaska Supreme Court cases, it is my opinion that constitutional invalidation would indeed be the outcome.

In *Alaska Pacific Assurance Co. v. Brown*, 687 P.2d 264, (Alaska 1984), the state supreme court outlined a three-step analysis to determine whether an Alaska statute violates the equal protection of the law promised by the Alaska and federal constitutions.

First, the *Alaska Pacific Assurance* court inquired closely as to what purpose the statute under review serves. The legislature's pronouncements of policy, and the legislative history will reveal what the legislature intended to accomplish. Secondly, the court identified the classifications the statute makes, that is, the distinctions made between the law's application to, and the law's disparate treatment of, similarly situated citizens. Third, the court looked closely at the nature of the citizen's interests affected. Some interests, such as those in life, liberty and the enjoyment of property, are "fundamental" rights entitled to maximum constitutional protection.

Once the court understood each of these factors, it then determined the burden the state of Alaska would have to meet to justify the classifications in its statutory scheme. If a "fundamental right is involved, the state must show a "compelling state interest" for the classification, (as compared to the legislation). Even if the legislation impacts only some lesser right, the state must demonstrate "legitimate objectives" for the classification, according to the Alaska Supreme Court.

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Finally, the *Alaska Pacific Assurance Co.* court analyzed whether the classifications in the legislation meet the precise state interest that is being urged to justify the disparate treatment of similar citizens. If a fundamental or important right of citizens is involved, then the classification is justified only if the discrimination is absolutely necessary to further those goals. Even where fundamental rights are not involved, the state must demonstrate a "substantial relationship between the means and ends". Where a fundamental right is involved, the means and end must match almost perfectly. *The Alaska Pacific Assurance Co.*, 752 P.2d at 471.

The Alaska Pacific Assurance Co. case dealt with a statute that treated design professionals differently than other classifications of individuals. The Supreme Court rejected all offered justification for the statutory distinction. It was not enough for the State to argue ease of administration in that case; Alaska had to explain why the distinction was necessary to a legitimate state goal and how the distinction met the goal. Alaska was not able to justify the disparity.

The constitutional right to equal protection is a *command to state and local governments to treat those who are similarly situated alike*. The common question in equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to equal treatment. Equal protection jurisprudence concerns itself largely with the reasons for treating one group differently from another. In reviewing equal protection claims we view the enactment in question as *creating, by its differential treatment, separate groups*. [Footnote omitted]

Provisions of an act challenged on equal protection grounds that separate different groups are referred to as a "classification." [Footnote omitted] Classifications such as those involved here which relate merely to economic interests are reviewed under Alaska's equal rights clause "by asking whether a legitimate reason for disparate treatment exists, and, given a legitimate reason, whether the enactment creating the classification bears a fair and substantial relationship to that reason."

Anderson v. Alaska, 78 P.3d 710, 718 (Alaska, 2003).

The *Anderson* court dealt with a tort reform law that provided that 50% of punitive damages awards was payable to the state, except as to maritime claims. While this discrimination between citizens with punitive damages awards was extreme, it was based upon two very sound reasons. First, there were issues arising from the Exxon Valdez disaster and punitive damages claims in that that were far different than ordinary punitive damages claims, and secondly, maritime claims are governed by a complex and important federal maritime statutory scheme that could not be undone by the Alaska legislature. Thus the *Anderson* court declined to find an Alaska tort reform measure unconstitutional. The reason

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the law survived constitutional scrutiny was because the legislative classification of maritime claims for separate treatment bore a "fair and substantial relationship" to the "legitimate reason" that maritime claims had to be treated differently so as to conform to federal maritime law.

The distinction between classes that subjects a law to equal protection scrutiny need not be express. It is how the law applies to the citizen that counts. Under SB160 some Alaska businesses who sell the same products will do very well. Some will do not well at all. As to most, no one knows how they will fare because there are no rules or standards to govern the scope, extent or prejudice caused by the commercial discrimination inherent in the bill. SB160 creates, at a minimum, a "rules" class and a "no rules" class of citizens wishing to sell goods to the state. There is no relationship between the classifications and the goal of saving money for the state. The "no rules" contractors will have some rules, but no one knows what they will be, and no one can say they will further the legislative cost savings goal. The "rules" contractors may turn out to be cheaper, since they will actually have to compete and they are unable to wrest unreasonable economic concessions within the formal procurement process in place.

But to advance even a "legitimate" state interest, the classifications created by SB160 must also be consistent with the larger goals of procurement law "to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to insure that the [state] receives the best work or supplies at the most reasonable prices practicable". *Ruckle v. Anchorage School District* 85 P.3d at 1034. "No Rules" bidding and contracts are precisely the way to promote and insure collusion, favoritism and improvidence, if not fraud. Under constitutional equal protection analysis this bill must treat similar bidding citizens of Alaska equally, and if does not, it must have at least a legitimate, and because contract and therefore property rights will be implicated, I believe a compelling state interest advancing competition and the elimination of cronyism, collusion and improvidence that is well-served by the discrimination built into the bill. Then the legislation must also make no more or broader distinctions between citizens than is necessary to furthering that goal. Clearly, SB160 creates a sharp, unfair and unnecessary program of disparate treatment that places some Alaska companies at a deep disadvantage.

C. SB160 will be Difficult to Defend

SB160 would by its very nature operate to disadvantage the state of Alaska in any judicial proceedings, because of the unlimited discretion given to the private procurement administrator to set his own rules. According to the

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Alaska Attorney General, agency authority to avoid competitive bidding must derive from statute. For example, an Alaska statute authorizes the Alaska Department of Administration to negotiate contracts without competitive bidding. AS 37.25.230(2). This authority is expressly given to the Department when "it is in the best interests of the state." Inf. Op. Att'y Gen., October 6, 1987. The determination of what is in the "best interests of the state," which is statutorily committed to the Department of Administration, is, according to the Attorney General, "probably subject to judicial review under the "reasonable basis" test and not the "independent judgment" test. This means a court will look at the decisions the private procurement administrator makes on an objective standard of "reasonableness". It will not be enough for the state to argue that the private vendor used his best judgment. And, the state will have to defend the private contractor's subjective decision as to what is in "the best interest of the state", since the legislature will have delegated to him absolute control over those decisions in state procurement. Complaints about flawed procurement make their way to the Alaska Attorney General, who must find both that procurements without competitive bidding are in the "best interests of the state". The Attorney General must also find that the manner of contracting "was handled in accordance with law", so as to give the procurement a pass from legal action by the Attorney General to void the transaction. Inf. Op. Att'y Gen., October 6, 1987.

Where a private procurement vendor has unfettered discretion to make the "rules" contract by contract, to what statutory authority is the Attorney General to look to ascertain that the contract was in "the best interests of the state" and that it was handled "in accordance with law"? It will not be enough under the "reasonable basis" test of *McKinnon v. Alpetco Co., supra*, to point to SB 160 and argue that the private contractor is given the power to procure and therefore he always acts in the interests of the state, because he must also act with reference to objective standards. These standards must be sufficiently clear so that the Alaska Attorney General, and a court, can conclude that his actions have a "reasonable basis", are in the "best interest of the state" and are in "accordance with law". SB 160 sets no standards of compliance. A bill that contains no standards means the bill offers no legal basis to justify the contracting terms or mechanisms employed by the omnipotent private procurement vendor. Where a statute eliminates standards by which to measure the legality of his conduct, that statute does not pass constitutional muster.

Conclusion

SB 160 is sharply discriminatory and the classification into commercial first- and second-class citizens it creates bears no relationship of any kind either to the policy of saving money, or the laudable goals of competitive public procurement schemes. Under no constitutional analysis does SB 160 offer the businesses of Alaska the equal protection of the laws.

April 13, 2005

Representative Lesil McGuire
State Capitol Room 118
Juneau, AK 99801-1182

Dear Representative McGuire:


As you are aware the undersigned Unions are opposed to SB 160 & HB 257 "An Act relating to a procurement and electronic commerce tools program for state departments and instrumentalities of the state; and providing for an effective date."

We did enter into a contract with Mr. K.J. "Beau" Grant of Beau-Geste Enterprises, Incorporated to assist us with research on the legislation. As part of the research Mr. Grant had a member of his firm, Suzanne M. Dallimore, P.C. Attorney at Law prepare a legal analysis of the legislation. On our review of the memorandum we directed Mr. Grant to have any discussion of a possible conflict of interest by any party removed from the memorandum. Unfortunately, Mr. Grant failed to have the reference to a possible conflict of interest removed in the memorandums dated March 29 and April 4, 2005 that he distributed. The undersigned parties did not authorize distribution of these memorandums as written. We apologize for any confusion this has caused, and for the diversion away from the merits of the bill. But it's not always easy to control the folks with whom we contract.

Attached is a copy of the corrected memorandum that has been authorized for distribution by the undersigned. If you received a memorandum dated March 29 or April 4, 2005 we request that you either destroy it or return it to us.


Thanks for your understanding.

Sincerely,


Bruce Ludwig Jim Duncan Jim Ashton
Business Manager Business Manager Business Manager
APEA/AFT ASEA LOCAL 71

Suzanne M. Dallimore, P.C.
Attorney at Law
A Professional Corporation

MEMORANDUM

To: Mr. K. J. "Beau" Grant, Beau-Geste Enterprises, Incorporated
From: Suzanne M. Dallimore, Esq. 
Re: Alaska Senate Bill 160
Date: REVISED as of: Tuesday, April 12, 2005

Your firm has asked for an analysis of the legal and competitive issues raised by a bill introduced into the Alaska state Legislature, the goal of which is to privatize Alaska state procurement. The bill is designated SB160. You have asked for an analysis based on procurement statutes, rules and practice, antitrust law and economic principles of free market competition. This memorandum contains my analysis, which relies on these principles and also on compelling relevant experience. Please note that this memorandum has been revised as of the date noted above.

In 1995, as Antitrust Chief Counsel for the Arizona Attorney General, I brought civil antitrust charges against Coopers & Lybrand, (now PriceWaterhouseCoopers), for rigging a bid to provide "government streamlining" services that were supposed to downsize government and produce massive efficiencies and cost savings. The project, proposed by a former Arizona governor and approved by the Arizona legislature, was called Project SLIM. Unfortunately, Coopers personnel and a key aide to the then-governor communicated in secret and rigged the bid for Coopers. Coopers settled my case for \$750,000 to Arizona, and later paid another \$2 million to the federal government on identical charges under the federal Sherman Antitrust Act.

A most shocking aspect of the Coopers Project SLIM bid-rigging scheme was that Coopers undertook to perform a "streamlining" and "efficiency" operation that ended up costing Arizona taxpayers millions in fees and lost productivity, slowed the functioning of government to a crawl, outraged taxpayers, vendors and state employees, and produced not one single dollar

of savings. Coopers' people held scores of meetings with state officials, tied up hundreds of state worker hours, wrote interesting theoretical reports that could not be implemented, and did absolutely nothing but cost the state of

Arizona money. Arizona paid the firm \$4 million, but the loss of state function and productivity was beyond quantifying. Coopers and Arizona learned from that experience that the only real way to project a significant dollar savings in state operations is to downsize by terminating employees. But they also learned that large scale employee downsizing is impossible, because of the various agency mandates imposed by the legislature, by federal programs, and by various court orders. Even agency directors appointed by the Project SLIM governor fought against the attempt to downsize state workers, because they simply could not do what was required of them by law if they had to reduce staffing levels. The ultimate outcome was that Coopers wrote a report on "vacancy savings", (these were positions already vacant at the beginning of the consultancy), gave those savings a number, and thereupon claimed success. Not one system was improved, not one additional employee was made more productive, and for two years delivering state services was seriously impaired.

I base the following analysis first, on a careful review of the proposed SB 160, entitled "An Act relating to a procurement and electronic commerce tools program for state departments and instrumentalities of the state; and providing for an effective date." Secondly I have examined the Alaska constitution, the existing Alaska Procurement Code, and other pertinent Alaska statutes. Thank you for this opportunity to be of service on this important matter.

Summary of Findings

1. The bill proposes to prematurely privatize 100% of Alaska procurement without economic justification.
2. The bill is an anticompetitive, special-interest bill that favors a single firm and injures competition in Alaska.
3. The bill does not require a legislative finding that cost savings were in fact achieved by the pilot program and therefore cannot be justified on cost savings grounds.
4. The one-size-fits-all privatized model is not appropriate for all Alaska agencies.
5. The bill raises constitutional concerns.

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6. The bill will expose the state of Alaska to litigation and liability.
7. The bill will not save Alaska state employee costs.
8. The bill is poorly written, internally inconsistent, and does not permit of reasonable understanding or implementation.

Background

In 2003, the Alaska Legislature passed a "pilot" procurement privatization act wherein the state's Department of Administration would implement a test program by which it would contract with a private procurement administrator who would then handle certain procurements for the Department. The other expressed purpose of the pilot program was to develop a system of electronic procurement management tools including increased use of the Internet. The pilot program was found in HB 313, and was based upon the following findings of fact and legislative policy:

- (1) the fiscal condition of the state requires that any opportunity to save state costs in a way that does not directly reduce program delivery must be actively and thoroughly explored;
- (2) the costs associated with procurement and supply management are significant areas of the state's administrative costs and represent an area of potential substantial cost savings;
- (3) as a basic administrative function procurement and supply management represent appropriate opportunities for achieving cost savings through the use of management specialists in the private sector;
- (4) electronic commerce tools offer opportunities to reduce the amount of labor resources required to requisition, procure and otherwise administer the acquisition of goods and services, as well as to reduce the actual costs of goods and services. 2003 Alaska legislature, HB 313, Section 1.

As originally enacted, HB 313 allowed the director of the Department of Administration to enter into a private procurement pilot program. but did not require it. The private procurement contractor was to be procured pursuant to competitive bidding procedures found in Alaska Statute (AS), title 3, chapter 20, also known as the Alaska Procurement Code. However, as part of this

experiment, the legislature exempted the procurements handled by the private contractor from the Procurement Code except that, "where practicable" the bidding preferences found in AS 36.15 and §§ 36.30.322 - 36.30.338 were to be applied. (HB 313, § 2)

The pilot program is set to expire by automatic repeal, on July 1, 2006. (HB 313, § 3)

In 2003, the Alaska legislature was faced with a significant budget deficit. Alaska's economy, and therefore its tax-based state revenues have been highly dependent on the economic fortunes of the world crude oil market for many years. In 2003, market commentators, including the Alaska Chamber of Commerce, were actively advocating that Alaska's government develop new means of fiscal stability so that state spending is less driven by the market price of crude oil. The Chamber promoted privatization of government functions and improved efficiencies to deal with the state's significant budget deficits. One of the ways discussed in the political debates of the time was to reduce competitive barriers for Alaska-based workers, businesses and Alaska-produced products. These barriers were, among other things that the cost of doing business in Alaska is in some cases higher than the cost of doing business in, say, California. Because a California firm would be able to underbid an Alaska firm for Alaska state contracts, the legislature kept the various bidding preferences found in the Alaska Procurement Code and elsewhere that were intended to give an economic boost to Alaska-based competitors. Clearly Alaska resident workers and the Alaska forest products and fish industries were recognized as market sectors that could assist in changing Alaska state government's dependency on crude oil prices and provide greater fiscal stability.

Economic times have changed in Alaska since HB 313 was passed in 2003. Historically high prices for crude oil have, by all reports, completely turned Alaska's fiscal picture around. Although it would not be fiscally responsible for the legislature to base government budgets on the current oil prices, there is time for the legislature to carefully examine the pilot program implemented in 2003 for the sole purpose of providing cost savings and to ask whether the program in fact did so. To date, there has been no evidence of demonstrable cost savings presented.

SB 160 purports to make this pilot program permanent and to expand it to every agency and instrumentality of the state of Alaska. SB 160 comes a year before the pilot program expires. Through SB 160 the legislature is being asked to make the determination that the pilot program not only has, but also will, save money for the state. SB 160 provides no information about whether it has been

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economically successful. As I set forth below, however, the bill demonstrates on its face that it is anticompetitive, runs afoul of other carefully crafted Alaska purchasing statutory schemes, disadvantages Arizona's resident workers, forest products, fish industries and Alaska-based business, exposes the state to litigation and appears to be unconstitutional, in that it denies similarly situated citizens the equal protection of the law, (see my supplemental memorandum on constitutional issues, dated April 8, 2005) and amounts to a seizure by the executive branch of government of the purely legislative function of overseeing and regulating expenditures of public funds. This legislation does not employ market incentives so as to insure that the private program contractor protect the interests of the state over other, conflicting interests and gives virtually unlimited discretion to the private contractor.

Analysis

1. The bill proposes to prematurely privatize 100% of Alaska procurement without economic justification.

Government procurement is a source of tremendous competitive effect and, properly handled, permits of innovation, favors new and more efficient business development, protects economies and small business within market sectors, acts as a curb on unreasonable prices and gives a state the full power of free market forces to assist it in its purchase of needed goods and services. Some procurement systems are cumbersome and unwieldy, and often procurement systems are challenged in an effort to find greater efficiency and less bureaucracy. Well-conceived privatization schemes can theoretically produce efficiencies, and, again in theory, good business principles can be brought to bear to reform cumbersome procurement systems.

However, I have been involved in antitrust, procurement and government corruption cases for over 25 years, as Chief Antitrust Counsel for the Attorneys General of Utah and Arizona and in private practice. In all those years I have yet to see a procurement privatization scheme that actually produces positive savings to a state. Those schemes I have examined have, on the other hand, caused serious anticompetitive effects in relevant product markets. The reasons why privatization schemes often fail to produce results, is that such schemes operate to the detriment of the overall positive competitive effects produced by good procurement practices statewide. These schemes tend to establish new barriers to market entry as well, making it harder for more efficient, cost effective firms to compete for state dollars. Unfortunately, the interests served by privatization often conflict with the broader public policy interests of a state in its own economic health, and typically make it harder for small business, minority-owned business or local or intra-state

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business to participate. This is particularly true where the private contractors are given unlimited discretion over the award of contracts.

Privatization can, under the right conditions, provide savings, as, for example, when a state has maintained an entire construction department that becomes more costly than contracting for repairs and limited improvements. But privatization schemes, if they are to have merit as a means to achieve greater efficiencies, *must* rely on sound economic data and on hard numbers that take into account all of the costs and economic consequences of procurement, including government employee costs. Any procurement privatization proposal must be based upon a very thorough understanding of the power government purchasing has on the economy of a state.

SB 160 provides that "notwithstanding any other provision" of the Procurement Code "all state departments and instrumentalities may participate in the program" This program is to be implemented "Immediately" upon passage of the bill, eliminating the phase-in to July 2006, in the original pilot enabling legislation, HB 313. The decision whether to implement the "program" in any particular agency would be an executive branch discretionary decision, made by the governor and department heads. The "do it now" scheme found in SB 160 shifts 100% of the legislature's control over the expenditure of procurement dollars away from the legislative branch of Alaska government to the executive. This shift is not permitted by existing Alaska statutes, which require an "appropriation" by the legislature before expenditures by the executive agencies, AS §36.39.200(4), or by Alaska's constitution.

The bill you have asked me to analyze has nothing to recommend it in economic terms. SB 160 owes its existence to the Alaska's legislature's determination that the idea was worth a try, so long as it produced cost-savings. Thus the sponsors and promoters of this bill must show that cost savings have been achieved, where they have been achieved and how the *state's interest in cost savings* has been effected. This is because Alaska's policymakers need to know whether any cost-savings were due to reduced state employee costs, reduced expenditures for overhead items used to support those workers, reduced contract prices, the achievement of contract terms more favorable to the state, or are from enhanced competition from the removal of bureaucratic barriers to acquisition and supply management. In my experience, a bill that must, by law, be defended on cost savings grounds must attach or incorporate findings of actual cost savings to the state. No information appears to be attached to SB 160 that gives any hint that cost savings have been achieved, and equally importantly, how these savings were achieved.

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This proposed bill is one of the poorest attempts at government privatization I have had the opportunity to review, for several reasons:

a. There are neither incentives nor mechanisms to track the costs of procurement under the existing Alaska procurement code. What is apparent is that the bill would divert state resources without any economic justification in terms of meaningful state savings. The best way to think of this problem is to consider that, under this scheme, the activity that used to cost the state \$37.50 an hour using a state employee, now may cost \$150 an hour using a private contractor. If there were evidence, (or even the ability to develop the evidence), that a private contractor could do the work of four state employees in a single hour, there might be something to the proposed change, but then only if the state actually stops paying all four of the state workers who used to do the job.

b. This appears to ensure that the private contractor will have unfettered discretion over the award of contracts. This discretion is unlimited in SB 160 because the private procurement administrator sets his own rules. There is nothing to insure that, in the event of a conflict between the private vendors' personal business interests and the state's broader interests, the state's interests will govern. This does not say that all private contractors will serve themselves first, but the incentives in the private market are very different than the policy incentives that govern the administration of public funds.

c. These schemes, if not very carefully crafted and subject to strong oversight, absolutely destroy meaningful competition. This bill, especially, gives the private contractor *carte blanche* over whom and on what terms he procures for the state, and there is no mechanism for oversight or limitation on discretion. Thus smaller, newer, unknown businesses will have no ready mechanism to get into the game. But even as to existing firms, this bill does not mandate full competition, because it gives the procurement contractor too much discretion, without any clear policy or intent to maximize competition. This bill is likely to displace market opportunities for local and small Alaska business and flies in the face of the bidding preferences for Alaska firms, Alaska citizen workers and Alaska-produced products.

d. Privatization schemes inevitably favor a few large firms headquartered elsewhere. These large, out of state firms are simply in a better position to wine and dine the private procurement contractor and his employees, (none of whom swear their fealty to the state of Alaska). These interrelationships would play out under SB 160 without the benefit of clear standards governing the decisions.

The programs end up taking money out of a state, rather than making money for state and local economies.

e. This bill does not create private incentives consistent with the goals of government. The private, for-profit motive can conflict with the government's goals in public procurement. What is an efficiency for a private firm may be a single phone call to a buddy or client who can sell the goods or services. This may not be due to bias, but merely convenience. What is an efficiency for a government is much different. For example, a private firm would typically not dedicate a full time employee to handling complaints about a vendor, because a private firm would not see that as a task for the business plan to accomplish. But an agency may have a mandate to do exactly that, or may just desire to be responsive to the taxpayers and businesses desiring a chance to do business with the government. Given those goals, it would be much more cost-effective to pay someone \$15 an hour to do nothing other than answer telephone complaints, and then use that employee to make photocopies as well, than it would be to have to get the calls, then route them to the private contractor, then take the calls again when the private contractor does not satisfy the taxpayer. Of course it is much more efficient to perform this service in-house than it is to have the agency respond to a taxpayer lawsuit for non-compliance with its mandate.

A competent procurement officer with clear rules can run an efficient procurement program as cheaply as it can be successfully done. In Alaska, where there is a mandatory state policy to protect certain market segments, it is much more efficient to have that mandate effected by employees whose job it is to procure with the mandate in mind than it is to pay a private vendor whose entire orientation is contrary to the inefficiencies found in procurement preferences. A private procurement contractor may not even know all state policies and might not factor in the "must-dos" unique to government into his business plan.

Certainly procurement codes are often cumbersome and unwieldy, and it is often true that one can buy a calculator from Staples for \$12, when to buy it off a competitively procured contract costs \$20. Efficiencies such as bypassing formal procurement for small purchases are worth considering, and streamlining the process is always a good idea. The Alaska legislature has done this before, but always with a view to preserving competition. See, AS § 36.30.020. However, accomplishing this streamlining effectively while preserving free-market competition and its power to aid in producing cost-effective goods and services requires a very firm grounding in the real data about the existing system. Alaska's Executive Ethics Act, AS 39.52 requires that state officials keep their eyes exclusively on the state's, and not their own, economic interests. SB160

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does not address how that necessary orientation is to be preserved in a private contractor.

State employees tend to be blamed for procurement process inefficiencies, but in my experience few state workers are in fact wholly unnecessary to the process. Some are bottlenecks because they have to be. If the Legislature of Alaska wants to favor Alaska forest products, a state employee who knows the firms using Alaska forest products because it is his job to know is going to be much faster and more accurate in writing a scope, evaluating bids, and awarding a contract than a person without experience. If the executive branch agency administrators would rather assign workers to resolve complaints from Alaska businesses and consumers, there are state governance policy reasons to do so that are as important as the pure cost-savings to be achieved from letting those telephor calls and complaints go unanswered.

Thus clear, quantified analyses of whether there are real bottlenecks in the system, and where the bottlenecks are is absolutely necessary before "reforming" a procurement system. Reformers also need hard data and a clear insight into whether those bottleneck costs are there of necessity, to effect a government mandate or are really just popular assumptions just because the program is a government program. We can each name a large, private-sector firm, wholly unfettered by formal procurement systems, that still cannot answer a simple telephone call by providing a human, (or a machine), that knows what he, she or it is doing. There are inefficiencies in all organizations, but before getting rid of an entire division, a good CEO would want to know exactly where the slowdowns are and why they occur and how much it costs to leave them in place as compared to making wholesale changes.

Antitrust law imposes one of the government's often-ignored responsibilities. The federal Sherman Antitrust Act, 15 U.S.C. §1, is a limitation on private business, but it gives to the federal government the charge to make sure competition is not impeded. The Alaska legislature has assumed this responsibility as to intra-state commerce as well. Under the Alaska antitrust act, AS § 45.50.562 *et seq.*, the government of Alaska is duty bound to protect competition, (see, AS § 36.30.020), except where the legislature decides, based on sound economic data, that it does not wish competition to occur. There is no such grounded finding in the proposed bill. Alaska has a duty to its taxpayers to conduct government procurement so that the billions spent by the state actually improve state and local economies. None of the research one would have to see that would allow a legislature to know whether there is a problem and how to cure it while still preserving competition has been circulated, to my knowledge, in the case of the proposed SB 160.

Nor has market research been done. It is vital to know what goods and services can be supplied from Alaska vendors, forests and fisheries, to implement the preferences the legislature wants to preserve. But equally vital is information on how tax dollars expended through state procurement trickle down to Alaska-based businesses. This research can be done by tracking Alaska contracts, who the vendors are who successfully compete, and where they buy their business goods and services. Legislators may be surprised to learn that good procurement government workers routinely survey their market sectors for signs that cost-saving market opportunities are developing.

The analysis of cost-benefits is not so difficult that such data could not be assembled in support of SB 160 if it has generated cost savings. For example, if awarding a contract costing \$1.5 million to an Alaska business will result in that business employing 25 Alaska citizens and spending \$700,000 in Alaska to perform the contract, it is economically smart for Alaska to award the contract to that firm on a pure economic basis. The state gets back additional taxes and everyone wins. On the other hand, if the state spends the same \$1.5 million on a firm that has no Alaska employees and buys all of its goods and services in California, the benefit to Alaska's economy disappears, not to mention the protection to Alaska resident workers required by AS § 36.05.010. In one large procurement matter I investigated for the Utah Attorney General's office involving coal mine operations, we determined that as much as \$100 million was leaving the Utah economy due to contracts with out of state vendors.

A state legislature owes fealty to many types of consumers, but certainly the taxpayer and the small and local business operator are two of them. Without real economic data identifying and quantifying the nature of the problem to be solved and the hard-number ability of the proposed "reform" to solve it, reformers cannot claim to have fixed anything, and indeed no one can claim that anything is "broken". How does the state answer the local business/taxpayer who wants to know why the engineering firms that used to buy supplies from him for their government contracts no longer have government contracts? The engineering firm's business is negatively impacted, his Alaska suppliers are harmed and so is Alaska's economy.

Any reform that purports to displace experienced state workers whose duty is 100% to Alaska must at least have the numbers to show the taxpayers that the savings are real. If the state intends to let 100 state employees go at a salary savings of \$1 million, and has a contract that in fact does deliver the exact same services, (including taxpayer hand-holding), for \$750,000, only then can the state say it has saved anyone money and then only if the state stops paying the 100 state employees, and then only if same services are still delivered and the

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scheme does not create other problems that must be solved by all or some of the 100 workers. In my experience, terminating state workers is never what the state really wants to do, or does do, in part because of the legal rights of state workers, but often because governments always need those workers somewhere. In my experience, the "savings" never materialize, because they were never really quantified at the outset, and were never really achievable.

The Alaska legislature would be wise to look at these "reinventing government" programs across the country to see how they have fared. In my experience and research, the successes are few and far between. I know of no plan to privatize procurement that has been proposed on the scale of this proposed bill, and there is a reason no other state has been interested in this type of far-reaching "reform". Well managed government procurement that utilizes clear, uniform rules and competent, professional procurement officers who owe their loyalty to the state and its taxpayers, is in fact as efficient, and delivers as much value to taxpayers, as government operations can ever do.

2. The bill is an anticompetitive and injures competition in Alaska.

Where the program contract is competitively bid after a "pilot" program, many state and local procurement rules bar allowing the "pilot" vendor to compete for the program contracts, because the "insider" simply has the advantage of knowing all the right words to say to get the job. And, the "insider" has no incentive himself to be cost-effective, if he doesn't have to sharpen his own pencil and give the state a good deal on his own fees in a head to head, unbiased competitive bidding environment. SB 160 requires that the procurement contractor be acquired through competitive bid, but it does not level the playing field for other, perhaps equally qualified private procurement firms to compete. SB 160 proposes to give incredible discretion over billions in expenditures to a private firm, and to allow that vendor to hold this position in perpetuity. This creates certain disincentives to future cost-effectiveness, if the economics that support antitrust monopoly cases are to be believed. This is the precise reason that monopolies are unlawful; a firm that does not have to compete periodically, according to common antitrust monopoly economic analysis, may in the future lack incentives to keep quality of service up and price down. This is not unique to the specific pilot vendor in Alaska, but applies to any firm freed from competitive pressures.

There is further some concern about how SB 160 provides for the actual competition to procure the private procurement vendor. The proposed bill provides that the procurement contractor shall be selected in accordance with AS §§ 36.30.100 – 36.30.190. While this appears on the surface to cure the

Potential problem of a leg up in securing the permanent procurement contractor contract to the "pilot" procurement vendor, there are two reasons why this language could create at least one problematic loophole.

AS § 36.30.100 requires that unless otherwise provided by law or in the Procurement Code itself, an agency contract "shall be awarded by competitive sealed bid." However, § 36.30.110 provides that "when competitive sealed bidding is used, a procurement officer shall issue an invitation for bid." The proposed amendment only incorporates the IFB process from the Alaska Procurement Code, §§ 36.30.100 - 36.30.190. It does not incorporate the RFP provisions in the Code, §§ 36.30.200 - 36.30.260. A privatized procurement contractor contract would ordinarily be awarded pursuant to competitive sealed proposals, since presumably one of the competitive requirements by the state would be that the contractor determine how it will save Alaska money or time, (efficiency or cost-savings), as compared to any competitors interested in bidding. Further, the state would want the proposals to demonstrate how the contractor intends to implement the many preferences the Alaska legislature has determined are necessary to protect Alaska state market segments.

An RFP is made an impermissible procedure by SB 160. AS §36.30.110 provides for the IFB process only "if" an IFB is used, but does not mandate the use of the IFB. By removing the RFP portions of the Code from the scheme in SB160, there could be an executive agency decision not to use the IFB. If such a decision were made then nothing, no rules, would apply to the procurement of the private procurement contractor. This would be an anti-competitive outcome. SB 160, as drafted, simply does not fit, and is not legally consistent with, the rest of the State's many procurement statutes and rules. Thus the loophole is that the bill may grant executive agency discretion not to use any procurement rules for the process of selecting the private procurement administrator.

Competitive bidding systems presume, rightly, that competition keeps vendors in check. The Alaska procurement code does this effectively. Procurement without rules is not appropriate; checks and limitations are required simply to act as a check on market incentives that may be inconsistent with government policy goals. The unfettered discretion given the private contractor to make the rules as he goes, (SB 160, §1(c)), could operate to eliminate powerful incentives that the legislature may wish to preserve as incentives to a private procurement administrator to save money for the state of Alaska first, last and always.

SB 160, like its enabling legislation the 2003 HB 313, relegates the Alaska preferences to the "where practicable" back burner. (SB 160, § (c)) It is often

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said that preferences are anticompetitive, and of course, they are intended to favor certain market segments. Where a legislature determines as a matter of policy that market sector protection is necessary to the well being of the state, however, that legislative policy governs.

If this legislation passes, Alaska workers, products and businesses will witness their market protections becoming subject to the incentives of a private procurement contractor. This is anticompetitive in Alaska Intra-state commerce, because those companies who have made it their business to deal in Alaska-produced goods and services may pay more for those goods and services than a competitor who uses cheap labor and products from elsewhere. The private procurement vendor under this amendment can simply award to the firm who doesn't bear the cost of supporting the Alaska economy as the legislature intended, giving the cheaper firm a higher profit margin and penalizing the preference-conforming Alaska-based firm. Eventually this cost of doing business imbalance can harm local, Alaska-based business, as we have seen elsewhere in the form of the Wal-Mart market displacement phenomenon.

Any system of tax dollar expenditure that does not require sole fealty to the state is going to cost the state money. I can point to whole rooms in state archives containing files relating to really big contracts, such as statewide computer systems, that are filled with the sad stories of costly failures. Alaska would be well served to stop this bill in its tracks and gather the real facts about the exact nature and scope of existing procurement inefficiencies and about what firms the free market has to offer that may be capable of correcting those inefficiencies without creating others and without upsetting Alaska public policies that favor legislative control over the expenditure of public funds, the protection of Alaska-based businesses, the employees of those businesses, the Alaska companies they buy from and their employees, Alaska citizens, the taxpayers, the general economy of the state. The interests of politicians and state employees alike are well served upon a full public debate over privatization of the critical procurement function, in the context of real numbers. This bill, as written, does not permit of that debate.

3. The bill does not reflect a legislative finding that cost savings have been achieved and therefore cannot be justified on cost savings grounds.

SB 160 does nothing to justify the concept of privatized procurement. The absence of findings of quantifiable actual cost savings to support this bill suggests that there is no cost-savings justification to offer. It is possible, albeit unlikely since the data has not been offered in support of SB160, that the hard costs of the pilot program have in fact been developed as the legislature

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intended. If so, the data should be made public. This is so that the legislature can assess whether the bill operates to burden the state with new employee costs.

Permit me to reiterate that the development of appropriate cost-justification data is relatively straightforward, although there is a cost in employee time to develop the numbers. If, hypothetically, during the pilot it cost the state \$70,000.00 in employee and overhead costs to procure an electronic tools system, and the system cost \$1 million, and the state paid out \$10,000 per month, (\$120k per year), to maintain the system, then the cost of the system to the state for the first year of operation is \$1,169,000. On the other hand, if the cost of using the private program contractor to procure the electronic tools system would be \$200,000, and the state employee cost to implement and administer the private contractor management is now \$100,000, (because state employees must work on the "project"), and the electronic tools program cost \$1.5 million and the annual maintenance cost is \$120,000 per month, then the first-year cost under the new program would be \$1,920,000 and there is no cost savings achieved by the privatized methodology.

No one can make an informed decision about this bill without all of these numbers. It is certain that e-commerce tools can save money; the only issue is whether they have. To determine that employee costs must be known, employee savings must be based on what people actually did before the pilot, during the pilot and under the new program, or the entire purpose of privatization makes no sense. No private program can claim to have saved a dollar figure no one knows. And, unless Alaska intends to let all state employees who previously worked on procurement go, **there will be no cost savings to the state.** Alaska will simply pay for a Project SLIM outcome. The taxpayers will not "save" money in any real sense. It would be a poor business practice indeed to claim cost savings in a privatization program without reference to necessary state employee costs.

In the case of this particular proposed privatized procurement, whether there would be cost savings for the post-implementation years will also depend on whether the state reassigns workers to other agencies, and whether, and how many, state workers the state intends to terminate. If the state moves the workers, the taxpayers save nothing, and if the problem in state procurement is that government workers are inefficient, moving them just shifts inefficiencies to another agency. There is nothing in SB 160 that suggests that state employees are the problem, therefore there is nothing to suggest any real "savings" can be achieved.

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If history teaches us anything, it is that in these privatized systems the only cost savings has to come from eliminated employees. The state never closes buildings, stops paying for the heat, shuts down the phone lines or turns off the lights when a program changes form. A state, like a law firm, is a people-based service industry. Cutting costs means cutting people. Thus, the wage and overhead attributable to a single employee is the only hard savings possible. But the number of employees that can be or are eliminated is almost always fewer than proponents of privatized schemes usually believe can be eliminated. If the real cost-savings is in terminated employees, then the studies and cost justifications must disclose how many employees are to be eliminated. It may well be that no one wants to talk about terminating state workers for political reasons, but if not, then neither can anyone talk about "cost savings". It may be that the state has paid \$20 for a \$12 calculator, but it may also be true that to take advantage of the coupons, sales and TV-advertised deals that seem to be much cheaper will require more employees to find and seize the bargains. Many procurement processes can be streamlined, but my experience is that simple, relatively cheap solutions such as raising the must-bid dollar level; efficiency training and the reduction of top-heavy management improve the procurement process much more than any privatization scheme.

One of the problems reformers has in evaluating state government processes is that whether they are efficient and effective depends on the perception of those the agency serves. In procurement, for instance, one employee may be unavailable to a business caller, because he or she is on the telephone hearing a complaint or solving a problem for another business caller. Which of those functions is to be eliminated? Which of those business callers is more important? How many employees would the private vendor put to the task of talking to concerned Alaska companies, which may include competitors of his firm? Is there any chance that person in the private-sector job will be paid less than the state employee?

Or, the "inefficient" worker who is unavailable for the first caller may be engaged in writing a scope of work to re-bid a high-dollar contract that reflects his or her market research that this year the state can save millions by re-bidding due to changes in pricing caused by market forces. Should the employee stop doing that type of work? Would the private vendor pay one employee to look for bargains and another to take the constituent calls? Perhaps, but one cannot assume a private vendor has these things in mind. Indeed, if the pilot program vendor's recommendations for implementing the privatization program include recommending that he himself have absolute power to set the rules for each procurement, then the vendor demonstrates a lack of understanding about how fairness and equal treatment of constituents is required of a government.

Without real cost saving data, this bill is wholly unjustified. Most legislators today are businessmen and women. Business people know good and well that one cannot make a sound business decision without business numbers. No businessperson would argue that their bottom line would get better through a wholesale change about which there are no projections about profitability. Unless the legislature is given a set of numbers that tracks and compares historic, pilot program existing and projected future costs, there can be no data from which to extrapolate any cost savings whatsoever. We had the "theoretical" cost savings experience in Arizona under Project SLIM, and it failed.

As for efficiency in serving the customer, it all but disappears during the complex "transition". In antitrust practice, we understand that this is why stock often falls after a merger and never recovers. The cost of the transition to the new business form are always huge, the "fit" between entities is not always so good, the products conflict and the post-merger companies do not do well for some time. In the case of this bill, it is hard to see how there could be an efficient "fit" between privatized procurement and the many complex mandates of government without much trial and error, adjustment, and a formidable learning curve involving continued support from state workers.

In this bill, the Alaska legislature appears to be moving away from the efficiencies of state-owned buildings, utilities, maintenance costs and low state employee wages. (compared to the private sector), and toward paying higher hourly rates that include high office rents, high salaries, executive bonuses and furniture that is guaranteed not to have been built by prison inmates. It may be, on the right set of facts, that this is justified. But for the legislature to make such a policy decision on economic grounds it must have the economic data to determine what the state spends now and how fast it moves, and hard data from competing vendors who take those costs and demonstrate how they can beat them. If nothing else, bidding gives the state a free look at whether anyone can beat the existing system, apples compared to apples. Requiring frequent bidding as a means of keeping contractors sharp is a known and very powerful procurement tool.

In efficiency analysis, one must always follow the money. Policy makers and Alaska taxpayers have the right to full disclosure of the real costs of this program, past, present and future. They also have a right to know whether this will help, or hurt, the Alaska businesses, local economies, state workers and industries the legislature must also protect. Finally, they have a right to know that the power of market competition, which costs the state nothing, has not been eliminated as a check on excesses and abuse.

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4. The one-size-fits-all privatized model is not appropriate for all Alaska agencies.

The bill exports the program to every state agency "immediately" upon passage. Although SB 160 does not mandate that every agency participate, how far it goes depends on who in the executive branch of Alaska government gets behind it. There will be problems in exporting this scheme as a practical or legal matter. The Alaska procurement Code is not the only set of purchasing rules in operation in Alaska by law. One agency, for example, may handle federal special and earmarked funds and may have to do procurement in accordance with the terms of a federal grant. Alaska agencies must cooperate with federal rules in federally funded public works programs. AS § 35.05.050. The Department of Transportation may have contracts with local governments to share revenues, and these may be subject to local procurement codes. The transportation department may have to use Federal Acquisition Regulations (FARs) for federally funded highway construction. A state agency may administer international funds pursuant to a treaty, such as Arizona has with Mexico regarding cross-border economic development. In Alaska, all public works construction *must* be by a competitive bidding process fixed by statute. AS § 35.10.160. It is entirely unclear at this stage whether and to what extent the proposed privatized procurement format can realistically replace existing procurement requirements in different Alaska agencies handling different government-source funds. This is another issue that has not been quantified. How much authority a private procurement contractor would have over the actual funds handled by the various agencies is unknown. Until it is known, "cost savings" cannot be extrapolated across agencies, nor can the legislature know that the program will even work on an agency-wide efficiency basis, given an agency's activities and funding sources.

Certainly independent political subdivisions in Alaska, and particularly Native organizations that may be sovereign forms of government would be neither well served nor happy to be required to purchase through a single private vendor not of their choosing, and it is unlikely that other governments would participate, (turf being what it is), with the exception of cooperative purchasing, where the state is able to get a particularly cost-effective contract for a commonly needed item. These efficiencies, however, already exist in state procurement. No additional legislation is typically needed to facilitate procurement offices working together, and with formal associations of procurement officials, to improve efficiency and purchasing power through inter-governmental cooperation. SB 160 tells us nothing about whether a private procurement contractor can or will utilize these efficiency mechanisms.

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It simply does not appear that the drafters of this legislation have given sufficient thought to the magnitude of the impact the proposed changes will have in Alaska on the many programs in effect and agencies that administer them. This is undoubtedly because the reasonable "stake-holder" process legislatures use to receive input from various affected constituencies before wholesale statutory scheme changes are made did not occur here. I can only infer that this is because such a process would take months, if not years to undertake fairly.

5. The bill raises constitutional concerns.

Legislation must give the public a clear view of what is right and what is wrong, what the rules are, must treat the same classes of individuals the same, and must protect existing contract rights. SB 160 takes the remarkable step of permitting a private contractor to set the procurement rules in a contract. (SB 160, § 1(c)) This is a legislative provision almost guaranteed to be challenged in court on constitutional grounds. (Please see my memorandum on the equal protection constitutional issue, dated April 8, 2005.)

Some may take this provision to mean that the privatized administrator determines the needed items, (like bonding, for example), in the contract. In Alaska, certain procurements require contract terms already fixed by the legislature. *E.g.*, AS § 36.30.430. But SB 160 says that a private vendor, acting as an agent of the state, has 100% discretion to make up the rules the state will seek to enforce against the vendor. (One hopes the state is fully indemnified by the private vendor if it delegates its rule making power in this way). Rules cannot be made in a private contract, and terms in a private contract cannot be enforced as "rules" governing public behavior.

The Alaska constitution does not permit the expenditure of tax money without some very clear checks and balances, and the legislature has already put into effect many expenditure-tracking laws. In Alaska, like many states, the legislature does not permit the expenditure of tax dollars without an official appropriation from the legislature, an obvious check on uncontrolled spending. AS §36.39.200(4). The appropriation statute is pursuant to the Alaska constitution's delegation of fiscal authority to the legislative branch of government. Alaska const. art. II, § 1.

In the proposed bill, legislative control through appropriation flies out the window. A private vendor can pay \$1200 an hour for routine accounting if he wishes, by setting some new standardized fee rules in a contract. It will be a private contractor, who decides where the tax money goes, how much, and to whom.

This bill is a remarkable delegation of legislative authority through contract. I suspect it contravenes many other Alaska statues and constitutional requirements not mentioned here. SB 160 shifts control over agency expenditures away from the legislative branch and gives it to the executive.

As I have noted, SB 160 raises equal protection constitutional issues. At a minimum, the bill removes the business public's ability to know the rules of the game. Does one have to have experience to vie for a contract? Does a vender have to have insurance? Can a business expect to have to indemnify the state, or not? Vendors who have to operate under one set of rules, i.e., the bonding, licensing, indemnification, non-collusion and other mandatory bidder qualification rules are unfairly discriminated against if their competitors do not have to comply with those rules and incur those costs of doing business. Vendors who know the private contractor may not have any burdensome rules, those who do not, may have them. This inability to know how the laws work, and the unlimited ability SB 160 gives to a private vendor to arbitrarily apply different rules to different citizens is good grounds for a legal challenge based on the denial of equal protection of the law. If citizens do not know how to comply with a law, and the rules as to them are different than the rules as to their competitors, a law creating this situation is likely unconstitutional and unenforceable.

Moreover, this program stands a very good chance of impairing the value of existing contracts between the state and its suppliers. (See point 6, below). The Alaska constitution does not permit the legislature to take citizen's contract rights without just compensation. Alaska const. art. I, § 5. Only one firm needs to perceive that its contracts are about to be impaired to bring a successful constitutional challenge to the bill.

The bill may also run afoul of the U.S. constitution relating to the power of Congress to regulate interstate commerce. This is because the private procurement contractor may set "rules" for a federal contractor to do business in Alaska that are contrary to federal rules. The bill may therefore violate principals of federalism under the U.S. constitution and be void able under the Supremacy Clause.

6. The bill will expose the state of Alaska to litigation and liability.

The program this bill would implement does not appear to have dealt at all with the issue of existing contract rights and business expectancies. A company who has successfully competed for a renewable contract may have a vested

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contract right. If the state acts to eliminate the business expectancy under that contract, in favor of a contract for a competitor, awarded at the discretion of the privatized procurement contractor under an unknowable set of rules, the vendor with an existing contract would have a very good claim against the state for impairment of his contract. Absent information about what existing contracts there are that must continue to be administered, and honored, by their terms, it cannot be said that there will be no increased liability.

Those companies who are prepared to bid on procurements based on preferences, and who expect, and are rightly entitled to, a bump up because of those preferences, have just been written out of the game. This bill as amended invites litigation by whole market sectors, such as Native Alaskans who supply Alaska fish or forest products. When such dire changes in the right of Alaska citizens to do business with their own government are made, someone inevitably sues.

Tortious interference with contract is not the only legal theory the state invites against itself by enacting this bill. If the procurement contractor under the new scheme happens to favor a not-prequalified vendor over existing, pre-qualified competitors, then the state can expect antitrust claims against it. While antitrust law does not award treble damages against the state, an antitrust plaintiff could certainly sue involved individuals within the state, and the contract procurement vendor, both of whom would look to the state for their defense and payment of any judgment against them.

We have unhappy experience in Arizona on this point as well. Recently, as you know, a sitting Arizona Corporation Commissioner was sued by a regulated company for failing to provide a level playing field to all comers. He and the state were of course sued by the offended would-be acquirer, which won a jury verdict against the state for actual damages and against the Commissioner for punitive damages in the amount of \$60 million. Arizona as a state is not legally obliged to pay punitive damages, (or treble antitrust damages for that matter), but absent some very good lawyering it will have to pay the punitive damages penalty a jury imposed on the Commissioner, who was acting within the scope of his employment with the state. Alaska may have a duty to defend its private procurement contractor if that contractor acts, even inadvertently, in such a way as to harm someone's business expectancy.

The new, untested, never-competed procurement vendor under the proposed bill will be the state of Alaska in his dealings. If he errs, particularly if he errs in favor of his own or a crony's economic gain, his defense, and any

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damages he causes will have to be paid for by the same taxpayers this privatization scheme purports to protect. The hit on Arizona's tax dollars will be \$60 million plus the costs of defense unless very good lawyers procure some form of relief. Alaska's legislature should carefully consider the effect of SB160 on existing contractors.

It is not enough to have state workers work on the "sensitive", (subject to litigation), contracts. There must be some continuity of contract administration with reference to known standards, or the state's private contractor may impair the value and the terms of the non-sensitive contracts and get the state sued. There may also be contracts with longer-term pricing benefits, renewal leverage or other factors that would be undone by this new regime. All agencies will not use the privatized program during the transition. There will be a time, therefore, when the risk of error, born out of confusion, grows exponentially. An agency, the State Procurement Officer or maybe the governor can just say "lets do that one this way", (privatized), and "let's do the other one that way", (public, subject to fixed rules), with the outcome that no vender is treated like any other. The proposed program will not be cost-effective when litigation defense and payout costs are factored in.

7. The bill will not save Alaska state employee costs.

SB 160 cannot be divorced from its enabling legislation in 2003, HB 313. The only lawful basis upon which SB 160 can be enacted, is that the legislature is given enough real data on procurement costs and the effect of the pilot program to find, as a matter of legislative policy, that the "opportunities" for cost savings reflected in HB 313 in 2003 have turned into actual savings of costs. It is not enough to rely on trite but unproven theories, such as the popular belief that private sector employees are inherently more productive than government workers. The cause of that productivity loss and bottlenecks in government is only occasionally due to the workers' laziness, bureaucratic tendencies or incompetence. Government productivity loss is often caused by the policy makers' change in game plan. The legislature or an agency simply changes priorities, so that more employee resources are moved to interfacing with the public to improve an agency's image, for example, and fewer are devoted to getting the agency's product out the door.

Without pre-pilot employee costs, employee costs per dollar procured during the pilot, and statewide cost saving projections, there never will be a solid means to assess the efficiency, or cost-effectiveness of this program for the taxpayers of Alaska. By the same token, without this data, it can never be

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Demonstrated that state workers are the cause of those inefficiencies, or that privatization will correct them.

Wholesale organizational changes of any kind rarely save money. The private procurement contractor will not get the phone calls from constituents and other governments clamoring over the change in who gets to bid and under what rules employees of the state of Alaska will get them and the state will incur the cost of the disruption. Only if privatization will recoup those costs as well, will a privatized scheme make business sense.

8. The bill is poorly written, internally inconsistent, and does not permit of reasonable understanding or implementation.

It is not possible to work through this bill and figure out exactly how this program is supposed to work, what existing contracts will be renewed versus re-bid, what rules govern which contracts handled by which agencies, how much the private procurement contractor is bound by existing, limiting rules and procedures, or how, or even whether, the private contractor is going to administer the contracts he awards. Contract administration is a huge cost of government procurement, and nothing in SB 160 shows how much administration is going to cost the state.

Part of the dilemma is that SB 160 creates a scheme that conflicts with numerous other Alaska statutes, such as the laws requiring certain contract terms be included in certain state-awarded contracts, e.g., AS § 36.30.430. Courts will struggle mightily to interpret this legislation and to try to reconcile it, as courts must do, with other laws governing public purchasing and the expenditure of tax monies. This makes the outcome of litigation much more uncertain than it would be under an internally consistent statutory scheme.

The Alaska legislature needs to understand that the interests of the taxpayer in competence and fair pricing are at a sharp disadvantage. With an IFB but not an RFP process for choosing the statewide private contractor, there is no mechanism for requiring full disclosure and full evaluation of whom among potential competitors for this big job is the best suited. Under SB 160, Alaska would have an insufficient procedure to ensure insight into how the vendor, who is going to be speaking as the Alaska procurement representative, plans to effect not just cost savings but the other important policies of the state.

In addition, although the bill purports to mandate numerous preferences, such as for Alaska products and local business, the bill *de facto* eliminates those preferences by empowering the private contractor to make his own rules. On an RFP the private procurement contractor makes his own decision as to the value,

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or weighting, of various factors and he appears to have complete discretion to use an RFP to bypass these preferences. All the private contractor has to do is weight the "Alaska forest products" portion of his bid evaluation at zero

SB 160 either gives the private procurement contractor complete discretion unlimited by any known rules, or his discretion is limited by the other procurement rules that this bill clearly intends to abandon. Under the proposed bill as written, the legislature will learn which, and will receive instruction on how to administer this program, from a federal or state court. With all due respect to the courts, they do not always run government programs the way legislatures intended them to be run.

Conclusion

This legislation is ill conceived, unjustified, dangerous and likely unconstitutional. The legislation has the real potential to disadvantage Alaska-based business, Alaska products, Alaska's economy, Alaska taxpayers and those who struggle within the state to keep Alaska in the black and out of trouble. I can find no study, report, article or analysis that supports the idea that privatization of Alaska state procurement is in the best economic interest of the state with real economic data. There is time now to look at whether the state's procurement mechanism needs an overhaul at all, and to plan for those changes that will implement real efficiencies and benefits for the Alaska economy. There are times when privatization, carefully crafted and based on economically sound data, is entirely appropriate. This bill offers nothing to suggest that the Alaska procurement system is wholly broken, and certainly offers nothing that will fix it, if it is.

SB 160, as proposed and as conceived, offers the state of Alaska nothing but trouble. In my view, this legislation cannot be amended to solve these many problems. There is no immediate budget crisis in Alaska, and so there is time to reflect. The only legislation appropriate at this time would be the establishment of a study process, which involved the obvious interested parties and Alaska market sector representatives, and which develops real data upon which cost-saving programs can be based.

Carolyn Holbert

From: Ben Milam [whiskers@mtaonline.net]

Sent: Wednesday, April 20, 2005 11:25 PM

To: Rep. Lesil McGuire; Rep. John Coghill; Rep. Les Gara; Rep. Pete Kott; Rep. Max Gruenberg; Rep. Nancy Dahlstrom; Rep. Tom Anderson

Subject: HB257

I would very much appreciate it if this could be read into the record at the next hearing. I believe it is important that this clarification be heard by all.

Thank you in advance for your patience.

Re: HB257

Madam Chair and members of the Judiciary Committee:

I would like to respond to testimony given before the Judiciary Committee by Mr. Barry Jackson on April 18, 2004.

I have known Mr. Jackson for several years and have always held him in the highest regard. The Barry that I knew probably knew more about State Purchasing and AS 36.30 than the next top 10 people combined and was the most ethical person I knew. That Barry would never have lied or even stretched the truth. That is not the same Barry Jackson that testified before your committee on April 18th. As a minimum, he failed to paint a clear picture of the situation at hand.

In an apparent effort to justify the \$150,000 small purchase limit in the Alaska Supply Chain Integrators Contract, he tried to say that AS 36.30 has a \$50,000 small purchase limit and that the majority of those purchases are not awarded with competition. That simply is not true. What AS 36.30 has that his contract does not is first, a requirement to solicit "from Alaskan vendors, whenever practicable", second to apply Alaska preferences to all small purchases, and third to award with competition. 2AAC 12, the implementing regulation for AS 36.30, requires those purchases at the lowest level of \$5,000 and below have competition that is "reasonable and adequate and to make records that facilitate auditing". The same regulation requires 3 verbal quotes for all purchases over \$5,000 and 3 written quotes for all purchases over \$25,000. His contract and this bill do not provide those same safeguards for any purchase under \$150,000.

The impression was also left that the University of Alaska is not required to follow State Procurement Code when in fact AS 36.30.005 states the University of Alaska "To the maximum extent possible, authority granted under this subsection shall be exercised in accordance with this chapter. The Board of Regents shall adopt regulations under this subsection that are substantially equivalent to the regulations adopted by the Commissioner of Administration." In practice UAA uses procedures that are very similar to AS 36.30 and 2AAC 12 used by other State Agencies.

AS 36.30 and 2AAC 12 were developed to protect State agencies and the citizens of Alaska

4/21/2005

and they work very well.

Thanks for your patience.

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Testimony of Barry Jackson on HB 257
Procurement and electronic ecommerce tools
Wednesday April 13, 2005; continued until Monday April 14, 2005.

My Name is Barry Jackson.

I retired with 31 years of credited service from the State of Alaska.

During that whole time I worked for the Department of Administration in the Division of General Services. Most notably I served as:

- Contracting Manager
- Deputy Director
- Acting Director

During my career of State service, I was known for my efforts to bring automation and improved productivity to the Division of General Services, the Department of Administration's central procurement function. As part of this quest, during my service I visited the State government central procurement operations of Texas, Alabama, Georgia, and Massachusetts to evaluate the levels of automation apparent in those locales.

I am a believer in, and a proponent of automation in State government because of the potential to do more work with less staffing and red tape. Automation yields benefits to both the government and the public through less cost and greater efficiency.

It's worth noting that during my tenure in State service, I also served in a multitude of leadership positions of the Alaska Public Employees Association, including Chief Negotiator, elected President, and Executive Director. Later, I was a founder and led the creation of the Alaska State Employees Association. I believe these experiences allow me to bring a uniquely qualified perspective to the discussion of the implementation and expansion of the current Pilot Program.

I now work for Resource Data, Inc. as a procurement management consultant, project manager, and programmer/analyst. When I saw the RFP issued by the State for e-commerce services and web-based tools for the Pilot Program, I knew I wanted to be a part of this effort to improve the State procurement system.

I convinced my company to offer my services to Alaska Supply Chain Integrators in support of their RFP response. I assisted Alaska Supply Chain Integrators in winning the contract and have since developed most of the internal operational policies, including the Ethics Policy and the Buy Alaska Policy, used in the Pilot

Program. I have also conducted training of DOT employees in the use of ASCI's SmartTools e-commerce applications used in the Pilot.

Before I go any further in my testimony I wish to state that the ASCI SmartTools suite of e-commerce applications and services is uniquely suited and fitted to the State of Alaska's procurement procedures and systems, and has been extensively customized to foster ease of use, efficiency, accountability, competition, and economy of purchase. These tools and services are far and away better than anything I have seen or heard of in other States.

Savings

I believe that some of the witnesses may have left the impression that it is questionable whether the contract with Alaska Supply Chain Integrators has produced any savings for the State. Let me answer that right now. From the moment the Contract was signed the State was guaranteed a savings of about \$225,000, or somewhat more than 20% over its old way of doing business. The State's business is now conducted with 10 fewer employees. Instead, the State pays the contract price to have those services rendered. That is an instant, substantial, and real, hard dollar saving.

Some witnesses have suggested that the State is paying more for goods purchased by Alaska Supply Chain Integrators than it paid when the work was conducted by DOT employees.

I have seen nothing that supports this allegation, but it is plausible that some purchases made by ASCI employees have cost more than the identical purchase made a year or more ago by DOT employees. In fact, I would expect that to happen regardless of who made the purchase.

Prices have a tendency to rise over time. Emergencies happen, and emergency purchases usually cost more because of special circumstances. Specifications change and that impacts prices. Freight rates change and delivered costs go up. The cost of oil goes up and the cost of goods dependent on oil goes up. Tomato crops fail and the cost of tomatoes go up. Vendors decide their competitive position in the market place is stronger and raise their prices. I could go on and on.

The purpose of any procurement organization is to get the lowest responsive and responsible price for goods and services that the market will bear at the moment of purchase. Whether or not there was a savings over the previous purchase of an item is irrelevant.

No one in professional procurement measures savings performance by comparing a previous price to the current price, including the State's own Division of General Services. Price comparisons over time are subject to an

almost infinite range of variables that cannot be brought down to a single calculation that consistently and reliably measures a previous performance against the present performance.

As for the State's own practices, it has always measured its procurement successes by comparing the prices offered at the moment of solicitation against each other. In this scenario, with one very special exception, there is never a negative savings, because even a single responsive, responsible offer will merely result in a savings calculation of zero.

The exception I mentioned is exceedingly rare; it occurs when a low responsive and responsible bidder refuses the award and the State is forced to move on the next lowest responsive and responsible bidder. In that one case there can be a negative savings. In my 30 years with State government, I only recall a negative savings calculation once, during an upward explosion in the cost of paper.

So, knowing only the allegations of the other witnesses, I dispute the Unions' "rumor" that Alaska Supply Chain Integrators have caused a 20% increase in the cost of goods to the State. This proposition is so far beyond belief as to reveal a lack of understanding about professional procurement.

Centralization vs. De-centralization

The remarks which follow are about centralization vs. decentralization of the State's procurement functions and are based on my own decades of service with the Division of General Services. They reflect the observations and opinions I made and formed when it was one of my duties to consider the trends and directions of the State's central procurement function.

When I came into State service in 1969, the Division of General Services was the State's procurement arm. Procurement was strongly centralized. With few exceptions, the Departments could purchase just \$25 dollars worth of goods and services without being required to make the purchase through General Services. There were very few supply personnel in the Departments. Most Departments had no Supply Officer at all. If memory serves me there were less than 10 full time professional procurement positions outside of the Department of Administration.

A paper and regulation-driven highly centralized procurement operation, such as existed in 1969 and for many years thereafter, has an Achilles-heel. It is time. It takes a long time to get anything done. Getting things done smoothly requires very strong "months-ahead" planning capabilities in the user Departments if their supplies and services are to be delivered on time. This kind of planning is not a strong capability of most Departments. Instead most departments were plagued by planning failures that at least inconvenienced their activities, and at times put programs in jeopardy of failure.

To be sure, central procurement was fairly efficient in carrying out procurements, given the multitude of rules and policies that afflicted them. However, once a requisition reached them, delivery of the items on the requisition was typically 75 to 100 days away, and this time could not be significantly shortened. Staffing in central purchasing was always short, forcing work to be prioritized in ways that pleased no Department in the long run. The main culprit was the rules and regulations which mandated fixed periods for the various steps in the procurement process.

The Departments complained bitterly about centralized purchasing, and rightfully so. The economic and rule-enforcement benefits of central purchasing were overshadowed by the burdens that central procurement placed on the operating flexibility of the Departments.

The solution was easy to see, and easy to produce. It was called Delegation of Authority, a nicely bureaucratic name for de-centralization of the procurement function.

The Division of General Services, faced with steadily eroding staff capacity as the rest of State government grew, was forced to repeatedly off-load procurement authority and responsibility to the operating Departments. This was often accompanied by hiking the dollar limits at which competition was required, and by changing the degree of competition required, so that the Departments could cope with the increasing demands placed on their procurement staff.

That trend has continued through until today. Today the number of positions with full-time or significant procurement related duties is somewhere between 200 and 300 positions spread among the Departments. Currently, the Departments generally have unlimited dollar authority to purchase goods and services.

Nowadays, the Division of General Services generally purchases only those goods and services which could be used by multiple Departments. They also provide training to the Departments in the procurement code, the Purchasing Regulations, and in good contracting procedures. There are just 6 professional procurement staff left.

Procurement in the State of Alaska is now strongly decentralized. It's my opinion that the State of Alaska is probably more strongly decentralized than any other State.

So why does centralization of procurement activities matter in the first place? There are three basic reasons: fairness, savings, and expertise.

In decentralized procurement activities, all three of these concepts are diminished.

- Operational pressures, personal preferences, and differing operational standards reduce the diligence with which the rules of fairness are applied.
- The inability to recognize and consolidate repetitive purchases of goods and services diminishes significant opportunities to save money.
- Similar procurement problems are resolved differently from Department to Department because no one encounters them often enough to recognize a common solution or best practice.

In the end, all of these concerns can and do have an economic impact.

In a centralized environment, the ability to provide continuous oversight, monitoring, and enforcement of rules and policies is enhanced significantly.

- Rules of fairness are better enforced.
- Consolidation of repetitive procurements is enabled to a much higher degree and substantial cost savings are more dependable and predictable.
- Subject-matter expertise is fostered and developed, and best practices can be identified, resulting in more satisfactory transactions between the State and its suppliers, and those transactions carry a higher potential for greater savings.

What the current pilot program offers is an opportunity to realize the benefits of an appropriate degree of centralized procurement without the usual disadvantages.

- In a mature application of Alaska Supply Chain Integrators' e-commerce tools the user virtually eliminates paper pushing from the procurement process, doing away with its attendant delays.
- The e-commerce tools and services allow the users to place instantaneous orders for commodities and services found in the State's customized catalog, get instant feedback on the status of the order, increase accountability for receipt of goods, cut the red tape, provide for quicker delivery, provide for greater savings opportunities, and enforce procurement rules.
- It provides a means to analyze State procurements across departmental lines to identify consolidation opportunities and target them for additional savings.
- It provides subject matter experts who can address procurement issues across departmental lines, and who can identify and promote the best practices.
- In competitive scenarios, the e-commerce procurement process can give access to all qualified interested bidders and virtually eliminate the burdensome waiting periods that now characterize the manual processes.

- The efficiencies realized have already resulted in reduced staffing costs to the State, freeing people and budgets for other purposes.

Today, the legislature has an opportunity to effectively re-centralize the most appropriate elements of the procurement system and have better service, better accountability, better productivity, markedly better efficiency, and substantial cost savings.

The Potential For Corruption

Witnesses have expressed concern that a private contractor would use corrupt practices which are legal in the private sector but are illegal under Alaska's procurement code. I state categorically that in all significant aspects, under the existing contract with Alaska Supply Chain Integrators, the Contractor is required to employ competitive practices which are fundamentally the same as those actually practiced by the State.

The most significant differences are in the use of e-commerce to speed things along and in the allowable dollar limitations required for the more formal competitions.

Currently the Departments can spend up to \$50,000 at a crack without meeting formal bidding requirements. It is my belief that right now, under State laws and regulations, somewhere between 50% and 80% of all procurement dollars can be spent by the Departments without being required to follow the formal bidding procedures encapsulated in the procurement code. I haven't seen any recent analysis of how much the State spends through procurement procedures, but if it's anything like in the past, that 50% to 80% amounts to hundreds of millions of dollars per year. The point is that this money is spent with little or no competition.

The reality is there's not much difference between professionally administered public and private purchasing practices except for mountains of red tape, institutionalized delay, antiquated systems, and huge performance and efficiency gaps.

Routine monitoring by General Services for procurement code violations in the operating Departments is non-existent, and violations are only investigated when some form of bad conduct is alleged by an interested party, or someone in a Department stumbles across a problem and reports it to General Services.

I suggest that an independent contractor, with preservation of its investment as its most potent motivation, has an unbiased primary interest in simply doing the job as efficiently and economically as possible for the State. In fact, I would argue that an independent contractor is in a stronger position to resist pressures to commit bad practices.

Such pressures do exist and are difficult for State employees to resist because their jobs or careers can be put in jeopardy. These pressures and consequences are not idle speculation on my part, they are real; I know from long and challenging personal experience.

I argue that coupled with independent oversight such as this contract has with the Division of General Services, an independent contractor with its own enlightened self-interest at heart, is in a far better position to rebuff pressures to use bad practices than are rank and file State employees.

Audits

I have never before seen the level of scrutiny being applied to this contract. There has been an audit every quarter, even during startup and transition periods.

Scrutinizing Contractor performance is expected and appropriate. However, quarterly audits using irregular criteria such as past and present price differentials, unscientific sampling, and lacking standards of comparison for fault tolerance are not reasonable. At the very least, this practice hinders the Contractor's ability to perform when repeatedly forced to respond to ill-conceived review after review.

In a project this small, the time spent responding to these quarterly audits leads to an inability to get the State's regular procurement work done. This can only end up one of two ways: either the contractor requires its employees to work longer hours to get the State's work done and absorbs a significant unanticipated expense; or the contractor lets the procurement performance of its staff falter, which will surely be a topic in the next audit. This is a true Catch-22, meaning no matter what, the Contractor loses.

To Alaska Supply Chain Integrators' credit, they have absorbed the cost of maintaining their performance while responding to the audits by putting in the extra hours needed to assure the State's procurement requirements are met. Ironically, at least one of the witnesses has used this accommodation on the Contractor's part as evidence that the real costs of the project are higher than anticipated and therefore this bill shouldn't pass.

This unusual scrutiny is especially dubious without an understanding of the extent and character of procurement violations committed by the Departments themselves under their current levels of authority.

I will state categorically that were I given the same time and resources to audit Departmental procurement activities on a quarterly basis, as has been done under ASCI's contract, I would find numerous purchasing violations and bad practices; enough to startle members of this committee.