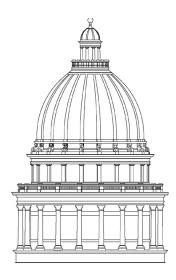
#### REPORT TO THE

#### **UTAH LEGISLATURE**

Number 2014-11



## A Review of Allegations Concerning Utah's Purchasing Interaction with WSCA-NASPO

December 2014

Office of the LEGISLATIVE AUDITOR GENERAL State of Utah

STATE OF UTAH



## Office of the Legislative Auditor General

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JOHN M. SCHAFF, CIA AUDITOR GENERAL

December 18, 2014

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, A Review of Allegations
Concerning Utah's Purchasing Interaction with WSCA-NASPO (Report #2014-11). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff, CIA Auditor General

John M. Solg

JMS/lm

#### Digest of a Review of Allegations Concerning Utah's Purchasing Interaction with WSCA-NASPO

This audit was requested because of a number of purchasing questions involving the Utah Division of Purchasing (UDP or Purchasing) and the WSCA-NASPO Cooperative Purchasing Organization (WSCA-NASPO). These questions were raised by legislators and other concerned parties and are addressed herein.

# Chapter II Utah Benefits from WSCA-NASPO Cooperative Contracts

WSCA-NASPO Contracts Have Lower Prices and Fees than Alternatives. WSCA-NASPO contracts compare favorably to contracts used by other cooperatives. The administrative fees on WSCA-NASPO contracts are at least three times lower than those on contracts used by other cooperatives. We reviewed five of six studies showing that WSCA-NASPO contracts typically offer goods at lower prices than comparable purchasing cooperatives. These lower prices incorporate the WSCA-NASPO administrative fees that do not appear to affect the price to those buying off of the contract.

UDP Saves Money by Using WSCA-NASPO Contracts. Utah's participation in WSCA-NASPO contracts leads directly to procurement savings for UDP. Using existing WSCA-NASPO contracts allows Utah to avoid duplicating work already done by WSCA-NASPO and other states, resulting in an estimated savings between \$40,900 and \$82,000. Additionally, UDP is reimbursed for time and expenses incurred when Utah is the lead state on a WSCA-NASPO contract or a member of a sourcing team.

## Chapter III Separation of WSCA-NASPO from NASPO Addresses Concerns

A For-Profit Entity Was Not Created. Despite accusations to the contrary, we found no evidence that WSCA-NASPO was created as a for-profit LLC, or that NASPO (National Association of State Procurement Officials) created any other for-profit entity. We believe that this accusation may stem from 1) confusion about the creation of WSCA-NASPO as a 501(c)(3), limited liability company with NASPO as the parent company, and 2) concerns about the large fund balances.

WSCA-NASPO Is Addressing Fund Balances. Because of high fund balances (\$41 million in 2013), questions have been asked as to whether WSCA-NASPO is appropriately managing its fund balances. It appears these fund balances are being appropriately addressed in the course of legally separating WSCA-NASPO from NASPO. The separation also allows both organizations to fulfill their respective missions.

## Chapter IV No Evidence That UDP Director Inappropriately Benefits from WSCA-NASPO

Financial Records Provide No Evidence of Enrichment. We reviewed WSCA-NASPO's general ledgers, Utah Finance records, and tax returns, and none of these contained any documentation supporting the allegation of personal financial enrichment for the UDP director. Reimbursements to Utah and the UDP director for official WSCA-NASPO duties as well as income tax returns all appear reasonable.

Election Process and Powers of Board Chair Limit the Risk of Financial Enrichment. Following board policies, the WSCA-NASPO management board unanimously elected the UDP director to the chair position. Once elected, the UDP director was limited in his ability to disproportionately influence board matters or WSCA-NASPO operations. Taken together, these facts indicate that it is unlikely the chair would be able to manipulate WSCA-NASPO operations to benefit financially.

# Chapter V Utah Facilitates Appropriate Participation by All Vendors

UDP Appears to Give Equal Opportunity to All Utah Vendors. It appears that UDP gives local vendors equal opportunities to bid on WSCA-NASPO contracts. These opportunities include providing notice on the Purchasing website, allowing contracts to be bid for specific geographical areas, allowing bids on WSCA-NASPO contracts already in place, and providing vendors with information and training. Also, there are situations in which UDP has encouraged the use of local distribution for WSCA-NASPO contracts but has not formalized this practice in policy. We encourage them to do so.

Legislature Has Chosen Not to Incentivize Rewarding Utah Vendors. In response to a specific question about whether the Legislature gives incentives to Utah-based vendors, we found no existing statute that allows or encourages giving preference to Utah vendors in the procurement process. Part of the reason for this appears to be some confusion over the definition of a Utah vendor, especially as some nationally operated vendors employ more Utah residents than Utah-based businesses employ.

# REPORT TO THE UTAH LEGISLATURE

Report No. 2014-11

## A Review of Allegations Concerning Utah's Purchasing Interaction with WSCA-NASPO

#### December 2014

Audit Performed By:

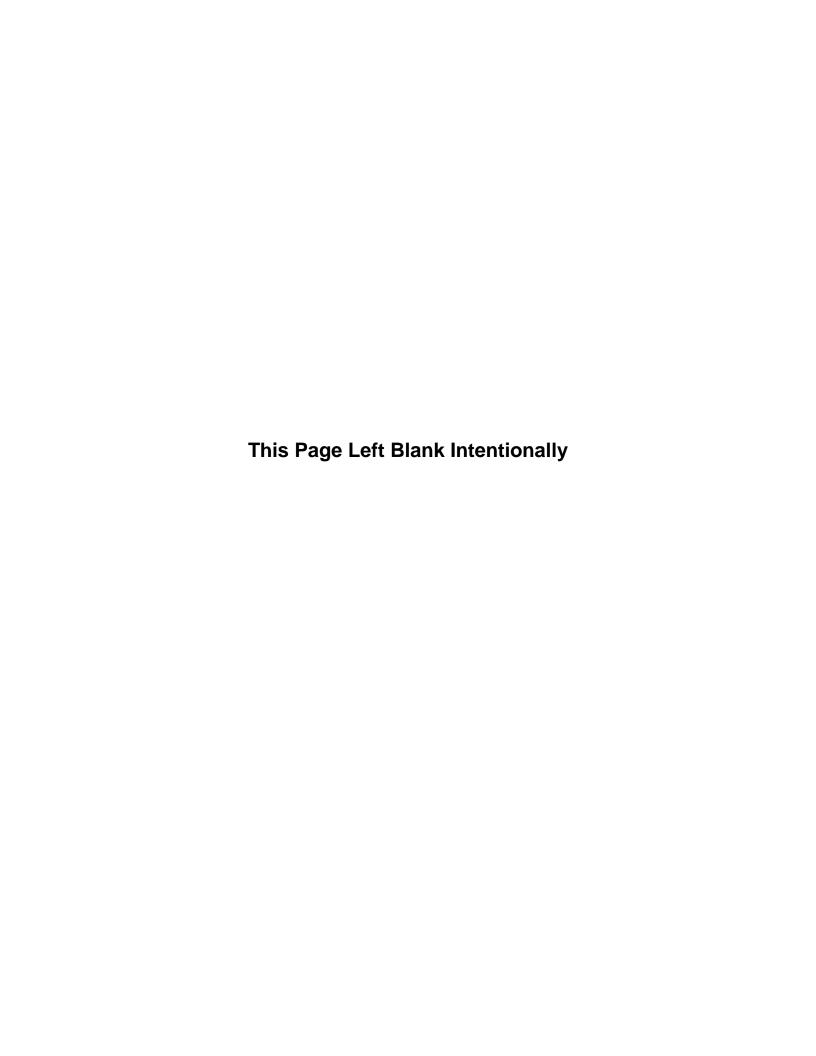
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#### Chapter I Introduction

The Utah Division of Purchasing and General Services (UDP or Purchasing) has increased its usage of state cooperative contracts and WSCA-NASPO Cooperative Purchasing Organization (WSCA-NASPO) contracts. The mission of UDP is stated as follows:

As a centralized purchasing function for all state agencies, the division processes requests for goods and services, aids in writing specifications, solicits and awards bids from suppliers, and manages state cooperative contracts.

Purchasing fulfills this mission with 27 full-time equivalent employees in 2014. It operates on a budget of \$3,116,400, \$617,200 coming from the state's general fund, and \$2,499,200 coming from its internal service fund. Utah has participated in WSCA-NASPO since its inception and usage of those contracts has increased markedly. Concerns with the contract growth and resulting fund balance led to this audit.

## Utah Participates in WSCA-NASPO Cooperative Contracts

UDP has chosen to participate in the National Association of State Procurement Officials (NASPO) in various capacities. NASPO's mission is "strengthening the procurement community through education, research, and communication." In the early 1990s, some western state members of NASPO determined that they should pool their purchasing powers together and form a cooperative purchasing organization. This organization (always a part of NASPO) was known as the Western States Contracting Alliance (WSCA). In 2012, NASPO officially formed the WSCA-NASPO Cooperative Purchasing Organization (WSCA-NASPO) as a limited liability company, operating with NASPO as the parent company.

Western state members of NASPO created WSCA-NASPO, a purchasing cooperative, in the 1990s.

The increases in WSCA-NASPO contract usage and fund balances led to this audit.

<sup>&</sup>lt;sup>1</sup> See Appendix A for a more detailed explanation of this separation.

Utah leads 12 of 54 WSCA-NASPO contract areas.

When UDP adopts a WSCA-NASPO contract, it essentially becomes the state cooperative contract.

### Utah Purchasing Has Been Involved in Most Aspects of WSCA-NASPO

Utah, and in turn UDP, has participated in NASPO and its related cooperative purchasing arm since its inception.<sup>2</sup> Utah currently leads, or manages, 12 of the 54 WSCA-NASPO contract areas, and participates on consultant teams<sup>3</sup> for many of the others. In fact, Utah leads more contract areas<sup>4</sup> than any other participating state.<sup>5</sup>

In addition, past and current Utah personnel have been involved in the operations of both NASPO and WSCA-NASPO. A Purchasing deputy director currently serves as the president-elect of the NASPO board of directors. The director of Purchasing currently serves as the WSCA-NASPO management board chair. Finally, the current CEO of WSCA-NASPO is the former director of Purchasing.

### WSCA-NASPO Contracts Operate Similarly To State Cooperative Contracts

WSCA-NASPO contracts used by UDP and UDP-solicited state cooperative contracts operate similarly and appear similar on the UDP web site. Government agencies buying from state contracts go through the same process whether it is a WSCA-NASPO or state cooperative contract.

After UDP adopts a WSCA-NASPO contract by signing a participating addendum (which ensures the contract aligns with Utah procurement statute), the WSCA-NASPO contract essentially becomes a state cooperative contract and appears on the state website when a product is searched for. The WSCA-NASPO contract usually includes a state administrative fee like state cooperative contracts. These fees are included in the purchase price with vendors responsible for remitting fees to UDP. Eleven percent of spending on cooperative contracts by any level of Utah government is done through WSCA-

<sup>&</sup>lt;sup>2</sup> For a more detailed history of NASPO and WSCA-NASPO, see Appendix A.

<sup>&</sup>lt;sup>3</sup> These consultant teams are known as sourcing teams.

<sup>&</sup>lt;sup>4</sup> For additional information on the number of contract areas led by various states, see Appendix B.

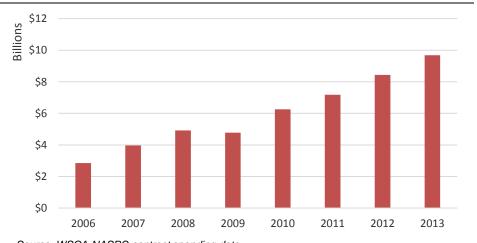
<sup>&</sup>lt;sup>5</sup> Utah likely leads more contract areas because Utah was one of the founding 15 member states of the original WSCA purchasing cooperative and has more experience with cooperative contracting. In addition, Utah-led WSCA-NASPO contracts are smaller in terms of spending volume than contracts led by other states. Contracts with lower spending volume are typically easier to manage.

NASPO contracts. Eight percent of state government spending on cooperative contracts is done through WSCA-NASPO contracts.

#### WSCA-NASPO Usage Has Substantially Increased

Spending on WSCA-NASPO contracts has increased dramatically at both the national and state level. Data indicates the increase in nationwide spending is likely a result of three factors: states increasing their use of existing contracts, more contracts being available, and more states using available contracts. Figure 1.1 demonstrates the increase in nationwide spending across all WSCA-NASPO contracts.

Figure 1.1 Overall National Usage of WSCA-NASPO Contracts Has Increased. Contract usage grew between calendar years 2006 and 2013 from \$2.9 billion to \$9.7 billion.



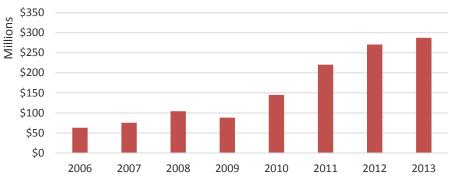
Source: WSCA-NASPO contract spending data

The marked increase shown nationally in Figure 1.1 has also occurred in Utah. Figure 1.2 shows the increase in Utah's spending on WSCANASPO contracts.

WSCA-NASPO contract spending increase is likely due to increased usage of contracts, more contracts available, and more states using existing contracts.

<sup>&</sup>lt;sup>6</sup> All three of these factors are true on the wireless and computer contracts, which account for the vast majority of the growth in WSCA-NASPO contract spending, as discussed in more detail in Chapter III.

Figure 1.2 Overall Usage of WSCA-NASPO Contracts Has Increased in Utah. Contract usage grew between calendar years 2006 and 2013 from \$63.4 million to \$287.5 million.



Source: WSCA-NASPO contract spending data

The number of states using WSCA-NASPO contracts increased from 44 in 2006 to 50 in 2013.

Along with these usage increases, the number of WSCA-NASPO contract areas has reportedly grown from 13 in 2006 to 54 in 2014. The number of states using WSCA-NASPO contracts has also reportedly increased from 44 in 2006 to all 50 states in 2013.<sup>7</sup>

#### **Audit Scope and Objectives**

This audit was requested because of a number of purchasing questions involving UDP and WSCA-NASPO. These questions were raised by other state members of WSCA-NASPO, Utah legislators, and private citizens. We examined these questions and narrowed them down to the following report objectives:

- How does WSCA-NASPO compare to other cooperative purchasing alternatives available to Utah? (Chapter II)
- What additional benefits does Utah derive from WSCA-NASPO participation? (Chapter II)
- Was WSCA-NASPO created as a for-profit entity? (Chapter III)
- Is WSCA-NASPO addressing its fund balance appropriately? (Chapter III)
- Did the UDP director financially benefit from WSCA-NASPO involvement? (Chapter IV)
- Does UDP facilitate appropriate participation by Utah companies? (Chapter V)

<sup>&</sup>lt;sup>7</sup> Appendix C shows examples of contract areas and the increase in the number of states using those contracts.

# Chapter II Utah Benefits from WSCA-NASPO Cooperative Contracts

We were asked to review Utah's use of a national purchasing cooperative because of allegations that taxpayer dollars may be siphoned away to nonproductive uses. Utah state agencies, higher education, and local entities all benefit from Utah's participation with the WSCA-NASPO Cooperative Purchasing Organization (WSCA-NASPO). The prices available through WSCA-NASPO contracts are generally lower and include lower administrative fees than contracts used by other purchasing cooperatives. The state also saves money through foregone request for proposal (RFP) costs because the Utah Division of Purchasing (UDP or Purchasing) is able to use contracts created by other states. Reimbursements to the state for work done by Utah purchasing employees on WSCA-NASPO contracts create additional procurement savings.

WSCA-NASPO Contracts Have Lower Prices and Fees than Alternatives

WSCA-NASPO contracts compare favorably to contracts used by other cooperatives. The administrative fees on WSCA-NASPO contracts are lower than those on contracts used by other cooperatives. WSCA-NASPO contracts typically offer goods at lower prices than comparable purchasing cooperatives. These lower prices incorporate the WSCA-NASPO administrative fees that do not appear to affect the price to those buying off of the contract.

UDP signs participating addenda in order to use WSCA-NASPO contracts developed by other states. UDP also develops its own state cooperative contracts for goods not covered by WSCA-NASPO contracts. WSCA-NASPO contracts include an administrative fee of between 0 and 0.25 percent<sup>8</sup>, which helps fund WSCA-NASPO and National Association of State Procurement Officials (NASPO) operations. Despite allegations that WSCA-NASPO fees are hidden,

Utah state agencies, higher education, and local entities all benefit from WSCA-NASPO contracts.

WSCA-NASPO contracts include an administrative fee of between 0 and 0.25 percent, which are not hidden from end users.

<sup>&</sup>lt;sup>8</sup> Some contracts have higher administrative fees because they were solicited prior to the standard fee changed from 0.5 to 0.25 percent.

these fees appear in the original contract and are not hidden from end users and purchasing officers. UDP may also include its own administrative fee on these contracts, up to a maximum of one percent.

### WSCA-NASPO Administrative Fees Are Comparatively Low

A comparatively low administrative fee contributes to the low WSCA-NASPO contract prices. Similar contracts in other states and other purchasing cooperatives have significantly higher fees.

WSCA-NASPO contracts can include an administrative fee of up to 0.25 percent. These administrative fees are included in a bid price and embedded in the final contract price. Vendors remit the collected fees to WSCA-NASPO quarterly along with a spending report for each state. Figure 2.1 compares WSCA-NASPO's fee to those of similar organizations in the United States.

Figure 2.1 WSCA-NASPO Charges a Low Administrative Fee Compared to Similar Public Cooperatives. WSCA-NASPO charges up to 0.25 percent on every dollar spent on a contract.

| Cooperatives  | Administrative Fee Rate (%) |
|---|-----------------------------|
| WSCA-NASPO  | 0.25                        |
| Minnesota Multistate Contracting Alliance for Pharmacy <sup>1</sup> | 3                           |
| U.S. Communities  | 1 - 2.5                     |
| National Joint Powers Alliance                                      | 2                           |
| The Cooperative Purchasing Network                                  | 2                           |
| General Services Administration                                     | 0.75                        |
| National Intergovernmental Purchasing Alliance                      | 2.5 - 3                     |
| E&I Cooperative Services <sup>2</sup>                               | 0.82                        |

Source: Auditor summary of organization contracts, RFPs

As shown in Figure 2.1, contracts used by competing cooperatives have administrative fees that are between three and twelve times the size of fees on WSCA-NASPO contracts. Many of WSCA-NASPO's contracts have lower administrative fees, such as 0.1 percent for wireless telephones and computer hardware contracts. The overall fee rate when considering total contract sales and total fees collected was 0.14 percent for calendar year 2013. WSCA-NASPO reported that the reason their fees can be so low is the volume of contract sales. Their large contract sales (\$9.6 billion in 2013) allow the organization to

<sup>2</sup> This cooperative fee rate is the calculated administrative fee rate after factoring in rebates.

WSCA-NASPO has lower administrative fees than comparable purchasing cooperatives.

High contract sales reportedly contribute to low WSCA-NASPO administrative fee rates.

<sup>&</sup>lt;sup>1</sup> This cooperative has a maximum allowable administrative fee of three percent.

charge a lower fee while obtaining necessary fee revenues. Over time, the fee rate has decreased as contract sales have increased.

## WSCA-NASPO Pricing Is Generally Lower than Competing Contracts

According to pricing studies, the prices on WSCA-NASPO contracts are generally lower than competing contracts from other cooperative purchasing organizations. When WSCA-NASPO prices are higher than other prices available to UDP, UDP waits to adopt WSCA-NASPO contracts until the prices drop as a result of renegotiated or rebid contracts. The low prices on WSCA-NASPO contract contribute to higher education's and local government entities' heavy use of WSCA-NASPO contracts.

WSCA-NASPO Has Lower Prices than Competing Cooperatives Have for Most Studied Goods. Studies completed by KPMG compared the price of WSCA-NASPO goods to prices of other states' and cooperatives' contracts. KPMG's methodology for these pricing studies appeared thorough and included many factors, such as contract exclusivity and quantity discounts that affect price comparability. WSCA-NASPO generally had superior pricing, selection, and terms for goods in five of the six studies. Its contracts for office furniture, copiers, office supplies, computer hardware, and industrial supplies had a combination of lower price and larger selection of goods. In addition, WSCA-NASPO's computer hardware contract covered more ownership costs in the form of longer warranties. WSCA-NASPO's contract for light auto parts was the only studied contract that appeared inferior to another cooperative's contract.

UDP Monitors WSCA-NASPO Pricing to Ensure Utah Uses the Best Contracts Available. Monitoring usually takes the form of periodic pricing studies that help the state determine if WSCA-NASPO is the best choice for the state. Even when WSCA-NASPO does not have the best pricing of contract alternatives, WSCA-NASPO

WSCA-NASPO generally had superior pricing in five of the six KPMG pricing studies, which we reviewed.

<sup>&</sup>lt;sup>9</sup> For the purposes of this report, price comparisons are restricted to other cooperatives such as the National Joint Power Alliance, U.S. Communities, and National Intergovernmental Purchasing Alliance Company. Comparing prices to other state contracts introduces problems due to the unique nature of some state contracts. In addition, contracts in other states are less relevant—Utah may be able to use contracts from other cooperatives but not contracts from other states.

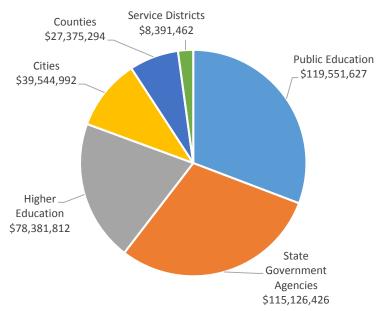
Purchasing uses WSCA-NASPO contracts once prices drop below alternative contracts.

Seventy percent of WSCA-NASPO spending in Utah is done voluntarily by higher education and local entities.

contracts help the state benchmark and leverage the pricing for different goods. In at least one instance, UDP reportedly waited to adopt a WSCA-NASPO contract until the pricing became more favorable. The WSCA-NASPO copier contract reportedly lagged behind the state's contract in terms of overall cost per copy for numerous models. After WSCA-NASPO renewed the contract with lower prices and more favorable terms, Utah began using several of the WSCA-NASPO copier contracts.

Higher Education and Local Government Entities in Utah Use WSCA-NASPO Contracts by Choice. Statute requires state agencies to use WSCA-NASPO contracts after they have been adopted by Purchasing, but political subdivisions (higher education, cities, counties, school districts, and special service districts) may choose whether or not to use them. Figure 2.2 shows the breakdown of WSCA-NASPO contract spending in Utah.

Figure 2.2 Seventy Percent of all WSCA-NASPO Spending Between Fiscal Years 2011 and 2014 was Voluntarily Done by Local Entities and Higher Education. WSCA-NASPO purchasing in Utah totaled \$394.9 million\* during this period.



Source: Utah Division of Purchasing

This data indicates that public entities find the combination of prices and other benefits of WSCA-NASPO contracts to be more favorable than alternatives. We spoke to four institutions of higher education

<sup>\*</sup> The \$394.9 million includes \$6.5 million of spending that cannot be accounted to any specific agency or local entity. The \$6.5 million does not appear in the figure above.

that reported they were able to minimize overall purchasing costs by using available WSCA-NASPO contracts.

### State and WSCA-NASPO Administrative Fees Have Little Effect on the Price of WSCA-NASPO Contracted Goods

The WSCA-NASPO administrative fee included on most of the organization's contracts does not appear to affect the final price of goods. The fee, which ranges from 0 to 0.25<sup>10</sup> percent, is considered when vendors bid on contracts but does not adversely affect prices because the fee is so small. Four vendors (both large and small in terms of sale volume) reported that prices would be unchanged if the fee were eliminated.

Some Vendors Absorb Much of the Cost Associated with Administrative Fees. Although this decision seems contrary to common business practices, several factors may explain why vendors choose to do this. Vendors with the largest WSCA-NASPO contracts (in terms of money spent) reported that participating on cooperative contracts creates efficiencies for their companies. Participation reduces the number of responses to RFPs that need to be produced and the number of contract renewals that need to be processed. For the most part, companies deal with one entity (the lead state) instead of many. In addition, the large volume purchased on WSCA-NASPO contracts may compensate for lower per-unit profits resulting from the WSCA-NASPO fee.

UDP's use of state administrative fees on state cooperative contracts (which includes adopted WSCA-NASPO contracts) provides insight on the relationship between fees and cooperative contract pricing. Vendors with WSCA-NASPO contracts cannot modify pricing information on participating addenda unless a state has its own administrative fee. If the state imposes a fee, the vendor may adjust the contract price upwards by the full fee amount. Figure 2.3 displays the responses of WSCA-NASPO vendors to Utah's administrative fee.

Vendors choose not to charge administrative fees to end users.

Vendors experience some efficiencies by selling products on WSCA-NASPO contracts.

<sup>&</sup>lt;sup>10</sup> The standard administrative fee on new WSCA-NASPO contracts is 0.25 percent. Some contracts, such as those for wireless telephones and computer hardware, are much lower.

Figure 2.3 Most Unique WSCA-NASPO Contract Prices Are Unaffected by Utah Administrative Fees. Even though vendors can adjust the contract price to include the state administrative fee, most choose to absorb the fee.

| WSCA-NASPO Contracts with State Administrative Fee | Frequency | Percentage |
|--|-----------|------------|
| Vendor does not add the fee to the price           | 91        | 76 %       |
| Vendor adds the fee to the price                   | 28        | 24 %       |
| TOTAL  | 119       | 100 %      |

Source: Utah Division of Purchasing

A majority of WSCA-NASPO contracts used by Utah have prices unaffected by state administrative fees. As shown in Figure 2.3, UDP charges a state administrative fee ranging from 0.25 percent to 1 percent on 119<sup>11</sup> WSCA-NASPO contracts. Seventy-six percent of WSCA-NASPO contracts with the added state administrative fee do not have an adjusted price as a result of the state administrative fee. These vendors decided to absorb the state administrative fee, perhaps lowering their per-unit profits, instead of increasing the overall contracted price.

## UDP Saves Money by Using WSCA-NASPO Contracts

Utah's participation in WSCA-NASPO contracts leads directly to procurement savings for UDP. Using existing WSCA-NASPO contracts allows Utah to avoid duplicating work already done by WSCA-NASPO and other states. Additionally, UDP is reimbursed for time and expenses incurred when Utah is the lead state on a WSCA-NASPO contract or a member of a sourcing team.

#### Purchasing Avoids Procurement Costs Through WSCA-NASPO Participation

UDP is able to avoid some procurement costs for many goods by participating in WSCA-NASPO contracts developed and executed by other states. Utah participation results in fewer RFPs and fewer

<sup>&</sup>lt;sup>11</sup> Utah used 32 other WSCA-NASPO contracts in addition to the 119 WSCA-NASPO contracts with a state administrative fee. These 32 contracts do not have a state administrative fee added. There are also two WSCA-NASPO contracts on which some items have state administrative fees and some do not.

contract renewals by state procurement staff. In the absence of WSCA-NASPO, UDP would have to solicit bids for these goods.

The process of developing a WSCA-NASPO contract begins when there is an unmet need among member states for a certain good. If the WSCA-NASPO management board decides to pursue a contract for the good, they choose a lead state and a sourcing team (comprised of purchasing staff from multiple states) to support the work of soliciting bids and developing the contract. After a contract is awarded, individual states sign a participating addendum to the WSCA-NASPO contract that introduces necessary changes to comply with that state's purchasing and contracting guidelines.

UDP saves an estimated \$40,900 to \$82,000<sup>12</sup> annually in RFP costs by using WSCA-NASPO contracts. These savings are the amount of money UDP would have to spend on labor and other expenses to replace the WSCA-NASPO contracts in 20 contract areas used by Utah that were led by other states. These avoided costs are in addition to savings associated with lower WSCA-NASPO prices.

## **Utah Receives Reimbursements For Developing WSCA-NASPO Contracts**

Utah is reimbursed for time spent on procurement duties when acting as the lead state or a member of the sourcing team on a WSCA-NASPO solicitation. These reimbursements pay for costs that the state would have to pay if WSCA-NASPO did not exist.

Lead states, which do a majority of the work on WSCA-NASPO contracts, receive money based on the amount of work done throughout the life of the contract. The WSCA-NASPO contracts that Utah leads are typically contracts that the state would have otherwise solicited in the absence of WSCA-NASPO. Utah formally documents expenses and staff time for each phase of the WSCA-NASPO contracting process. In its role as a lead state, Utah develops, solicits, evaluates, and manages WSCA-NASPO cooperative contracts. Utah received an average of \$439,383 annually between calendar years 2011 and 2013 in lead state reimbursements and \$77,875 annually in sourcing team reimbursements. The WSCA-NASPO management board approves reimbursements as part of its annual budget. Lead

Purchasing saves money by using WSCA-NASPO contracts negotiated by other states.

Purchasing receives reimbursements for work done on WSCA-NASPO contracts.

<sup>&</sup>lt;sup>12</sup> Savings are presented as a range because RFPs vary in complexity and scope.

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# Chapter III Separation of WSCA-NASPO from NASPO Addresses Concerns

We were asked to review whether the legal separation of the cooperative purchasing arm of the National Association of State Procurement Officials (NASPO) resulted in the creation of a for-profit arm. We determined that the actions taken seem reasonable and found no evidence that a for-profit entity was created. Concerns with growing fund balances contributed to NASPO's creation of the WSCA-NASPO Cooperative Purchasing Organization, LLC (WSCA-NASPO) as a non-profit LLC. This resulted in two separate but connected entities. In addition, this action led to both organizations increasing focus on their core missions.

#### A For-Profit Entity Was Not Created

Despite accusations to the contrary, we found no evidence that WSCA-NASPO was created as a for-profit LLC, or that NASPO created any other for-profit entity. We believe that this accusation may stem from 1) confusion about the creation of WSCA-NASPO as a 501(c)(3), is limited liability company with NASPO as the parent company, and 2) concerns about the large fund balances discussed in the next section. Because the funds raised before the split all ultimately belonged to NASPO, that organization "initially contribute[d] the cash, contracts, and other property" for WSCA-NASPO to begin operations.

Figure 3.1 lists documentation demonstrating WSCA-NASPO's 501(c)(3) status.

Despite accusations, NASPO has not created a for-profit cooperative purchasing entity.

 $<sup>^{13}</sup>$  According to the IRS, 501(c)(3) organizations "...are commonly referred to as *charitable organizations*. ...The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual."

<sup>&</sup>lt;sup>14</sup> See Appendix A for a more detailed discussion of the organizational and funds split.

Figure 3.1 Documentation Exists Demonstrating that WSCA-NASPO Is a 501(c)(3) Entity. We found no documentation suggesting a for-profit arm was created; in fact, just the opposite appears to have occurred. Emphasis added in figure.

| Documentation                                  | What It Demonstrates  |
|--|---|
| Operating<br>Agreement                         | Allows the LLC to "exercise all powers and rights that a <b>non-profit</b> limited liability company may exercise"  |
| Articles of Organization                       | Set forth the purposes of the company to "receive, administer, and expend funds for <b>charitable and educational</b> purposes within the meaning of <b>Section 501(c)(3)</b> of the Internal Revenue Code" |
| IRS Letter                                     | Approves NASPO as a 501(c)(3) in February 1994  |
| NASPO 2013 Tax<br>Return                       | Identifies the LLC as a "related tax-exempt organization" under the Exempt Code section 501(c)(3)   |
| Final Report and<br>Recommendation of<br>NASPO | Recommends that "a new separate legal entity be organized" and the new LLC use its funds for "appropriate uses consistent with NASPO's 501(c)(3) tax-exempt status"   |

Source: Listed in each row.

In addition to the documentation listed in Figure 3.1 showing the WSCA-NASPO LLC is a 501(c)(3), we found no documentation or evidence of a for-profit LLC being created. Furthermore, we found no evidence of funds being transferred to a for-profit entity as mentioned in the audit request letter. Instead, the reserve fund was split 50/50 between NASPO and WSCA-NASPO. <sup>15</sup> Based on these findings, we conclude that the WSCA-NASPO non-profit LLC is the only LLC under the NASPO umbrella.

## WSCA-NASPO Is Addressing Fund Balances

Because of high fund balances, questions have been asked as to whether WSCA-NASPO is appropriately managing its fund balances. It appears these fund balances are being appropriately addressed in the course of legally separating WSCA-NASPO from NASPO. The separation also allows both organizations to fulfill their respective missions.

Fund balances are being appropriately addressed in legal separation of WSCA-NASPO from NASPO.

We found no documentation showing NASPO created any for-profit entity.

<sup>&</sup>lt;sup>15</sup> Discussed in the following section.

## Actions Taken During the Entity Split Are Addressing Fund Balances

A sharp increase in reserve balances caused NASPO and other parties to be concerned about the plans for use of this money. Because of this concern, NASPO took two major steps. First, it split the funds when splitting the organizations. Second, WSCA-NASPO further decreased its administrative fees.<sup>16</sup>

Reserve and Ongoing Fund Balances Were Split Between NASPO and WSCA-NASPO. When the two entities were separated in 2012, the use of these reserves and ongoing revenue was split evenly between NASPO and WSCA-NASPO.<sup>17</sup> Fifty percent of the funds went to NASPO "to be placed in an unrestricted account to be used in the sole discretion of NASPO" and fifty percent went to WSCA-NASPO "to be retained by [WSCA-NASPO] to be invested by [WSCA-NASPO] for reserves and special costs in the sole discretion of the [WSCA-NASPO Management Board]." Figure 3.2 shows what the two entities plan to do with this money.

Figure 3.2 The Reserve Funds Will Be Used to Continue to Fulfill Each Entity's Mission. Many of these uses are currently in development.

| WSCA-NASPO                                      | NASPO   |
|---|---|
| Current year operating budget                   | Develop a Procurement University for public procurement officials                                     |
| Three-year additional operating budget          | Create innovative strategies in education and professional development – including in state trainings |
| Cooperative Program Defense Fund of \$3 million | Influence states and stakeholders on public procurement issues and policies                           |
| eMarket Center for online sales                 | Deliver technical assistance  |
|   | Publish a NASPO Guidebook   |

Source: WSCA-NASPO Articles of Organization and Board Minutes

Fund balances were split when the WSCA-NASPO 501(c)(3) was created.

<sup>&</sup>lt;sup>16</sup> Chapter II discusses WSCA-NASPO's administrative fee in relation to other similar entities.

<sup>&</sup>lt;sup>17</sup> Although the use of these funds is split between the two entities, the funds always belong to NASPO as WSCA-NASPO is a subsidiary.

<sup>&</sup>lt;sup>18</sup> Appendix A shows the specific amounts and how they were split.

As WSCA-NASPO meets its fund goals a higher percentage of the funds will go to NASPO.

WSCA-NASPO dropped its maximum allowable fee from 0.5 to 0.25 percent in response to growing fund balances.

A legal opinion stated WSCA-NASPO could not return funds to states without endangering their 501(c)(3) status.

As WSCA-NASPO meets these goals, the fund balances will shift so that more money goes to NASPO. WSCA-NASPO board minutes recommend that

Once [the] target fund balance is reached, the Workgroup recommended changing [the] revenue split with NASPO; currently at 50/50 to 40/60, 30/70; etc. until NASPO reaches their target fund balance.

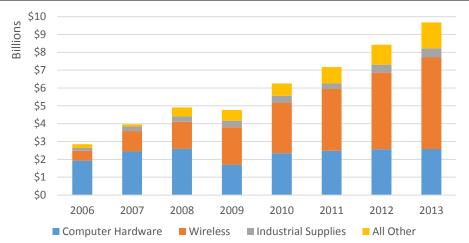
After NASPO has met its fund goals following increasing contributions from WSCA-NASPO, we were told WSCA-NASPO will further reduce administrative fees, and eliminate them on additional contracts.

Maximum Administrative Fee Rates Were Cut to Reduce Fund Balances. Because of its own concern with the growing reserve balances, as well as the concern voiced by others, the second step taken by WSCA-NASPO was to reduce the standard administrative fee ceiling on all contracts. Previously, the maximum allowable fee was 0.5 percent; in June 2013, the maximum fee was reduced to 0.25 percent. This fee reduction will occur as each of the contracts is extended or rebid. We were told that, if and when the need arises to further control the fund balance, they will continue to reduce the ceiling on administrative fees.

Some parties have asked why the excess funds are not simply returned to the states. NASPO obtained a legal opinion from an independent law firm regarding the disbursement of funds directly to states. The law firm recommended that NASPO should not disburse excess funds proportionally based on each state's use of the organization's cooperative contracts, as such a step might jeopardize its 501(c)(3) tax-exempt status. The legal advice went on to state that NASPO can disburse funds directly to states for a specific, restricted purpose that is consistent with the tax-exempt purposes of NASPO.

Unexpected Increases in WSCA-NASPO Fund Balances Were Largely Due to Two Contracts. In 2007 and 2008, WSCA-NASPO member states rebid two contracts, one for computers and one for wireless communications and equipment. Figure 3.3 demonstrates the impact these two contracts (along with another large contract for industrial supplies) have had on WSCA-NASPO contract usage.

Figure 3.3 In 2013, the Three Largest Contracts Constituted 85 Percent of Total WSCA-NASPO Contract Usage. The wireless contract amounts continue to grow.

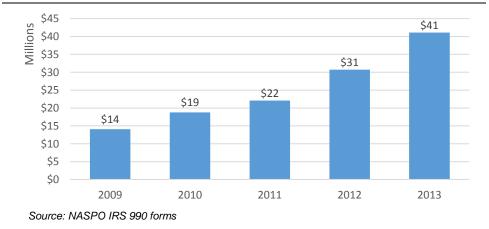


Source: WSCA-NASPO Contract Spending Data, 2006-2013

In 2006, total contract sales were \$2.9 billion. As shown in Figure 3.3, this number increased to almost \$4.9 billion in 2008 after the wireless and computer contracts were rebid in 2006 and 2007.

The increase in contract usage naturally caused a corresponding jump in the reserve balance, funded through administrative fees. <sup>19</sup> An estimated 61 percent of the administrative fees collected in 2013 were due to these three large contracts. Figure 3.4 shows how reserve balances have correspondingly increased.

Figure 3.4 WSCA-NASPO and NASPO Reserve Balance Increased 192 Percent from 2009 to 2013. This increase from \$14,113,407 to \$41,294,821 led to concerns about the large balances.



<sup>19</sup> Administrative fees are explained and discussed more fully in Chapter II.

WSCA-NASPO contract sales increased by \$2 billion from 2006 to 2008 with wireless showing most overall growth.

WSCA-NASPO reserve balances increased from \$14 million to \$41 million in five years. NASPO responded to these rising fund balances by separating both the funds and the organizations to try to control the increases and more closely monitor the financial decisions.<sup>20</sup> In addition, the organizational split had the added benefit of more fully allowing both organizations to fulfill their respective missions.

### Funds Split Helped NASPO and WSCA-NASPO Meet Their Missions

Splitting these funds seems to contribute toward each organization meeting their separate but related missions. NASPO's mission is to "strengthen the procurement community through education, research, and communication." The purpose of WSCA-NASPO is "to operate a purchasing cooperative program for public procurement officials in order to improve the quality and efficiency of the public procurement function." Because of these separate purposes, the split into two separate but connected entities seems reasonable.

NASPO created a workgroup to study how the entities should operate. It was this group that first recommended a separate legal entity be created. Figure 3.5 lists the objectives this group explained for the split.

Splitting funds allows WSCA-NASPO to meet its cooperative purchasing goals and NASPO to meet its education goals.

<sup>&</sup>lt;sup>20</sup> For more information on WSCA-NASPO's reported improved financial tracking, please see Appendix D.

<sup>&</sup>lt;sup>21</sup> Specific tasks NASPO has undertaken, or intends to undertake, to fulfill this mission are discussed in Appendix E.

# Figure 3.5 Objectives for the Legal Split Included Legal Liability Protection and Nationwide Participation. These objectives, to be met by WSCA-NASPO, did not remove NASPO from all decision-making responsibility.

#### **Objectives for the Creation of WSCA-NASPO**

Ensure that the cooperative purchasing program benefits all member states in a fair and equitable manner

Allow/encourage all NASPO members to participate, lead, and share in cooperative procurement contracts

Do no harm in the restructuring to the successful cooperative purchasing model developed by WSCA-NASPO but increase participation of other states in the WSCA-NASPO governance model by transitioning over time

Create a single enterprise focus on cooperative procurement as preferable to two or more groups within NASPO

Maximize decision-making autonomy for working groups and signing states, especially on time-sensitive matters, within broad policy boundaries set by the responsible, and ultimately legally accountable, governing body

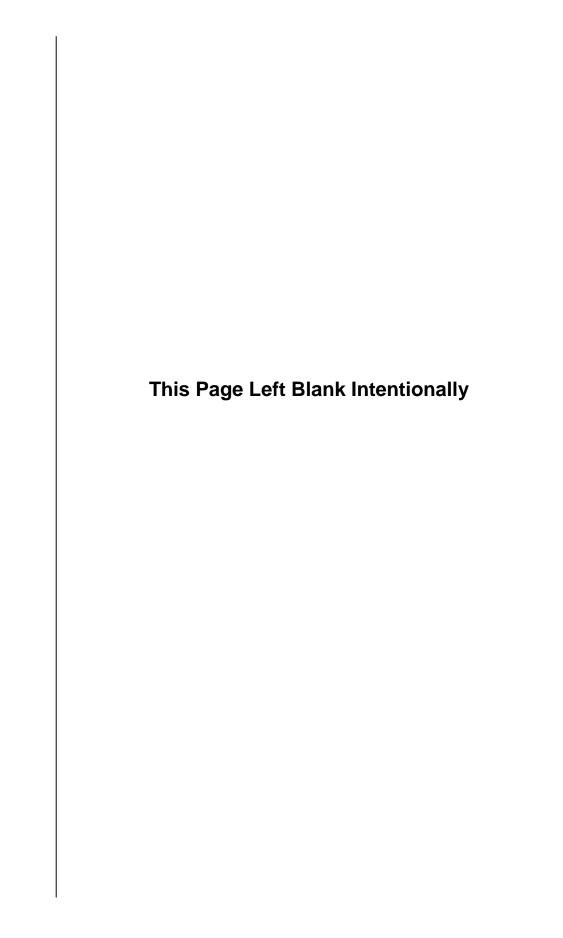
Protect NASPO, WSCA-NASPO, and the other cooperative regions from the liability for any future litigation resulting from contract disputes

Provide flexibility in establishing methods and formulas for distribution of excess administrative fees

Take advantage of the group procurement experience and expertise of NASPO member representatives

Source: Final Report and Recommendations of the NASPO Cooperative Purchasing Governance Work Group (August 10, 2012)

These objectives are all intended to further both organizations' ability to fulfill their respective missions.



# Chapter IV No Evidence That UDP Director Inappropriately Benefits from WSCANASPO

We found no evidence that the director of the Division of Purchasing (UDP or Purchasing) has financially benefited from his position as chair of the management board of the WSCA-NASPO Cooperative Purchasing Organization, LLC (WSCA-NASPO). Available financial records show payments for reasonable expenses related to the director's official duties as well as expected sources and levels of the director's income. In addition, neither the process by which he was elected nor the position's powers and responsibilities raise concerns about past and future financial enrichment. These conclusions are based on WSCA-NASPO general ledgers, Utah Finance (reimbursement) records, and the director's tax returns<sup>22</sup>. Analyzed in the context of WSCA-NASPO policies and procedures, we believe there is a low risk of unreported financial benefits from WSCA-NASPO.

Financial Records Provide No Evidence of Enrichment

The financial records we reviewed do not contain any documentation supporting the allegation of personal financial enrichment for the UDP director. Reimbursements to Utah and the UDP director for official WSCA-NASPO duties as well as income tax returns all appear reasonable.

WSCA-NASPO's general ledger shows several expenditures associated with the UDP director in calendar years 2012 and 2013, all of which seem appropriate for their stated purposes. These amounts (\$636 reimbursed to Utah and \$348 paid to a travel company) are also consistent with amounts paid for similar travel expenses for other WSCA-NASPO management board members. Additional data

Travel reimbursements for the UDP director appear reasonable.

We found no evidence the UDP director benefitted financially from his involvement in WSCA-NASPO.

 $<sup>^{22}</sup>$  Auditors did not have access to non-public documents such as personal bank records.

The UDP director received minimal direct reimbursements from WSCA-NASPO.

provided by the Utah Division of Finance shows \$2,726<sup>23</sup> in total reimbursement from WSCA-NASPO and the National Association of State Procurement Officials (NASPO) to the state of Utah for travel related expenses for the UDP director from fiscal years 2012 through 2014. Again, these dollar amounts appear reasonable for travel related flights, meals, and mileage reimbursement. Reportedly, the only money directly paid to the UDP director between 2011 and 2014 was \$154 in out of pocket travel expenses such as taxi fare and meals. All these dollar amounts appear to be reasonable.

Tax records for the director of UDP show an expected level of reported income with nothing indicative of inappropriately obtained money. When considered in conjunction with the data on reimbursements and information on the UDP director's role as board chair, there is low risk of unreported financial benefits from WSCA-NASPO, as discussed below.

#### Election Process and Powers of Board Chair Limit the Risk of Financial Enrichment

Following board policies, the WSCA-NASPO management board unanimously elected the UDP director to the chair position. Once elected, the UDP director was limited in his ability to disproportionately influence board matters or WSCA-NASPO operations. Taken together, these facts indicate that it is unlikely the chair would be able to manipulate WSCA-NASPO operations to benefit financially.

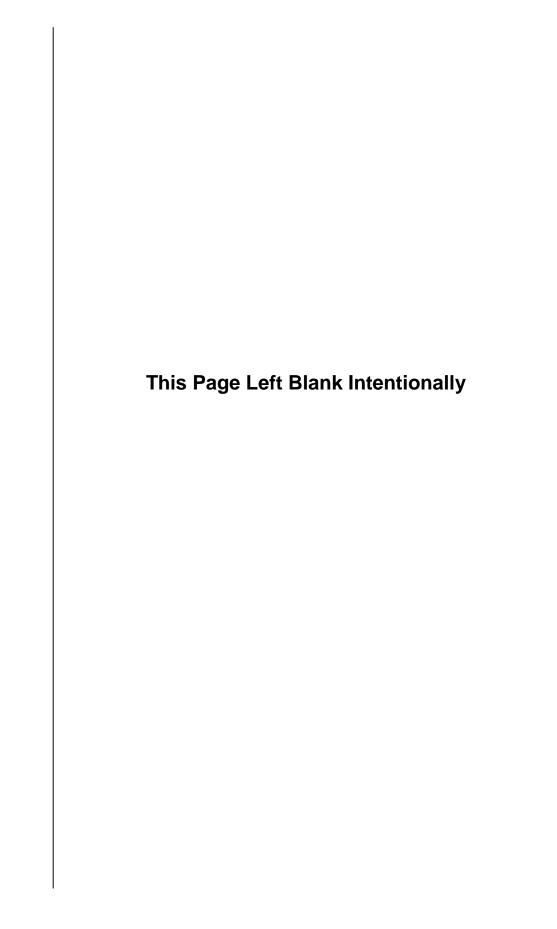
The UDP director was elected board chair at a board meeting on January 3, 2013, with 14 of 21 board members in attendance. Board members from other states made and seconded a motion to elect the UDP director to the position of board chair. Organization policies and procedures require the chair to be a member of the board and be elected by the members of the board. Board minutes indicate both of these requirements were satisfied.

<sup>&</sup>lt;sup>23</sup> The difference between the two numbers, \$636 on the WSCA-NASPO general ledger and \$2,753 on Utah records, can be attributed to the fact that the Utah reimbursements include amounts paid by both NASPO and WSCA-NASPO.

The UDP director has limited opportunities to benefit financially from his position of board chair. The chair is the presiding individual at management board meetings. In practice, this means the chair formally begins meetings and follows the meeting's agenda. The chair has no unilateral powers to manipulate WSCA-NASPO board decisions or WSCA-NASPO operations. The main powers of the management board, which include setting administrative fee rates, selecting an executive team, and investing fund balances, reside with the entire management board. All motions of the board are decided by a majority vote. Vacancies on the board are not filled by the board chair or the management board but by the NASPO Board of Directors. In addition, the board chair can be removed at any time, with or without cause, by a majority vote of the management board. Furthermore, as discussed in Chapter II, UDP uses WSCA-NASPO contracts because the contracts are the most beneficial.

The WSCA-NASPO board chair has no unilateral power to affect board decisions.

WSCA-NASPO board members make decisions based on a majority vote.



# Chapter V Utah Facilitates Appropriate Participation by All Vendors

Although there was a concern that WSCA-NASPO contracts were unfair to local businesses, we believe that the Utah Division of Purchasing (UDP or Purchasing) appropriately facilitates participation by all vendors in the request for proposal (RFP) process. This facilitation includes both local and national vendors in state and WSCA-NASPO Cooperative Purchasing Organization (WSCA-NASPO) contracts. However, Purchasing could further encourage this participation by formalizing policies on local distribution. In addition, the Legislature has chosen not to give preference to local businesses in procurements because of complications in that process.

UDP appropriately facilitates participation by all vendors in the RFP process.

## **UDP Appears to Give Equal Opportunity to All Vendors**

It appears that UDP gives local vendors equal opportunities to bid on WSCA-NASPO contracts. These opportunities include providing notice on the Purchasing website, allowing contracts to be bid for specific geographical areas, allowing bids on WSCA-NASPO contracts already in place, and providing vendors with information and training. Also, there are situations in which UDP has encouraged the use of local distribution for WSCA-NASPO contracts but has not formalized this practice in policy. We encourage them to do so.

#### Local Vendors Are Given Equal Opportunity to Bid

We found that state and local vendors are given appropriate opportunities to bid on contracts, including WSCA-NASPO contracts. Although there is no official WSCA-NASPO policy allowing vendors from all states to participate, "fair and open competition" is stated as one of the organization's core values. To that end, both WSCA-NASPO and UDP have taken steps to allow local and smaller Utah vendors the opportunity to bid on WSCA-NASPO contracts through website notices, contracts bid on select geographical areas, bids on existing WSCA-NASPO contracts, and vendor information and training.

"Fair and open competition" is one of WSCA-NASPO's core values.

UDP fulfills statute by providing notice of all WSCA-NASPO contracts accepting bids.

Vendors can choose to be emailed when goods they select are being bid, and WSCA-NASPO contracts can be bid as small as a single state.

UDP allowed software suppliers to bid on an existing WSCA-NASPO contract.

UDP's Website Provides Notice of All WSCA-NASPO Contracts Accepting Bids. The website notice satisfies one of the requirements set forth in procurement statute. The state can only enter into a cooperative contract if "the procurement was conducted in accordance with the requirements of [state procurement code]." This means that all the requirements that are set forth in the Utah Procurement Code (*Utah Code* 63G-6a), must be met by that contract. One of those requirements is that notice should be given on a state website or newspaper so that all who are interested can

The software Purchasing uses, BidSync, has additional features that help Purchasing further comply with this statutory requirement. Vendors can register to receive email notifications whenever an RFP for a commodity they have selected goes up for bid. This service includes WSCA-NASPO contracts, whether led by Utah or other states.

respond. By publishing notifications for WSCA-NASPO contracts on

WSCA-NASPO Formally Allows Contracts to Be Bid for Select Geographical Areas. The RFP template provided to lead states includes the following language: "To insure the participation of small business and firms focused on a single state, solicitations shall allow bidders to restrict their proposal to a single state, a group of states or all states." Utah currently uses three such WSCA-NASPO contracts

Office Depot, a contract for just Utah

its website, Purchasing fulfills this requirement.

- Codale Electric (a Utah-based company), a contract for Utah, Idaho, Nevada, and Arizona.
- Industrial Supply (a Utah-based company), a contract for Utah, Arizona, and Nevada

Local Vendors Can Bid on Contracts Already in Place with WSCA-NASPO. RFP language allows that "each participating entity has the option to negotiate an expanded product line within the product category offering." For example, purchasing agents for the computer equipment contract periodically send out requests for best prices on a collection of items listed in the contract. They then determine which company offers the best all-around deal, and that becomes the new state contract amount.

Computer software provides a second example. A vendor told UDP that he could supply six of the hundreds of software items

offered on the WSCA-NASPO contract for a lower price. UDP solicited bids for these six items, and found that two vendors could supply these products for less, so UDP awarded both vendors a state cooperative contract for a year as a pilot. The pilot program was intended to allow Purchasing to:

Explore the prospects of obtaining more advantageous pricing and value-added services from niche authorized reseller(s) who may not be able to provide all ... software – as was required in the WSCA-NASPO ...RFP.

The pilot, however, resulted in no usage of those two contracts, so the pilot was canceled and the WSCA-NASPO contract is again the state cooperative contract.

UDP Provides All Vendors with Information and Training for Participating on Available Contracts, Including WSCA-NASPO Contracts. Examples of these resources include:

- Training sessions for public entities and vendors
- A UDP newsletter available for public entities and vendors
- A vendor information link on the Purchasing website
- A question and answer page on all RFPs available to all interested vendors

By advertising all contracts, allowing contracts to be bid for specific geographical areas, allowing local bids on existing WSCA-NASPO contracts, and providing vendors with sources of training and information, WSCA-NASPO and UDP appropriately enable local participation.

## **UDP Has Not Formalized Policies that Encourage Local Distribution**

UDP has no formal policies or written procedures that encourage use of local distributors for contracts with national companies. Currently, some state participating addenda and contracts identify authorized local dealers for their goods. This means that, although the contract is with a manufacturer who may be nationally based, purchasing entities can choose to go to local distributors. This way, Utah distributors are not cut out of the procurement process, while purchasing entities still get WSCA-NASPO prices.

UDP trains vendors, offers them newsletters, and answers all questions.

Although some contracts use local distributors, this practice is not formalized in UDP policy.

We found two commodities (copiers and tires) for which the Utah contracts specify authorized local dealers.<sup>24</sup> However, there is no official purchasing policy encouraging purchasing agents to find appropriate situations to require distribution through local dealers or distributors. Creating this policy could increase the use of local distributors, positively impacting Utah's economy.

The state of Idaho provided an example of possible language for this policy in a WSCA-NASPO RFP they released that encouraged local participation. It required that applicants "...provide a comprehensive discussion of [their] company's corporate and local sustainability practices...." It also stated that

NASPO encourages the involvement of local businesses.... Describe any programs that your company currently has in place in support of these organizations; and whether and how the resulting contract would or could be incorporated into the program(s).

Utah Purchasing should include such language in both policy and its own procurements.

### Legislature Has Chosen Not to Incentivize Rewarding Utah Vendors

In response to a specific question about whether the Legislature gives incentives to Utah-based vendors, we found no existing statute that allows or encourages giving preference to Utah vendors in the procurement process. Part of the reason for this appears to be some confusion over the definition of a Utah vendor, especially as some nationally operated vendors employ more Utah residents than Utah-based businesses employ.

Currently, 63G-6a-1002 is the only portion of the *Utah Code* that allows UDP to give preference to items that are "produced, manufactured, mined, grown or performed in Utah." It is referred to as "reciprocal preference," and is allowed only if the state in which the

Idaho provides an example of potential language for a local distribution policy.

There is no statute that favors Utah vendors over all others.

<sup>&</sup>lt;sup>24</sup> Tires provide an example of how this could work. Utah may have a hypothetical WSCA-NASPO contract with Goodyear to buy a tire for \$100. Under this contract, users can go to a local distributor and still get the WSCA-NASPO price.

other vendor originates offers a preference to its own vendors, and only for the amount that the other state offers it.

Printing services can be used as an example of how this reciprocal preference would work. Assume UDP has two responses to a hypothetical RFP for printing services. One is from a Utah-based company and the other from a Wyoming-based company. In this hypothetical situation, Wyoming gives a 10 percent preference to Wyoming-based printing companies in its own statute. Because of the reciprocal preference statute, the Utah-based company would receive a 10 percent preference over the Wyoming-based company in the state of Utah. Essentially, this would put the Wyoming-based company at a 10 percent disadvantage in Utah bids.

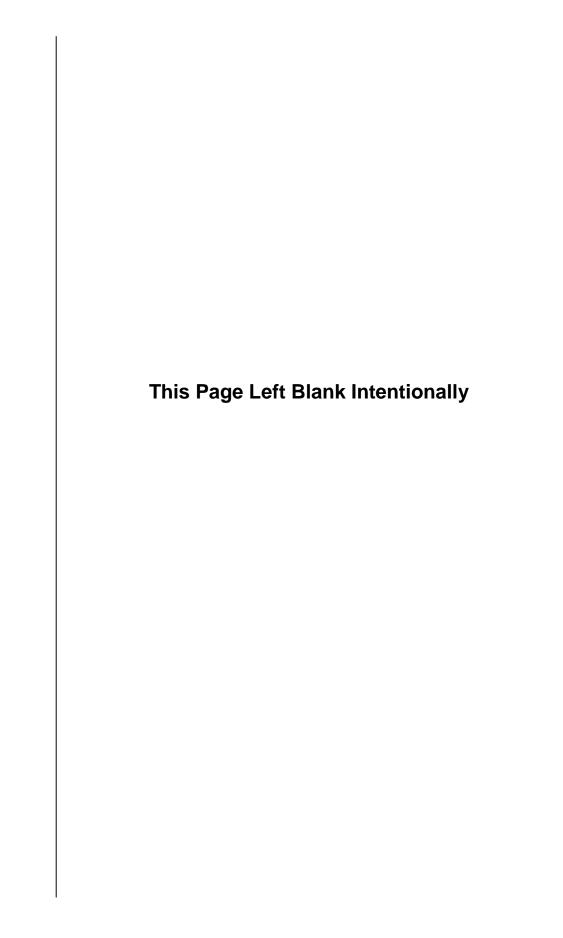
Colorado purchasing statute contains similar reciprocal preference language. Because other states have similar laws, giving Utah-based companies preference in Utah would trigger that same disadvantage for Utah bids in other states with those laws. UDP reports that industries are generally in opposition to changing these reciprocal laws, as they could then lose bids, which would make it difficult to compete in other states. Two other states, Wyoming and Idaho, have no mention of vendor preference.

UDP reports that legislators occasionally come in to discuss putting laws into place to allow for preference for Utah business, but they decide not to because of these unforeseen consequences. For example, we were able to find one bill file that was opened for this purpose, but was never pursued.

### Recommendations

1. We recommend the Utah Division of Purchasing create an official policy encouraging purchasing agents to find appropriate situations to encourage distribution through local dealers or distributors.

Utah law only allows for reciprocal preference if another state offers a preference to vendors from their state.



### **Appendices**

## Appendix A Information on the Creation of WSCA-NASPO

In 2012, the main cooperative purchasing arm, the Western States Contracting Alliance (WSCA), of NASPO split off into a related non-profit LLC. The following figure explains the timeline that led up to the nominal split.

**WSCA Separated from NASPO in 2012.** This timeline of events is influenced by the rebidding of the computer and wireless contracts, and the resulting increase in both revenues reserves.

| Date         | Event   |
|--------------|---|
| 1947         | NASPO created   |
| 1992-1993    | WSCA alliance formed with Utah as a founding member   |
| 1998         | IRS approves the use of NASPO's tax-exempt status for WSCA  |
| 2007, 2008   | WSCA rebids the computer and wireless contracts, resulting in significantly increased revenues and reserves |
| August 2012  | A NASPO work group recommends the creation of a subsidiary 501(c)(3) for their cooperative purchasing arm   |
| October 2012 | The NASPO Cooperative Purchasing Organization, LLC files Articles of Organization.                          |

Sources: NASPO website, WSCA contracts and Articles of Organization

As the figure shows, until 2012, WSCA was just a separate branch under NASPO, with no legal separation. In essence, WSCA did not legally exist, and was simply a part of NASPO. In 2012, NASPO decided to split the cooperative purchasing arm off into its own separate legal entity for the following reasons:

- Reduce the risk, liability, and fiduciary accountability of the NASPO board of directors
- Correct the separation of the NASPO board from the day-to-day operations they were approving

To address these risks, NASPO created the NASPO Cooperative Purchasing Organization, LLC<sup>25</sup> (referred to in this report as WSCA-NASPO). While it is a separate legal entity, it is also a subsidiary of NASPO because NASPO is the sole member of the organization. NASPO is the parent company.

In addition, the WSCA funds (both reserve and ongoing) were split between the two organizations. The following figure demonstrates how this was accomplished.

 $<sup>^{\</sup>rm 25}$  Also known as the WSCA-NASPO Cooperative Purchasing Organization.

## The 2012 Balance Was Split Evenly Between WSCA-NASPO and NASPO. This split was done after subtracting the set-asides to remain in WSCA-NASPO's budget.

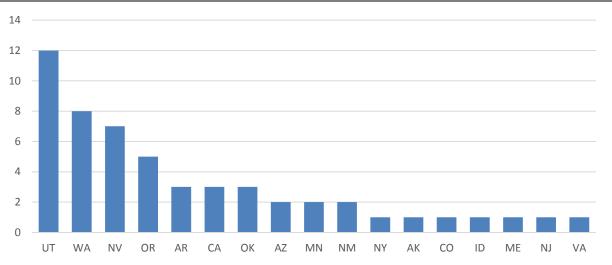
|                                | Original WSCA | WSCA-NASPO   | NASPO        |
|--------------------------------|---------------|--------------|--------------|
| 2012 End Fund Balance          | \$24,861,858  |              | \$3,564,432  |
| Set Asides*                    |               | \$9,492,830  |              |
| Remaining                      | \$15,369,028  |              |              |
| Amount Split                   |               | \$7,684,514  | \$7,684,514  |
| 2013 Beginning Fund<br>Balance |               | \$17,177,344 | \$11,248,946 |

<sup>\*</sup> Set Asides include a legal contingency fund, their 3-year operating budget, and the eMarket center budget

# Appendix B WSCA-NASPO Contract Lead States

Each WSCA-NASPO Cooperative Purchasing Organization (WSCA-NASPO) contract is led and managed by a member state. There are typically multiple contracts in a given contract area such as wireless phones. For example, there are six WSCA-NASPO contracts for wireless phones, each with a separate vendor, for this one contract area. The following figure shows which states lead the most WSCA-NASPO contract areas.

**Utah Leads Contracts in 22 Percent of All WSCA-NASPO Contract Areas.** Of the 54 contract areas, Utah leads contracts in 12 of them, the highest number among all member states.



Sources: WSCA-NASPO web site

# Appendix C Number of States Participating in WSCA-NASPO Contracts

Growth in total WSCA-NASPO contract spending can be attributed in part to an increase in the number of states participating on contracts. The following figure provides a sample of how many states have participated in several contract areas over time.

The Number of States Participating on Different Contract Areas Has Generally Increased. This sample of contract areas indicates growth in the number of states participating.\*

| Contract Areas      | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
|---------------------|------|------|------|------|------|------|
| Wireless Hardware   | 19   | 19   | 19   | 45   | 47   | 48   |
| Computer Hardware   | -    | 42   | 42   | 44   | 46   | 45   |
| Industrial Supplies | -    | -    | 39   | 40   | 40   | 42   |
| Computer Software   | -    | -    | -    | 9    | 10   | 17   |
| Tires and Tubes     | 11   | 15   | 15   | 19   | 20   | 26   |
| Laboratory Supplies | -    | -    | 14   | 21   | 23   | 23   |
| Copiers             | -    | 4    | 11   | 12   | 23   | 24   |
| Office Supplies     | -    | -    | 5    | 10   | 11   | 11   |

Sources: WSCA-NASPO "State of the Cooperative - 2013" presentation

<sup>\*</sup>Blank cells in the table represent years for which a contract did not exist, was not active, or accurate figures are not available.

# Appendix D Improvements in WSCA-NASPO's Financial Tracking

| Pre-Separation  | Post-Separation   |
|---|---|
| No audits done to assure vendor compliance with contracts   | Have done 2 compliance audits to determine whether vendors 1) appropriately remitted fees, 2) charged the right price for the goods |
| The UDP financial manager reports that WSCA-NASPO's finances were not always closely watched. For example, they recently double paid a reimbursement. | The financial manager reports WSCA-NASPO is keeping better track of their financials  |
| Less attention paid to financial details  | WSCA-NASPO has demanded more attention to financial detail from their management company  |
| No monitoring of management company's controls  | Audit of management company's internal controls completed   |

In addition, most other states we interviewed had no real problems with how WSCA-NASPO handles their finances.

## Appendix E NASPO's Activities and Goals

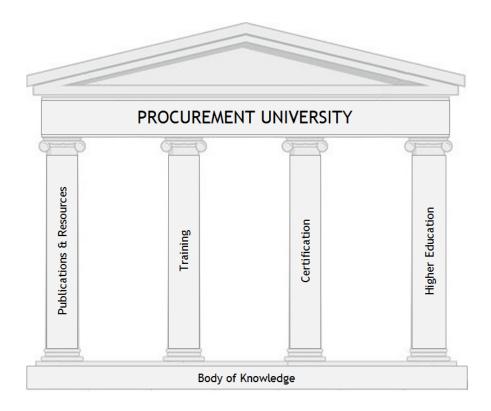
### **NASPO Activity/Goals**

Develop NASPO Guide Book – Includes instructional tools and helps

Develop courses to meet New Mexico's Certified Procurement Officer requirements – The intent of this is to design the course to be customizable for all states to create a certification program

Develop customizable state training module – to be delivered online or in person Develop NASPO Procurement University – An image of the university's goals is included below

Deliver timely and relevant member services, programs, and technical assistance Influence states and other stakeholders on public procurement issues and policies Build an exceptional professional public procurement association



## **Agency Responses**



State of Utah

GARY R. HERBERT Governor

SPENCER J. COX Lieutenant Governor Department of Administrative Services KIMBERLY HOOD Executive Director

Division of Purchasing and General Services KENT D. BEERS Division Director

The Utah State Division of Purchasing expresses its appreciation for the thorough and accurate audit of the WSCA-NASPO Cooperative Purchasing Organization conducted by the Legislative Auditor General's Office. WSCA-NASPO is the premier public purchasing cooperative in the United States. Forty eight states and thousands of public entities (cities, counties, school districts, colleges and universities, and service districts) save millions of dollars annually by purchasing goods at discount pricing through WSCA-NASPO. The audit documents that:

- The Utah Division of Purchasing saves money by using WSCA-NASPO contracts.
- WSCA-NASPO contracts nearly always offer procurement items at lower prices than comparable purchasing cooperatives.
- WSCA-NASPO administrative fees do not affect the price paid by public entities.
- WSCA-NASPO administrative fees are significantly lower (3 to 12 time lower) than fees charged by other purchasing cooperatives.
- WSCA-NASPO is a legally formed 501(c)(3) nonprofit organization.
- The WSCA-NASPO fund balance is being appropriately managed.
- The Director of the Utah Division of Purchasing does not personally benefit from the state's participation in WSCA-NASPO or by being voted chair of WSCA-NASPO.
- The Division of Purchasing gives Utah vendors equal opportunity to bid on WSCA-NASPO contracts.

The Division of Purchasing agrees with the audit recommendation to formalize, by way of policy, its current practice of seeking ways to encourage vendors on WSCA-NASPO contract to use local dealers and distributors. The Division applauds the work of the auditors assigned to the audit. They were very courteous and professional as they conducted dozens of interviews and meticulously dug through volumes of documents and data.

Note #1: The WSCA fund balance is used as a rainy day fund in event of an economic downturn, changes in technology that may result in lower sales on contracts, and other unforeseen circumstances. The State of Utah is a nationally recognized leader in long-term fiscal management. Political leaders in Utah initiated a "Rainy Day Fund" (current balance over \$400 million) to guard against economic downturn and mitigate revenue volatility. The purpose for WSCA's fund balance and the State's rainy day fund are identical.





October 30, 2014

Mr. John M. Schaff, Auditor General State of Utah - Office of the Legislative Auditor General W315 Utah State Capitol Complex Salt Lake City, UT 84114-5315

RE: Report No. 2014-11

Dear Mr. Schaff.

We express our appreciation for the opportunity to review the performance audit of Utah's Interaction with the WSCA-NASPO Cooperative Purchasing Organization. Our compliments to you and your very capable staff, specifically Darin Underwood, Leah Blevins and Christopher McClelland, for the thorough and professional manner that this review was conducted.

We are pleased that the audit validates the very important and beneficial relationship that has existed for over 20 years between Utah and WSCA-NASPO. Through that relationship the state, institutions of higher education, school districts, cities, counties and other political subdivisions have been able to purchase goods and services cooperatively with other states saving millions of dollars for the citizens of Utah.

WSCA-NASPO is the standard of excellence in public cooperative contracting. As adopted by our Management Board (comprised of 21 state purchasing directors across the nation), the purpose of the cooperative guided by our vision, mission and values is to support States and participating public entities.

#### **Our Values support S-T-A-T-E-S**

| • | Sovereignty    | We recognize the authority and autonomy of participating states.                       |
|---|----------------|--|
| • | Transparency   | We award contracts based upon fair and open competition.                               |
| • | Above reproach | We adhere to the highest standards of professionalism and ethics.                      |
| • | Teamwork       | We cooperate and build relationships in order to deliver best value.                   |
| • | Expertise      | We provide leadership, learning and best practices for public cooperative contracting. |
| • | Service        | Everything we do is for the benefit of the of the STATES and participating entities.   |

Utah's leadership and support have been a key factor in building and enhancing the strength and benefits of the cooperative over the years. As the audit indicates, Utah's importance in the national cooperative is reflected in the excellent service of Kent Beers as the WSCA-NASPO Management Board chair - elected by his national peers. The synergy and effectiveness of the WSCA-NASPO best value contracts are predicated upon participating states leading contracts and providing procurement and subject matter experts on sourcing teams. We are grateful for the significant contributions by Utah both in leading cooperative contracts and participating in sourcing teams benefiting all cooperative contract participants.

We look forward to continuing to move forward with the cooperative to serve and benefit public entities and taxpayers in Utah and across the nation.

Sincerely,

Douglas G. Richins, C.P.M. Chief Executive Officer

WSCA-NASPO Cooperative Purchasing Organization

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