

3/24/98
Not introduced

Submitted by: ATU Committee
Prepared by: Department of Law
For reading: March 24, 1998

ANCHORAGE, ALASKA
AO NO.98-60

MKH

**AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY ESTABLISHING A
STRUCTURED PROCESS TO SELL THE ANCHORAGE TELEPHONE UTILITY
PROVIDING PREAPPROVAL OF THE SUCCESSFUL BIDDER**

WHEREAS, the Assembly has adopted AO No. 98-44 (S-2) whereby a proposition authorizing the sale of the Anchorage Telephone Utility (ATU) will be voted upon by the voters at the April 21, 1998, Municipal Election; and

WHEREAS, to thoroughly inform the voters of the intent of the Municipal Assembly, assuming the passage of the proposition, a structured process should be established which provides a course of action for the Municipal Assembly and the Administration.

NOW, THEREFORE, the Anchorage Municipal Assembly ordains:

Section 1: That the following process shall be followed by the Assembly and the Administration in selling ATU:

- A. Passage of the ATU sale proposition by the voters on April 21, 1998, and certification of the election.
- B. Issuance of an RFP for a sale consultant (investment banker/financial advisor) and selection of the sale consultant.
- C. Issuance of an RFP for a business consultant, who would provide an opinion to the Municipality validating the bidding process and indicating that the process yielded a fair market value for ATU, and selection of the business consultant.
- D. Issuance of an Invitation to Bid (ITB) on ATU.

- 1 E. Selection by the Municipal Purchasing Department of the highest
2 responsive bid from a responsible bidder in an amount equal to or
3 exceeding ATU's fair market value.
4
5 F. Receipt by the Municipality of the opinion validating the bidding process
6 and indicating that the process yielded a fair market value for ATU.
7
8 G. Action by the Administration accepting or rejecting the successful bid as
9 determined in subsection E., above.
10
11 H. Approval by regulatory authorities.
12
13 I. Formal closing of the sale.
14
15

16 **Section 2:** That the following specifications shall be included in the ITB:
17

- 18 A. Each bidder shall agree that should its bid be the highest responsive bid,
19 it will provide the Municipality of Anchorage with a down payment equal
20 to five percent (5%) of the purchase price in cash within thirty (30) days
21 of the action described in Section 1, subsection G., above. The down
22 payment shall be nonrefundable unless closing of the transaction is
23 prevented due to circumstances beyond the reasonable control of the
24 bidder.
25
26 B. Each bidder shall agree that should its bid be the highest responsive bid,
27 it will use its diligent efforts to close the transaction within five (5)
28 months of the Municipality's acceptance of its bid as described in Section
29 1, subsection G., above, or as soon thereafter as all legal, administrative
30 and regulatory requirements have been fulfilled.
31
32 C. Each bidder shall agree that should its bid be the highest responsive bid,
33 it will pay all reasonable expenses incurred by the Municipality of
34 Anchorage in relation to the sale of ATU assets, including, but not limited
35 to, costs of the Municipality of Anchorage for legal, financial and other
36 advisors relating to solicitation of bids, contract negotiations, regulatory
37 approvals and any litigation in relation to the sale of the ATU assets. In
38 addition, each bidder shall agree that should its bid be the highest
39 responsive bid, at the closing of the transaction, it shall pay the "Closing

1 Fee" due to the Municipality of Anchorage's investment banker/financial
2 advisor.
3

4 D. Each bidder shall agree that should its bid be the highest responsive bid,
5 it shall recognize any labor organization which is currently certified as the
6 lawful bargaining agent for and representative of ATU's employees, to
7 include recognizing the current collective bargaining agreement until
8 August, 1999, including reopener or adjustment provisions in the
9 agreement.
10

11 E. Each bidder shall agree that should its bid be the highest responsive bid,
12 it shall honor ATU's current interconnection agreements, including
13 reopener or adjustment provisions in the agreements.
14

15 F. The only acceptable form of consideration shall be cash. Each bidder
16 shall specify a single dollar amount as the purchase price of its bid. Bids
17 which are contingent on or in which the purchase price is determined by
18 reference to any term or provision of any other bid are prohibited.
19
20

21 Section 3: That the following are required to be a responsive bid:
22

23 A. Each bidder must acknowledge having read and understood the ITB in its
24 entirety; and
25

26 B. Each bidder must acknowledge that its bid will be irrevocable until the
27 earlier of such time as its bid is rejected or a definitive contract for the
28 sale of ATU is executed with another bidder; and
29

30 C. Each bidder must acknowledge that the highest responsive bid from a
31 responsible bidder shall be the successful bid; and
32

33 D. Each bidder must comply with the instructions contained in the ITB; and
34

35 E. Each bidder must acknowledge that it and, to the extent appropriate, its owners
36 and parent companies, has obtained all requisite authority,
37 corporate or otherwise, including but not limited to approval of
38 any corporate entity's board of directors; and
39

- 1 F. Each bidder must provide a bid signed by a person of authority, a
2 corporate officer or otherwise, with an appropriate verification of
3 signature; and
4
5 G. Each bidder must provide with its bid evidence of the bidder's financial
6 ability to fund its bid; and
7
8 H. Each bidder must provide with its bid evidence of the bidder's ability to
9 manage and operate a telecommunications company such as ATU; and
10
11 Each bidder must provide with its bid evidence of the bidder's ability to
12 obtain or satisfy all regulatory, legal and other approvals, consents and
13 other requirements that are necessary to complete the transaction without
14 unduly delaying the closing; and
15
16 J. Each bidder must submit the Agreement to Purchase executed by the
17 bidder (any substantive deviations from the form of Agreement to
18 Purchase may result in a bid being deemed nonresponsive); and
19
20 K. Each bidder must submit a nonrefundable bid fee of \$25,000
21 accompanying its bid.
22

23 The determination of whether a bid is responsive shall be made by the Municipal
24 Purchasing Department.
25
26

27 Section 4: That the following are all required to be a responsible bidder and shall be
28 provided by the bidder with its bid:
29

- 30 A. Evidence of the bidder's financial ability to fund its bid; and
31
32 B. Evidence of the bidder's ability to manage and operate a
33 telecommunications services company such as ATU; and
34
35 C. Evidence of the bidder's ability to obtain or satisfy all legal, regulatory,
36 administrative, and other approvals, consents and other requirements that
37 are necessary to complete the transaction without unduly delaying the
38 closing.
39

2 Bidders may bid through special purpose subsidiaries formed for the purpose of the
3 bidding. In the case of bidders that are special purpose subsidiaries, criterion A above must be
4 satisfied by the subsidiary itself, but criterion B may be satisfied by the subsidiary's parent
5 company.

6 In the case of bidding consortia, the bidding entity must satisfy criterion A, whereas
7 criterion B may be satisfied by a company either holding a majority of the voting equity of the
8 bidder or otherwise controlling the bidder.

9
10 The determination of whether a bidder is responsible shall be made by the Municipal
11 Purchasing Department.

12
13
14 Section 5: That the Municipality of Anchorage expressly reserves the right, in its sole
15 discretion and without stating any reason therefor, to terminate discussions with any or all
16 bidders or prospective bidders, to negotiate with any party with respect to a transaction, and to
17 reject any and all bids.

18
19
20 Section 6: That the process above stated is binding upon the Municipal Assembly and
21 the Administration for the sale of ATU pursuant to AO No. 98-44 (S-2) and that the Municipal
22 Assembly preapproves the action of the Administration described in Section 1, subsection G.,
23 above, of accepting or rejecting the successful bid as determined in Section 1, subsection E.,
24 above.

25
26
27 Section 7: That this ordinance is effective upon passage and approval.

28
29
30 PASSED AND APPROVED by the Anchorage Assembly this day of , 1998.

31
32
33 _____
34 Chairman

35
36 ATTEST:

37
38 _____
39 Municipal Clerk