

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT
BOARD OF EDUCATION
FAIRBANKS, ALASKA

Special Meeting

MINUTES

August 5, 2008

President Hajdukovich called the meeting to order at 5:30 p.m. in the Board Room of the FNSBSD Administrative Center at 520 Fifth Avenue, to hear the Vendor Appeal of Administrative Decision Regarding Districtwide Copy Machine Services.

Present:

Leslie Hajdukovich, President
Jennifer Schmidt, Treasurer
Kristina Brophy, Member
Sue Hull, Member
Howard Thies, Member

Absent:

Sharon McConnell Gillis, Vice President
Wendy Dominique, Clerk
Michael Fitzgerald, Base Representative
Timothy A. Jones, Post Representative
Ken Sample, Student Representative

Staff Present:

Cynthia Klepaski, Borough Attorney
Nancy Wagner, Superintendent
Roxa Hawkins, Assistant Superintendent – Elementary
Mike Fisher, Chief Financial Officer
Bart Grahek, Procurement & Purchasing Director
Robin Mullins, Business Services Director
Sharon Tuttle, Executive Assistant to the School Board

Others:

Cynthia Klepaski, Borough Attorney Representing the Board of Education
James DeWitt, Attorney Representing the Fairbanks North Star Borough School District
John Connors, Attorney Representing IKON
Robert Blasco, Attorney Representing Océ Imagistics Inc.
Bart Maize, IKON Fairbanks' Account Manager
Doug Gifford, IKON State of Alaska District Sales Manager
Ronald Diltz, Océ Branch Manager – Alaska

Vendor Appeal of Administrative Decision Regarding Districtwide Copy Machine Services

IKON Office Solutions, Inc. appealed the administration's decision denying IKON's protest on the award of RFP 08-R0011 Districtwide Copy Machine Service to Océ Imagistics. Under School Board Policy 442.23, after consideration of the aggrieved bidder's appeal, the school board may:

1. Award the contract as recommended, indicating its reasons for rejecting the appeal;
2. Recommend the contract be awarded to another bidder, in which instance, formal award will be held over until the next Board meeting, except that the Board may award the contract at that meeting to some other bidder if it finds that a delay in making the award would adversely affect the district;
3. Stay any award of the contract to permit further consideration of the appeal, with action to be scheduled as soon as practicable, but in no event more than twenty (20) days after the stay is initiated;
4. Reject all bids; or
5. Take such other action as appears appropriate and in the best interest of the district under the circumstances.

Each party - IKON Office Solutions, Inc., the Fairbanks North Star Borough School District, and Océ Imagistics – were allotted 15 minutes to state their case. IKON was allowed 5 minutes for rebuttal.

IKON

John Connors, attorney representing IKON, presented IKON's appeal of the administrative decision regarding districtwide copy machine services. His presentation included the differences between a Request for Proposal (RFP) and an Invitation to Bid (IFB), school board policies and state regulations as they applied to bids and proposals, process negotiations, and the accuracy and completeness of the proposals.

Mr. Connors stated that IKON's appeal was based on the fact that Océ's original proposal was incomplete and noncompliant. IKON also objected to the school district's numerous and lengthy communications afforded to Océ, but none of the other proposal vendors. Mr. Connors' cited, what IKON felt, was an unusually large number of questions, approximately 29, between Océ and the school district in an attempt to clarify Océ's original proposal. He felt the need for so many questions were due largely to Océ's proposal being incomplete and not meeting the requirements of the RFP, thus making it unresponsive and noncompliant.

Mrs. Hull arrived at 5:36 p.m.

Bart Maize, IKON's Fairbanks' account manager, reviewed and compared the technical aspects of IKON's copy machines versus Océ's machines. He stated IKON's proposal called for the same machines in the schools, thus alleviating the need for staff to learn, and schools to stock supplies for several different types of machines.

Mr. Maize stated that Océ's bid, although it stated all of its machines were from one manufacturer, in fact, included machines from several different manufacturers that were rebranded with the Océ name. Mr. Maize noted with different machines within the same schools, it would be necessary for staffs to know how to operate different machines, clear jams from different machines, know different operator codes for each of the machines, as well as stock supplies for different machines – all factors in decreasing efficiency in the schools.

Representatives for IKON felt Océ's bid was incomplete and not compliant with several of the requirements of the RFP and asked the Board to overturn it.

BOARD QUESTIONS

Mrs. Schmidt asked if IKON's appeal was based on the Océ's non-standardization of product or the district's process. Mr. Maize stated IKON's appeal was based on both. He felt IKON offered a better machine and Océ's proposal had been non-compliant. He noted Océ's initial proposal did not reveal their manufacturers and one machine included in the proposal was a remanufactured machine, which was against the request. Mr. Maize stated Océ changed their proposal once the remanufactured machine was questioned by the district.

Mrs. Schmidt clarified that one of IKON's objections to the process was the district's numerous questions and communications with Océ and the timing of those negotiations. She noted the RFP allowed for negotiations with the offeror of the most attractive proposal in an attempt to modify the proposal to be acceptable to the district. Mrs. Schmidt asked if the negotiations were still an argument of the appeal. Mr. Connors said it was still an issue to the extent that Océ had the opportunity to "retool" their proposal. The district's questions to Océ showed Océ's original proposal was lacking a substantial amount of information; where as IKON's proposal was more complete and had satisfied the proposal's requirements. He also noted the accelerated RFP calendar.

SCHOOL DISTRICT

Jim DeWitt, attorney representing the school district, explained IKON had the opportunity during the pre-proposal conference meeting with all proposal vendors to object to the clause allowing negotiations with one vendor, which was clearly spelled out in the RFP process. Mr. DeWitt felt that since IKON had not raised a concern or objection with the negotiations clause in the RFP during the pre-proposal conference meeting their appeal should not be heard.

Mr. DeWitt stated the RFP clearly stated the school district had the right to proceed with only one proposal and negotiate with that one vendor. The school district had exercised their right and awarded Océ Imagistics the contract. IKON objected to the award.

Mr. DeWitt questioned Robin Mullins, director of the district's business services department, on the district's procedures regarding the copy machine proposal, as well as past proposals. Ms. Mullins was well aware of the district's procedures and had participated in other copy machine procurements in the past. She felt the solicitation for copy service was always complex.

Mr. DeWitt noted Océ currently provided the district's copy machines. He questioned Ms. Mullins on the issue of Océ having several machine manufacturers and how schools currently addressed the issue. Ms. Mullins stated schools usually posted operating instructions for specific machines. She stated schools had experienced no problems with having different machines. Ms. Mullins noted Océ had provided the district schools with good service over the last 36 months.

In Mr. DeWitt's questioning of Ms. Mullins, she stated the school district had not considered Océ having several machine manufacturers as non-compliant. The district was not purchasing or leasing the machines and if no copies were made, there would be no payment to Océ. Ms. Mullins also stated the large number of questions to Océ was not unreasonable and had negotiations been conducted with IKON, she would have probably had the same amount of questions for them.

BOARD QUESTIONS

Mrs. Schmidt asked Ms. Mullins how many copy proposals she had participated in and if she felt it had been a complicated proposal. This proposal was Ms. Mullins' third copy service proposal. It had been a very complicated procurement and that was why it had been a request for proposals rather than an invitation to bid. There were many competing products with minor differences and with current technology there were many features available on copy machines. The proposal had outlined the district's needs and asked vendors to submit their best options.

Mrs. Schmidt asked Ms. Mullins if she felt the 29 questions was an unusually high number of questions to ask of a vendor. Ms. Mullins stated no, she always asked many questions when involved in the process. Ms. Mullins noted had the negotiations with Océ not gone well, IKON was the next vendor on the list and she would probably have had as many questions for them, if not more.

Mr. Thies clarified that Océ had been the supplier for the district's copiers for the past 36 months. Ms. Mullins stated it had actually been longer – but during that time there had been several name changes – Imagistics, Pitney Bowes, and now Océ.

Mr. Thies also clarified that Océ was currently providing copy machines from different manufacturers and asked if there had been any problems. Ms. Mullins stated Océ currently provided copy machines from different manufacturers and she had not heard of any problems. She felt the schools were happy with the machines and the Board would know it if they were not.

Mr. Thies asked if Océ was responsive to copy machine problems. Ms. Mullins stated Océ had been very responsive.

Mrs. Hajdukovich asked Ms. Mullins if it was common to go to vendors with questions after an award had been made. In Ms. Mullins' experience, she had not found it uncommon. In past negotiations with other vendors on other pieces of machinery, there had been times when negotiations had taken place with single and/or multiple vendors.

Mrs. Hajdukovich asked Ms. Mullins how the decision to negotiate with one or more vendors was reached. Ms. Mullin's stated in the particular case of the copy machine proposal, part of the decision was looking at the overall proposals to determine if they meant the minimum criteria. Usually the starting point was price and then looking at what was being offered, the ability to service the equipment, machine features, support available, and the risks. Ms. Mullins stated had all the vendors come in with the same price, the district would have completed hands-on tests with all of the machines.

Mrs. Hajdukovich asked Ms. Mullins if it was more common to deal with one vendor or multiple vendors. Ms. Mullins suggested Bart Grahek, purchasing director, would be more qualified to answer the question. Mr. Grahek stated the procedures for the copy machine RFP were the same procedures the district used to conduct all their RFPs. The district looked at several evaluation factors to establish a competitive range. In the case of the copy machine RFP, there had been several evaluation factors.

Mr. Grahek stated the district looked at the differences in factors. If there were a lot of factors that were similar, such as corporate capacity and experience, the financial stability of the companies, references, etc., the district would set those aside and focus on the factors that were different. In the case of the copy machines RFP, Mr. Grahek stated there had been a significant difference in price. He said in reviewing the capacity of the machines, support functions, and technical features, it was determined they were similar enough that it was determined the price advantage of Océ's proposal had put them in a competitive range by themselves. Having made that determination, there were questions that had to be asked to clarify and determine if the other factors of their proposal were acceptable.

Although he had not specifically participated in the copy machine RFP, having reviewed the information and procedures of the copy machine RFP, he stated the district had followed the same procedures they had for other RFPs. They isolated the factors that had no differences and focused on the factors that were different. Mr. Grahek stated he had handled dozens of RFPs over his years with the district.

Mr. Thies stated, in his experience with the department of transportation, they had just sent out 69 questions to a vendor and he did not feel the 29 questions from the district were excessive or unusual. He clarified the reason for RFP's was so you could set the proposals side by side and compare them.

Océ

Robert Blasco, attorney for Océ, and Ronald Diltz, Océ's Alaska branch manager, responded to some of the previous questions from Board members, clarifying the copy machine proposals were RFPs and not IFBs. Mr. Blasco stated IKON's position was that RFPs and IFBs should be treated the same, but they failed to present any Alaska Supreme Court authority to support that argument. Mr. Blasco stated the district's position was fully supported by Alaska Supreme Court decisions.

Mr. Blasco stated IKON believed the district was required to negotiate with all the proposers, as if there was something legally wrong with negotiating with only one proposer. In all of IKON's documentation, he had not seen any citation to any Alaska authority to support their position.

Mr. Blasco stated it was also IKON's position the district was required to share its communications and negotiations with all the proposers. Again, he stated he had not seen any citation to any Alaska authority to support their position.

Echoing his previous comments, if there had been a problem with having the RFP process used as "retooling" Mr. Blasco stated it would have come up at some point through all the years of history and there would have been an Alaska Supreme Court case to cite. He noted nothing had been presented to the Board that any part of the process was legally incorrect in any shape or form.

Mr. Blasco believed IKON did not like the way the process went. He believed Ms. Mullins was correct in her statement that had the district, using its discretion, determined to also negotiate with IKON or only with IKON, there would have been at least the same amount of questions, if not more. Mr. Blasco wanted it clear that not only was the RFP process perfectly fine, but the complaints about the process did not have any legal backing.

Mr. Blasco agreed the RFP was an extremely complicated request as the Board had already heard. He recalled the attorney for IKON stated the district was charged with evaluating the proposals for the maximum education value for the district. In his opinion, that equated a very easily understood word – discretion. The district had the discretion to do exactly what Ms. Mullins said they did to determine that Océ's proposal was fully compliant and go forward with questions and negotiations in order to reach the maximum education value for the district.

Mr. Blasco stated the district had done exactly what it should have done, correctly, which resulted in the award going to Océ. He thanked the Board for their time and consideration of the issue. He believed IKON disagreed or was not happy with the process, but that did not in any way make it legally incorrect. On behalf of Océ, Mr. Blasco asked the Board to affirm the district's decision.

IKON Rebuttal

Mr. Connors stated IKON did not have an issue with the RFP proposal, but rather that it was not afforded fair and equal treatment in the evaluation of the proposal. It was not known what factors went to what part of the bid or which factors were weighted the highest - continuity of service, incumbent vendor, or price. Mr. Connors stated what was known was there had been a lengthy exchange between the school district and Océ. He was not aware of a single question being asked of IKON in response to its proposal. Mr. Connors said one of the factors of the RFP was the completeness and accuracy of the information provided. Mr. Connors stated it was presumed IKON's proposal had been reviewed. IKON had done the job right the first time.

Mr. Connors had no doubt that the total cost was an issue. But he asked what cost was placed on administrative efficiency – when you had some schools with multiple machines, having to juggle multiple manuals to clear jams, fill paper, fill toner, etc. – there was a price associated with the time staff spent on copy machine concerns.

Mr. Connors reiterated IKON's problem was not with the RFP process itself, but rather with the way it had been conducted in this particular case. IKON submitted that Océ did not submit a responsive or complete proposal. That argument was evidenced by the 20+ questions from Ms. Mullins to Océ and Océ's response many weeks later.

Mr. Connors stated the School Board was charged as trustees of the public's money available to educate children, which was important to everyone. Mr. Connors reminded the Board they had several options available to deal with the appeal. The Board could award the proposal to IKON; they could reverse the award; or they could instruct the purchasing department to request "best and final" offers. Mr. Connors stated IKON was prepared to respond to a "best and final" offer within 14 days and he asked for the Board's consideration.

BOARD QUESTIONS

Mrs. Schmidt clarified with Mr. Connors that IKON's concern was not with the process but rather with how it had been conducted. Mr. Connors said Mrs. Schmidt was correct. Mrs. Schmidt asked Mr. Connors what part of the RFP was conducted in a manner that was not allowed in the outlined evaluation process. Mr. Connors said Océ's initial bid was not responsive. Océ had the opportunity during the several weeks of exchange with the school district, to refine its proposal to make it more attractive. Mr. Connors cited the remanufactured copier for the print shop that was included in Océ's original bid, which was clearly against the RFP. The print shop copier was very critical to the school district. Ms. Mullins had done her job and caught the remanufactured machine. Océ admitted it was a mistake and redid their bid. Mr. Connors stated Océ switched copiers – a very important copier for the district. Mr. Connors stated IKON stood behind its initial proposal because it was completed correctly and completely, the first time.

Executive Session

An executive session was called to hear the appeal of the administrative determination regarding protest of notice to intent to award RFP 08-R0011 districtwide copy machine service.

HULL MOVED, BROPHY SECONDED, TO CONVENE IN EXECUTIVE SESSION TO DISCUSS SUBJECTS THAT TEND TO PREJUDICE THE REPUTATION AND CHARACTER OF ANY PERSON, PROVIDED THE PERSON MAY REQUEST A PUBLIC DISCUSSION; MATTERS, THE IMMEDIATE KNOWLEDGE OF WHICH, WOULD CLEARLY HAVE AN ADVERSE EFFECT UPON THE FINANCES OF THE GOVERNMENT UNIT; AND MATTERS WHICH BY LAW, MUNICIPAL CHARTER, OR ORDINANCE ARE REQUIRED TO BE CONFIDENTIAL.

MOTION CARRIED UNANIMOUSLY BY VOICE VOTE. 5 AYES

The Board convened to executive session at 6:25 p.m.

The executive session ended at 6:46 p.m.

SCHMIDT MOVED, THIES SECONDED, TO AWARD RFP 08-R0011 TO OCÉ IMAGISTICS FOR DISTRICTWIDE COPY MACHINE SERVICES FOR A TOTAL OF \$551,500, AS RECOMMENDED BY THE ADMINISTRATION.

MOTION CARRIED UNANIMOUSLY BY VOICE VOTE. 5 AYES

The Board thanked all the participants.

The meeting adjourned at 6:47 p.m.

Submitted by Sharon Tuttle, executive assistant to the school board.