

would evaluate further the comprehensive and systematic renovation of school buildings in need of improvement. Minnesota law does not require competitive bidding for professional service contracts. The District has a policy and a regulation addressing requests for proposal ("RFP") for contractual services that exceed \$25,000.00. In January 2006, the District issued an RFP for professional services to: comprehensively assess the physical condition and functional and educational adequacy of the District's existing school sites and other buildings; develop an LRFP, and provide and coordinate all professional services required to accomplish initial construction phases of the plan, if the District decided to move forward with construction.

3. A selection committee was established in January 2006 to evaluate RFP responses and make a recommendation to the Board. I served on the committee together with seven others from the District facilities management department, administration and members of the community.

4. The selection committee received eight responses to the RFP. Following committee evaluation of the responses, the selection committee invited three applicants to interview. In early March 2006, the selection committee heard presentations from the three applicants. The committee ranked the applicants based upon related experience, ability and capacity to perform the work, anticipated approach, professional fee, in either dollar quotes or percentage of the total cost, and other considerations. One of the finalists was Johnson Controls Inc. ("JCI").

5. The JCI proposal included a three part project approach: Phase I (an assessment phase); Phase II (development of an LRFP) and Phase III (the actualization/ implementation phase). JCI guaranteed that enough net savings would be realized by the District through implementation of its LRFP to completely offset the costs for assessment and development of the strategic plan. JCI proposed to defer the strategic planning development costs to the construction phase. As a result, under the JCI proposal the District would have no immediate out-of-pocket expenses related to the

development of the LRFP. The JCI proposal provided that if the District elected not to move forward with construction, JCI would require payment of its costs from the strategic planning phase in an amount not to exceed \$250,000. The District's RFP did not request a quoted fee for implementation of the project. None of the proposals submitted by any of the contractors attempted to estimate ultimate costs for the implementation phase of the project. The cost estimates for the planning phase of the project for all of the contractors submitting a proposal ranged from a low estimate of \$58,000.00 to a high estimate of \$692,400.00.

6. On March 13, 2006 the committee unanimously recommended that the District accept the JCI proposal. The reasons for selecting JCI included: its experience in helping schools with facilities planning; its status as a nation-wide firm with a Duluth office with employees who lived in the District; JCI's successful work with numerous other school districts in Minnesota; its comprehensive approach to the project; and JCI's resources for assistance in the project in personnel, communications experience and finances. The committee concluded that, "having one firm do the entire project ensure[d] accountability."

7. The Board adopted the committee recommendations and directed the District administration to finalize the contract with JCI; and authorized the board chair to execute the contract.

8. The contract with JCI was executed on January 29, 2007 ("Contract"). (Exhibit D). The Contract includes a description of the scope of the work in three phases of the project, including the implementation/actualization phase (Phase III). The Contract provided that the District agrees to use JCI to provide all professional services associated with Phase III of the LRFP if the District decided to go forward with Phase III. The Contract contains a fee schedule whereby JCI is paid on a percentage basis for certain aspects of the project during Phase III. For example, for renovations,

repairs and remodels the contract provided compensation to JCI of 2% of the total construction costs, plus 8% of related architectural construction costs, plus 9.5% of related engineering construction costs, etc. I recall no objections to the process or to the selection of Johnson Controls from any member of the public at the time the selection was formalized in January of 2007 by the Board's execution of the Contract.

9. Between April 2006 and March 2007, and with JCI's assistance, the District proceeded with public hearings and forums for the assessment phase of the project. This included the formation of a Citizen's Group in April 2006 ("Citizen's Group"). The Citizen's Group included approximately 35 community members representing various areas of the community. Focus groups were also formed with parents, teachers, staff, students, and community members to gather input for the project. Between June and December of 2006 the District conducted numerous meetings with local organizations, neighborhood groups, and special interests groups to obtain input on the project. Comprehensive reports were also researched and developed during this time, including: a demographics report, a facilities assessment report, a property value report and an educational adequacy report. These reports were shared with the public in November and December of 2006 through the media, the District's website, community meetings and a mailing to residents. The District also invited members of the public to share their thoughts and advice regarding the reports through meetings, emails, letters and phone calls.

10. The results of the JCI reports and public feed back were used to create three options for the LRFPP implementation. The three options (The "Red", "White", and "Blue" Plans) were shared with the public in March of 2007 via the media, the District's website, community meetings, a mailing to taxpayers and other means. These Plans included similar schools in the District for renovation. In May 2007, after more than 10,000 hours of expert analysis, nearly 100 meetings

with numerous organizations and groups, ten open community meetings, information appearing over 100 times in local media, including television, radio, newspaper, newsletters, websites, and e-blogs, information gathered via e-mail, fax, phone, and one-on-one conversations, and after studying the results of a professional public opinion survey, the Citizens Group and District staff recommended the "Red Plan" for the District.

11. The Red Plan involved the renovation of thirteen school buildings. Of the three Plans, the Red Plan was the least expensive in terms of estimated construction cost. After members of the public were again invited to share their thoughts and advice on the recommended Red Plan on June 19, 2007, the Board adopted the Red Plan as the LRFPP for the District. (See attached board resolution.)

12. Pursuant to state law, the District prepared a Review and Comment Document outlining the District's construction plan pursuant to the Red Plan and submitted it to the Minnesota Department of Education (MDE) for approval on August 8, 2007. On November 2, 2007, the MDE issued a favorable review for the majority of the District's proposal. The MDE withheld approval on the construction of two new schools (Lincoln/Piedmont Elementary and Western Middle School) because the District had not yet identified the sites for the new schools at the time it had submitted its plan to the MDE.

13. After obtaining MDE approval of the Red Plan the District took the following actions:

- January 2008 -- District released a design and construction schedule
- January 2008 -- District issued \$59 million in bonds for the project.
- February 2008 -- District began negotiations for the purchase of property necessary for the completion of the plan
- May 2008 -- District issued \$111 million dollars in bonds for project
- May to September 2008 -- Construction on Stowe and Lakewood elementary schools was initiated and completed on time and on budget

- August 2008 – School Board approved Long-Range Program Plan; design teams of community members, parents, teachers and others were formed; six local architectural firms were hired by District (Note: LRPP is related to academic and curriculum programming).
- September to November 2008 – The District conducted operating levy campaign and conducted meetings with groups and organizations concerning levy
- November 2008 – The District operating levy was renewed
- February 2009 – The District completed negotiations to purchase nearly 40 properties.
- As of January 2009, the District estimated that \$10 million of revenue related to the building projects had been put back into the local economy and nearly 700 local people were working in some fashion on the project.

14. On March 9, 2009, I was made aware that the above legal action was commenced challenging the action of the District Board in retaining JCI to provide professional services for construction under the Red Plan. I have read the plaintiff's Amended Complaint and am aware of the requested court relief to declare the JCI contracts void and to seek the recovery of payments made to JCI back to the District. I have also seen numerous publications from plaintiffs on websites and other mediums spreading inaccurate information about the Plan and asking for ideas from other members of the public and attorneys to delay or stop construction on school buildings scheduled for renovation, especially during the 2009 construction season. Examples of these publications are attached to this affidavit. On April 8, 2009, Plaintiffs also brought several motions against the District and JCI seeking punitive damages from the District and other orders from the court.

15. The District has great concern over possible construction delays that may result through Plaintiffs' legal action and publicity campaign at this critical and advanced point in construction and bond sales. The cost to the District taxpayer of construction delays would be very substantial. These delays could occur if any contractors were forced to slow or suspend work for any reason such as concern about the validity of contracts and previous or pending payments to them for work performed. It is clear that the plaintiffs hope to slow or stop the construction and renovation and all related actions.

