

CLERK'S OFFICE
AMENDED AND APPROVED
Date: 3-31-98

Submitted by
Prepared by:
For reading:

ATU Committee
Department of Law
March 24, 1998

ANCHORAGE, ALASKA
AR NO.98- 83

**A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY ESTABLISHING A
STRUCTURED PROCESS TO SELL THE ANCHORAGE TELEPHONE UTILITY**

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 resolves:

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 Assembly accepting or rejecting the successful bid as
9 determined in subsection E, above.
10 and F.
11 H. Approval by regulatory authorities.
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13 Formal closing of the sale.
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16 Section 2: That the following specifications shall be included in the ITB:
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- 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 one----- to five percent (5%) of the purchase price in cash within thirty (30) days-----1%
21 of the Assembly action described in Section 1, subsection G., above. The
22 down 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 Assembly's acceptance of its bid as described in Section 1,
29 subsection G., above, or as soon thereafter as all legal, administrative and
30 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
40 Fee" due to the Municipality of Anchorage's investment banker/financial
41 advisor.
42
43 D Each bidder shall agree that should its bid be the highest responsive bid

1 it shall recognize any labor organization which is currently certified as the
2 lawful bargaining agent for and representative of ATU's employees, to
3 include recognizing the current collective bargaining agreement until
4 August, 1999, including reopener or adjustment provisions in the
5 agreement.
6

7 E. Each bidder shall agree that should its bid be the highest responsive bid,
8 it shall honor ATU's current interconnection agreements, including
9 reopener or adjustment provisions in the agreements.
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11 F. The only acceptable form of consideration shall be cash. Each bidder
12 shall specify a single dollar amount as the purchase price of its bid. Bids
13 which are contingent on or in which the purchase price is determined by
14 reference to any term or provision of any other bid are prohibited.
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16
17 **Section 3:** That the following are required to be a responsive bid:
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19 A. Each bidder must acknowledge having read and understood the ITB in its
20 entirety; and
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22 B. Each bidder must acknowledge that its bid will be irrevocable until the
23 earlier of such time as its bid is rejected or a definitive contract for the
24 sale of ATU is executed with another bidder; and
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26 C. Each bidder must acknowledge that the highest responsive bid from a
27 responsible bidder shall be the successful bid; and
28

29 D. Each bidder must comply with the instructions contained in the ITB; and
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31 E. Each bidder must acknowledge that it and, to the extent appropriate, its
32 owners and parent companies, has obtained all requisite authority,
33 corporate or otherwise, including but not limited to approval of any
34 corporate entity's board of directors; and
35

36 F. Each bidder must provide a bid signed by a person of authority, a
37 corporate officer or otherwise, with an appropriate verification of
38 signature; and
39

40 G. Each bidder must provide with its bid evidence of the bidder's financial
41 ability to fund its bid; and
42

43 H. Each bidder must provide with its bid evidence of the bidder's ability to

1 manage and operate a telecommunications company such as ATU; and

- 2
- 3 I. Each bidder must provide with its bid evidence of the bidder's ability to
- 4 obtain or satisfy all regulatory, legal and other approvals, consents and
- 5 other requirements that are necessary to complete the transaction without
- 6 unduly delaying the closing; and
- 7
- 8 J. Each bidder must submit the Agreement to Purchase executed by the
- 9 bidder (any substantive deviations from the form of Agreement to
- 10 Purchase may result in a bid being deemed nonresponsive); and
- 11
- 12 K. Each bidder must submit a nonrefundable bid fee of \$25,000
- 13 accompanying its bid.
- 14

15 The determination of whether a bid is responsive shall be made by the Municipal

16 Purchasing Department.

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19 Section 4: That the following are all required to be a responsible bidder and shall be

20 provided by the bidder with its bid:

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- 22 A. Evidence of the bidder's financial ability to fund its bid; and
- 23
- 24 B. Evidence of the bidder's ability to manage and operate a
- 25 telecommunications services company such as ATU; and
- 26
- 27 C. Evidence of the bidder's ability to obtain or satisfy all legal, regulatory,
- 28 administrative, and other approvals, consents and other requirements that
- 29 are necessary to complete the transaction without unduly delaying the
- 30 closing.
- 31

32 Bidders may bid through special purpose subsidiaries formed for the purpose of the

33 bidding. In the case of bidders that are special purpose subsidiaries, criterion A above must be

34 satisfied by the subsidiary itself, but criterion B may be satisfied by the subsidiary's parent

35 company.

36

37 In the case of bidding consortia, the bidding entity must satisfy criterion A, whereas

38 criterion B may be satisfied by a company either holding a majority of the voting equity of the

39 bidder or otherwise controlling the bidder.

40

41 The determination of whether a bidder is responsible shall be made by the Municipal

42 Purchasing Department.


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

Section 6: That the process above stated is binding upon the Municipal Assembly and the Administration for the sale of ATU pursuant to AO No. 98-44 (S-2).

Section 7: That this resolution is effective upon passage and approval.

PASSED AND APPROVED by the Anchorage Assembly this 31st day of March, 1998.


Chairman

ATTEST:


Municipal Clerk

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 312-98

Meeting Date: March 24, 1998

From: Assembly ATU Committee
(Wohlforth, VonGemmingen, Meyer)

Subject: AR 98-83; a resolution of the Anchorage Municipal Assembly
establishing a structured process to sell the Anchorage Telephone
Utility

The Assembly Resolution, recommended by the Assembly ATU Committee, establishes a structured process for the sale of ATU. The AR provides:

1. A detailed time line for the sale of ATU.
2. The specifications which are to be included in the Invitation to Bid (ITB).
3. The criteria for a responsive bid.
4. The requirements which are required to be a responsible bidder.
5. The Municipality's right to reject all bids.
6. The binding effect of the AR for the sale of ATU.

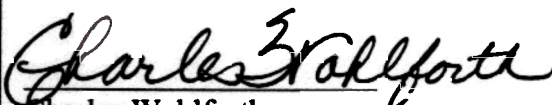
See page 2 for Assembly amendments.

The time line provides, after selection by the Municipal Purchasing Department of the highest responsive bid from a responsible bidder in an amount equal to or exceeding ATU's fair market value, action by the Assembly either accepting or rejecting the successful bid.

Approval of the resolution is recommended.

Respectfully submitted:

Prepared by:


Charles Wohlforth


Mary K. Hughes

The Assembly approved the following amendments on March 31, 1998:

7. Assembly Resolution No. 98-83 controls the sale process adopted under Anchorage Ordinance No. 98-44(S-2) and neither the Assembly nor the Administration will make any changes thereto.
8. Evidence referred to in Section 4. of Assembly Resolution No. 98-83 is documentation acceptable to the Municipality of Anchorage supporting the propositions set out in Section 4. of Assembly Resolution No. 98-83, the nature of which will be generally delineated in the ITB.