

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF
THE DEPARTMENT OF ADMINISTRATION**

FLAGSHIP DEVELOPMENT, LLC)	
)	
v.)	
)	
DIVISION OF GENERAL SERVICES)	OAH No. 06-0249- PRO
<hr/>)	DGS RFP No. 2006-0600-5772

DECISION

I. Introduction

This is a protest appeal. The Division of General Services (division) issued Request for Proposals No. 2006-6000-5772 to obtain office space in Anchorage for the Department of Health and Social Services, Office of Children's Services. The division gave notice of intent to award the contract to JBG Memorial, LLC (JBG). Flagship Development, LLC (Flagship), which had filed a competing proposal, filed a protest on March 9, 2006. The division denied the protest on March 23, 2006. Flagship filed an appeal, which the commissioner referred to the Office of Administrative Hearings.

The administrative law judge conducted a prehearing teleconference on April 6, 2006, and advised the parties that an initial determination as to whether there are material facts at issue would be made based on the documents submitted with the protest appeal, the protest report, and the comments on the protest report.¹ At a status teleconference on May 10, 2006, the division agreed that it would withhold award of the contract pending a final decision. Thereafter, the administrative law judge ordered that a supplemental protest report be filed. The supplemental report was filed on May 31, 2006, and Flagship submitted comments on the supplemental report on June 12, 2006. The division filed a report by its own independent consulting engineer on July 6, 2006.

Based on the evidence submitted, the administrative law judge concludes that there are no material facts at issue and that the appeal should be denied.

¹ AS 36.30.610(b).

II. Facts

On December 9, 2005, the division issued Request for Proposals No. 2006-6000-5772 (RFP) to obtain a long-term lease for approximately 30,846 square feet of office space in Anchorage for use by the Office of Children's Services. The RFP was prefaced with a standard form notice to the offerors stating that the offeror's signature on their proposal constituted certification that "the Offeror is complying with...all terms and conditions set out in this RFP."² It included specific "Offer Responsiveness Criteria"³ stating:

Offers will initially be reviewed to assure compliance with the following minimum responsiveness criteria:

...

(B) Offeror shall submit with the offer, or upon request by the State, a detailed floor plan of all areas of the proposed space drawn to 1/8" scale. The plans shall show usable square footage of each room or area; shall be labeled to show all rooms and areas listed in this RFP; and shall show scaled dimensions. ...

The RFP provided for occupancy within 540 days after the contract award and notice to proceed, and no sooner than August 1, 2007, and stated that "Compliance to all parts of this RFP will be required prior to occupancy...."⁴ "As Built" drawings were to be furnished at the time of occupancy.⁵

The RFP provided for use of an evaluation committee, with a three stage process leading to the contract award. In the first stage, the committee would score offers "deemed responsive by the Contracting Officer." In the second stage, offerors deemed reasonably susceptible of award could be "given the opportunity to discuss their proposals with the [committee] at the discretion of the Contracting Officer." Discussions could lead to changes to the "conditions, terms or price of the proposed contract," written changes to the RFP, and written alterations of an offer. If discussions were conducted, best and final offers would be submitted, with a final evaluation of those best and final offers leading to selection of the "prospective awardee." In the third stage, the division would negotiate with the prospective awardee to "finalize an acceptable floor plan which

² RFP p. 2.

³ RFP §2.5, pp. 16-17.

⁴ RFP §3.3, p. 21.

satisfies the tenant agency's need for efficient layout of its space." The purpose of the negotiations would be to obtain a floor plan meeting the "organizational, spatial, and functional relationships expressed in the RFP...and...the tenant agency's need for efficient layout of [its] operations, a need which can be considered only after knowing the physical and regulatory limitations of the prospective awardee's building."⁶ If negotiations were successful, a Notice of Intent would be issued.⁷

In addition to various required lease provisions,⁸ the RFP included a variety of specific building requirements regarding the type of building, nature and amount of space, windows, floor covering, partitions, paint, door hardware, elevators, interior and exterior signs, entrance and security, and other matters.⁹ One of the requirements was that the space must have "direct natural light through windows in offices and areas designated as workstation/office space areas," and must have "[a] minimum of 10% of outside window area relative to the overall office, workstation, and circulation floor space areas."¹⁰

The primary evaluation factor was cost, which constituted 60% (60 points) of the total evaluation. Apart from cost and the Alaska bidder preference (15 points),¹¹ proposals were to be evaluated on three factors: (1) function, planning and design (15 points); (2) appearance and indoor environment (5 points); and (3) public convenience and location (5 points).¹² Evaluation of the building's windows and the availability of natural lighting was within the scope of the appearance and indoor environment factor.¹³

Flagship, JBG, and Debarr Administration Building, LLC (Debarr) submitted proposals. Flagship's proposal included two separate options. The JBG proposal offered space occupying the entirety of an existing three-story building plus a proposed new addition. The proposal included architectural drawings showing the plot plan and floor plan. The floor plan showed window locations and horizontal scale dimensions.

⁵ RFP §3.21, p. 26.

⁶ RFP §5.1, p. 67.

⁷ *Id.*

⁸ RFP §§3.1-3.43, pp. 20-43.

⁹ RFP §§4.1-4.26, pp. 37-66.

¹⁰ RFP §4.10, pp. 39-40.

¹¹ The Alaska bidder's preference was worth an additional 5 points on the cost side of the equation, plus 10 points in the overall evaluation score. RFP §5.1, p. 72-73.

¹² RFP §5.3, pp. 72-73.

¹³ *Id.*, at 72.

The contracting officer reviewed all three proposals and determined that all three were responsive. He convened the evaluation committee and the committee scored all three proposals (Stage One). Following the evaluation, the contracting officer elected not to engage in discussions with the offerors, accepted the evaluation committee's scores as the final evaluation, and identified JBG as the highest-ranked offeror and the prospective awardee (Stage Two). The contracting officer did not engage in negotiations with JBG. On March 7, 2006, the contracting officer issued a notice of intent to award the contract to JBG (Stage Three).

On March 9, 2006, Flagship filed this protest, asserting that the JBG proposal was non-responsive because the floor plan submitted with the proposal did not show that the window space in the building to be provided would meet the minimum building requirements for natural light as set out in §4.10 of the RFP.

The contracting officer then contacted JBG and requested additional information and confirmation that the building offered would meet the requirements of RFP §4.10.¹⁴ In response, on March 13, 2006, JBG submitted a revised floor plan showing altered window numbers, locations and horizontal dimensions, and indicating the square footage of the windows. With the revised floor plan, JBG submitted a letter stating "Our budget included the costs associated with the natural lighting requirement as submitted originally in our response to the RFP."

Based on the additional information submitted by JBG, the contracting officer denied the protest. JBG appealed and on April 22, 2006, commenting on the division's protest report, submitted a memorandum from an engineer identifying seismic and structural concerns (the latter relating to the windows) regarding the proposed addition as shown in the revised floor plan. Subsequently, at the direction of the administrative law judge the division submitted a supplemental protest report. With the report, the division submitted a memorandum from JBG indicating that its revised floor plan would be provided at the cost stated in its initial proposal and a report from an engineer retained by

¹⁴ The nature of the contracting officer's communication is unknown. For purposes of this decision, the evidence must be viewed favorably to Flagship. So viewed, the contracting officer's communication is considered a request for additional information and for confirmation that the building offered would comply with RFP §4.10.

JBG indicating that the revised floor plan is technically feasible. On July 6, 2006, the division submitted a report from its own independent consulting engineer, responding to the concerns expressed by Flagship's engineer.

III. Discussion

The contracting officer denied the protest on the grounds that JBG's signature on its offer constituted certification that the proposed building would comply with the RFP, and that the RFP did not require submission of information regarding natural light.¹⁵ The officer adverted to language in §5.1 of the RFP allowing the agency to negotiate regarding the floor plan, and concluded that the additional information provided by JBG was "clarification" authorized by law.¹⁶

On appeal, Flagship asserts that the RFP required offerors to submit sufficient information to determine whether the proposed building would meet the minimum building requirements, and that JBG's proposal on its face indicated that the offered building would not meet the natural light requirements.¹⁷ Flagship argues that the contracting officer should have realized that the building proposed by JBG would not meet the minimum building requirements and disqualified the proposal as non-responsive.¹⁸ Flagship contends that the contracting officer's decision to accept an offer of non-complying space from JBG was inconsistent with his decision to reject Flagship's Option 2 on the ground that it failed to meet the minimum building requirements.¹⁹ In addition, Flagship asserts that JBG's alleged clarification was a material change in the proposal, contrary to 2 AAC 12.285.²⁰

The division's protest report repeats the points made by the contracting officer in denying the protest regarding the effect of the offeror's signature, the lack of a requirement to submit information regarding natural light, negotiations under §5.1 of the RFP, and clarification.²¹ The report distinguishes the contracting officer's disqualification of Flagship's Option 2 on the ground that Option 2 was expressly

¹⁵ Decision at 1.

¹⁶ *Id.*, at 2.

¹⁷ Appeal § 2.

¹⁸ Appeal §3.

¹⁹ Appeal §4.

²⁰ *Id.*

intended as an alternative offer.²² The report contends that the change to the floor plan was not material, in light of the proposal as a whole, and did not provide JBG with a substantial competitive advantage.²³

Commenting on the protest report, Flagship asserts that the RFP required submission of a floor plan, that responsiveness must be determined on the basis of the proposal as submitted (subject to clarification within the scope of 2 AAC 12.285), and that the original floor plan showed that the building proposed would not meet the natural light requirements. Flagship argues that the revised floor plan is not a clarification within the scope of 2 AAC 12.285 and therefore it may not be considered in determining responsiveness. Flagship adds that even if the revised floor plan is considered, the proposed building still does not meet the natural light requirements, and that the cost and feasibility of the revisions is unknown. Flagship's engineer points out that tying the proposed addition into the existing building would require bringing the original building up to the current seismic code, and that the revised floor plan does not show how the structural stability of the proposed addition will be achieved.²⁴ In supplemental comments, Flagship argues that JBG has provided only "vague assurances" that its revised floor plan is feasible, without describing the "precise method" that will be used to construct it.

A. JBG's Revised Proposal Met the Requirements for Responsiveness

Flagship does not argue that the JBG proposal failed to meet the minimum requirements for responsiveness as set out in §2.25 of the RFP. Rather, Flagship argues that in addition to those specific responsiveness requirements, the RFP included an implied requirement that the proposal demonstrate that the offered space would comply with all the minimum building requirements. The division responds that the RFP did not require any showing that the offered space would comply with the minimum building requirements, only that proposals must contained the information set out in RFP §2.25.

²¹ Protest Report at §§1-3.

²² *Id.* at §4. Under 2 AAC 12.830, alternative offers are non-responsive as a matter of law. To consider an alternative offer, the purchasing agency must revise the solicitation.

²³ *Id.*

²⁴ Comments, Ex. 6.

The division adds that the offeror's certification was a sufficient representation that the offered space would comply with the minimum building requirements.

1. *JBG's Initial Proposal Impliedly Warranted Compliance with the Minimum Building Requirements*

In this case, the solicitation did not require that the offered building space comply with the minimum building requirements at the time proposals were submitted. Rather, it called for compliance at the time of occupancy, which was scheduled for no earlier than August 1, 2007. The division argues that JBG's signature constituted certification that the space offered would comply with all of building requirements at the appropriate time.

The offeror's signature is certification that "the Offeror is complying with...all terms and conditions set out in this RFP."²⁵ This is certification that the offeror, at the time the proposal is submitted, complies with all the terms and conditions of the RFP. It is not certification that the goods and services offered will at the time of performance comply with the specifications and minimum requirements set out in the RFP. The purpose of the standard form is to ensure that the offeror meets the terms and conditions of the RFP that apply to the offeror, not to obtain assurance that the goods and services offered meet the all of the specifications and minimum requirements of the RFP.

Apart from the specific written certification that the offeror complies with the terms and conditions of the solicitation that apply to the offeror, however, any offeror is bound to the obligation of good faith and fair dealing. A good faith offeror warrants that the goods and services offered will, at the time required by the RFP, comply with the minimum requirements of the RFP. Thus, by submitting a proposal, JBG impliedly warranted to provide lease space with natural light meeting the minimum building requirements on the date compliance was due. That the offeror's certification did not have the same effect is irrelevant.

2. *JBG Did Not Negate the Implied Warranty*

Flagship argues that the procurement officer could not disregard the floor plan, which (according to Flagship) on its face shows that the space offered will not meet the minimum building requirements. Flagship's contention that JBG's proposal was non-

²⁵ RFP p. 2.

responsive is, in effect, an assertion that the floor plan submitted with the proposal negated any implied warranty to provide space conforming to the natural light requirement in the RFP, placing the division at risk of non-complying performance. In determining whether the floor plan submitted with the proposal negates any implied warranty, Flagship argues that the revised floor plan submitted by JBG may not be considered.

(a) SUPPLEMENTAL INFORMATION MAY BE CONSIDERED

Flagship relies on federal cases holding that the responsiveness of a bid is determined on the face of the bid submitted. But this case does not involve a bid: it involves a proposal, and there are significant differences in the treatment of bids and proposals with respect to responsiveness. Bids are not subject to change after submission, except to correct minor informalities.²⁶ Accordingly, the determination of responsiveness is critical, since the purchasing agency will be bound to the terms of the bid as submitted, if it is accepted. For this reason, if the goods offered in a bid do not meet the minimum requirements for acceptability, by law the bid must be rejected as non-responsive.²⁷ By contrast, competitive sealed proposals may (at the procurement officer's discretion, and if allowed by the solicitation) be substantially revised during the selection process. For this reason, although a purchasing agency may not enter into a contract with a non-responsive offeror, and the procurement officer has discretion to reject a proposal that is deemed non-responsive (with or without clarification), the procurement officer is not prohibited by law from considering a non-responsive proposal, pending the outcome of discussions and best and final offers, if the RFP provides for such discussions.²⁸

(b) THE REVISED FLOOR PLAN COULD BE CONSIDERED

In this case, in response to the protest, the contracting officer contacted JBG and asked for additional information. In response JBG submitted a revised floor plan. The division characterizes JBG's response to the request as a permissible "clarification" of the

²⁶ AS 36.30.150(a); AS 36.30.160(b); 2 AAC 12.170(a).

²⁷ 2 AAC 12.180(b).

²⁸ See ABA Section on Public Contract Law, GOVERNMENT CONTRACT LAW at 93, 109 (2d ed. 1999), citing Leigh Instruments, Ltd., No. B-233270 (Comp. Gen., March 3, 1989); Consolidated Controls Corp., No. B-185979 (Comp. Gen., September 21, 1976).

initial proposal. Flagship contends that JBG's revised floor plan was a material change to the proposal, not a clarification within the scope of 2 AAC 12.285.²⁹

JBG's initial floor plan was part of the proposal. The revised floor plan altered the number, location, and horizontal dimension of the windows as indicated on the floor plan submitted with the proposal. To characterize such a revision as mere "clarification" of the initial proposal is disingenuous. Whether the division has properly characterized its communication to JBG as a request for "clarification," as opposed to a suggestion or request for revision to the proposal makes no difference to the proper characterization of JBG's response: it was a change to the proposal, not a mere clarification.

Nonetheless, the contracting officer could consider the revised floor plan to the same extent that he could have considered it in the course of negotiations under 2 AAC 12.315, which allows the procurement officer to "negotiate with the offeror of the highest ranked proposal for the purpose of obtaining contract terms consistent with the solicitation and...favorable to the state." However, any such negotiations may not result in changes to a proposal that would "have the effect of changing the ranking of the highest-ranked proposal."

In this case, the revised floor plan would have increased JBG's score on the appearance and indoor environment factor, and JBG's proposal was already the highest-ranked proposal. Therefore, the revised floor plan would not have had the effect of changing the ranking of the proposals, and it was within the permissible scope of negotiations under 2 AAC 12.315.³⁰ That the contracting officer was alerted to the need for additional negotiations because of a protest, rather than by his own review, makes no difference, because the contracting officer had continuing discretion to reopen negotiations under 2 AAC 12.315 up until the time that a contract was executed. For

²⁹ 2 AAC 12.285 allows "communications...to clarify uncertainties or eliminate confusion concerning the contents of a proposal..." Communications under this regulation may not lead to substantive changes in the proposal, although the initial evaluation may be adjusted.

³⁰ The revision was also within the scope of negotiations under §5.1 of the RFP, which provided for negotiations to obtain a floor plan meeting the organizational, spatial, and functional relationships expressed in the RFP. Reasonably read, §5.1 of the RFP allowed negotiations regarding the location and size of windows, particularly in light of the specific reference in §4.10 to an overall 10% window requirement and in the final floor plan. In any event, §5.1 only applies to negotiations prior to the notice of intent. It does not limit the scope of negotiations under 2 AAC 12.315 that occurred after the notice of intent.

these reasons, the contracting officer did not abuse his discretion by considering the revised floor plan.

(C) THE REVISED FLOOR PLAN MEETS THE MINIMUM BUILDING REQUIREMENTS

Flagship argues that the revised floor plan does not show that the building, if constructed in conformity with the revised floor plan, will meet the natural light requirements of the RFP. It argues that the division has read the provisions of the RFP concerning ambient light in a manner inconsistent with the overall purpose of the natural light requirement.

Flagship has not shown that the division's interpretation of §4.10 of the RFP is unreasonable. More importantly, the issue raised in the protest was whether the initial floor plan negated any implied commitment to provide space meeting the natural light requirement of the RFP. This decision concludes that the revised floor plan could be considered in that connection, and that the revised floor plan confirms that JBG has offered to provide space meeting the natural light requirement of the RFP. That confirmation suffices to resolve Flagship's claim that JBG's proposal was non-responsive.

B. The Division's Determination of Responsibility is Discretionary

Flagship also contends that the revised floor plan cannot be constructed at the cost offered in the JBG proposal, and (in its appeal and in comments to the supplemental protest report) that the revised floor plan may not be feasible at any cost. Because JBG has confirmed that it will provide a building conforming to the revised floor plan at its original bid cost, Flagship's assertions go to the ability of JBG to perform in accordance with the terms it offered in its proposal. As such, they are not within the scope of a protest concerning responsiveness, but rather are matters of responsibility or contract administration.³¹

³¹ See, Azimi-Tabrizi v. State, Department of Administration, 2003 WL 23002625 at 4 (Mem. Op., December 17, 2003); In re Waste Management of Alaska, Inc., No. 01.08 at 15-16 (Department of Administration, April 24, 2002); cf. In re Bachner Co. Inc. and Bowers Investment Company, No. 03.10 at 17 (Department of Administration, February 10, 2004), *reversed on other ground* (Superior Court No. 4FA-02-02674, December 5, 2005), *petition for review granted* (Supreme Court No. S-12187, April 3, 2006) (after notice of intent was issued, inquiry to offeror was a matter of contract administration).

Under federal law, an affirmative finding of responsibility by a purchasing agency is a matter of contract administration and is generally outside the scope of a protest by an interested party.³² Assuming, without deciding, that the protest remedy may be utilized under Alaska law to contest an affirmative finding of responsibility, a finding of responsibility is within the discretion of the purchasing agency.³³ The commissioner gives due deference to the decision of a contracting officer regarding matters within the officer's discretion, and may affirm the contracting officer's decision regarding responsibility if it is supported by substantial evidence in the record.³⁴

In this case, Flagship presented evidence in the form of an engineer's report that raised a factual issue as to both the technical feasibility of the JBG's revised floor plan, and its likely cost. In response to Flagship's evidence, and subsequently in compliance with the administrative law judge's order, the division made further inquiries. Although the "precise method" by which JBG will construct the necessary windows is unknown, JBG offered more than "vague assurances" to meet the requirements of the solicitation: it made a firm commitment to that effect. In addition, JBG submitted a report from its own structural engineer describing a "structural system that may be used to allow the proposed structure to be constructed as illustrated in [JBG's revised floor plan]." Furthermore, the division retained an independent consulting engineer to review the concerns expressed by Flagship's engineer. The division's engineer pointed out that Flagship's concerns assume that the proposed addition would be tied in to the existing building and would have load bearing walls. According to the division's consultant, the addition need not be tied in to the existing building, and it need not have load bearing walls. In light of JBG's express commitment to meet the natural light requirement at its original price, JBG's engineer's report, and the division's independent consulting engineer's report, the division has a reasonable basis for finding JBG to be a responsible offeror.

³² 4 C.F.R. §21.5. See Imaging Equipment Services, Inc., No. B-247197 (Comp. Gen., January 13, 1992).

³³ "The determinations of 'responsibility' and the state's 'best interests' are largely committed to the discretion of the contracting entity." State v. Johnson, 779 P.2d 778, 782 at note 6 (Alaska 1989).

³⁴ See generally In Re Waste Management of Alaska, Inc., No. 01.08 at 11-14 (Department of Administration, April 24, 2002).

C. The Contract Should Not Be Awarded Prior to a Final Decision

Under AS 36.30.575, a purchasing agency may award a contract after a protest is filed unless the procurement officer makes a written determination that either (1) there is a reasonable probability that the protest will be sustained, or (2) a stay is not contrary to the state's best interests.³⁵ If the contract award is "stayed under AS 36.30.575, the filing of [a protest] appeal automatically continues the stay until the commissioner...makes a written determination that the award of the contract without further delay is necessary to protect the substantial interests of the state."³⁶

In this case, the contracting officer did not make a written determination in support of a stay. However, the contract was not awarded in the time frame anticipated by the RFP, and in a prehearing conference the division agreed not to award the contract until a final decision has been reached in the protest appeal. By agreeing to withhold the contract award, the division implicitly determined that the conditions warranting a stay under AS 36.30.575 are met.³⁷ Under these circumstances, the informal stay should be

³⁵ By contrast, both the Model Procurement Code and federal law provide for an automatic stay of contract award after a protest is filed, unless the procurement officer makes a written finding that "award of the contract without delay is necessary to protect substantial interests of the state" or there are "urgent and compelling circumstances." See Model Procurement Code §9-101(6); 31 U.S.C. §3553(c)(1).

³⁶ AS 36.30.600.

³⁷ "If a protest is filed, the award should be made unless the procurement officer of the contracting officer determines that: (1) A reasonable probability exists that the protest will be sustained; or (2) Stay of the award is not contrary to the best interests of the State. You may not stay an award without making such a determination." AAM 82.830 (emphasis added; eff. 1999).

This provision altered a prior policy, consistent with the Model Procurement Code and federal law, under which contract award was routinely stayed unless an affirmative decision to award the contract was made by supervisory officials: "In deciding whether to stay the award...you should proceed with the award only under circumstances where (1) there is virtually no chance of [the] protest being sustained, and/or (2) to delay the award would cause the State serious harm (as opposed to inconvenience). This should be a decision for top level departmental decision-makers." AAM 82.830 (1998).

Both policies, although diametrically opposite in practical effect, are consistent with the express terms of AS 36.30.575. The statute bars contract award only if the procurement officer makes a written finding that the standards for a stay are met. However, because the statute does not mandate that the procurement officer make a finding that the standards for a stay are met or are not met in each case, it does not in any meaningful way limit the procurement officer's discretion to award a contract: the procurement officer can award a contract even when the standards for a stay have been met. But that the statute does not limit the procurement officer's discretion to award a contract when the conditions for a stay are met does not mean that the procurement officer's discretion in that situation cannot be abused. Indeed, unless an agency articulates meaningful standards by which its own actions may be reviewed, it risks being deemed to have acted in an arbitrary manner.

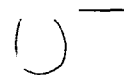
continued in effect on appeal, consistent with AS 36.30.600.³⁸ Accordingly, the division should not award the contract until a final decision is issued, unless the commissioner makes a written finding that award of the contract without further delay is necessary to protect the substantial interests of the state.

IV. Conclusion

The contracting officer properly considered the supplemental information submitted by JBG in determining that JBG's offer was responsive. The division has a reasonable basis to find that JBG is a responsible offeror. The protest appeal should be denied.

DATED July 11, 2006.

Andrew M. Hemenway
Administrative Law Judge



³⁸ Whether, in the context of a protest appeal with no formal stay, the commissioner has inherent or statutory authority to stay an award, or to suspend performance under a contract that has been awarded, has not been definitively addressed in either an administrative decision or on appeal. See AS 36.30.040(a) ("The commissioner may...monitor the implementation of the regulations and the requirements of this chapter with respect to using agencies."), AS 36.30.680 (commissioner may take "appropriate action" in response to hearing officer's recommendation); cf. Bachner Co. Inc. and Bowers Investment Company v. State, Department of Administration, at 7 (Superior Court No. 4FA02-02674, December 5, 2005) (noting failure of hearing officer to issue a stay at conclusion of hearing on protest appeal, after contract award), *petition for review granted* (Supreme Court No. S-12187, April 3, 2006); In Re Polar Supply Co., Inc., OAH No. 06-0248-PRO (*dismissed*, May 16, 2006), Supplemental Protest Report at 5-12 (asserting commissioner lacks authority, after contract award, to issue stay on appeal, and that review of denial of stay is by interlocutory administrative appeal to the superior court or by action for injunctive relief).

ADOPTION

The undersigned, on behalf of the Commissioner of Administration and in accordance with AS 44.64.060, adopts the Proposed Decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance within 30 days after the date of this decision.

DATED this 8th day of August, 2006.

By: [Signature]
Signature
Scott Nordstrom
Name
Commissioner
Title

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

Max Garner

Mike Barnhill, AAG
Signature Date

8/9/06