

Information Network of Kansas Board Meeting Minutes

October 2020 INK Special Board Meeting October 14, 2020

Opening

A meeting of the INK Board was called to order via teleconference at 3:15 p.m. on Wednesday, October 14, 2020 by Chairman Aaron Kite with the following members present:

Mark Burghart, Secretary of Revenue
Jennifer Cook, representing the Secretary of State
Doug Gaumer, representing the Kansas Bankers Association
Lucas Goff, representing the Kansas Association of Counties
Jim Haugh, representing the Secretary of Commerce
Glen Yancey, representing the Executive Branch Chief Executive Technology Officer

Others Present

Tim Shultz, INK Board Counsel; George Stewart, Managing Director, PayIt (joined at 3:21 p.m.); Duncan Friend, Information Network of Kansas; Nolan Jones, Kansas Information Consortium, LLC.

Agenda

Note: While no formal agenda was distributed for the meeting, its purpose was communicated to the members to be for the consideration of motions – as per a process outlined in the Master contract between INK and KIC – to decline bidding on two open state RFPs, one from the Department of Wildlife, Parks, & Tourism for a state permitting and registration system, the other from the Department of Health and Environment for COVID-19 testing – granting approval to KIC to refer these opportunities to their corporate parent, NIC, for bidding.

Kite convened the meeting then handed over the discussion to Friend. Friend began by explaining how he would proceed, first with some background on the provisions in the INK / KIC master contract which resulted in the meeting being called, and next with an outline of the two projects with separate motions offered for consideration for each project.

INK/KIC Master Contract provision re: Performing work outside the scope of the Master contract and the obligations of INK / KIC / NIC. Friend explained that the Master contract between INK and KIC had provisions in it that prohibited KIC and NIC from bidding against / competing with INK. In practice, this prevents Jones, for example, from saying “This would be a great project for me to do as KIC” without INK. By the same token, there was no parent company of KIC when the contractual relationship first started, so later NIC was prohibited as well. However, there is an out – if it turns out it isn’t in scope or is something INK is not interested in doing, provision 38.3 of the contract allows KIC to bring it to the Board first and then go out and form a subsidiary to do it, or to refer it to NIC. Friend continued that, to his knowledge, this provision had not been exercised during the life of INK to-date. But, what has happened is that NIC has started to develop and sell applications in a set of “verticals”, like Recreation, Prescription Management, and, for example, the Health field that will be talked about with the second RFP. So, it isn’t always that NIC would have a product where this issue would come up. Friend asked Shultz (INK Board Counsel) if he wanted to say anything about this provision in the Master contract. Shultz said Friend had pretty clearly described it, unless anyone had any questions for him.

Information Network of Kansas Board Meeting Minutes

Friend then continued, saying that in line with this topic, the situation has come up that there are two requests for proposals for different projects that are now on the state of Kansas bid list where this comes into play. He said he would address them separately.

1) State of Kansas RFP for Software, Automated Licenses/Permit Issuance - Event ID EVT0007606

Friend briefly explained his understanding of the project. It had come up last year as well, but INK did not bid, neither did NIC, but it apparently had not been awarded. It was a somewhat larger project than what KIC might have resources to accomplish, including both hunting and fishing permitting and boat registration. At that time, Friend hadn't understood what opportunities there would really be through the contract to partner with NIC and they didn't seem to have any interest at that time in doing that, so it had not come before the Board to discuss it. The current RFP closes at the end of the month and it is for all licensing and permitting for Wildlife and Parks – a company is doing it now – which is ongoing as a service. That is to say, it is more like software-as-a-service, not just putting a system in, but there is hardware out in the parks and in places like Walmart, so there is ongoing maintenance and 24-hour phone support across the state.

Shultz had reviewed the terms and conditions of the RFP to consider whether there might be some partnership opportunity for INK with NIC. His take, along with Jones, was that it might be problematic for INK to meet the qualifications with regard to experience required in the RFP if they were prime. Friend said he also didn't feel comfortable without having any knowledge or experience with the product that NIC would be offering. INK didn't really have the scale or expertise or history here to put something like this in with KIC or INK, so it would be challenging – INK would have to stand up for that and stand behind it with a performance bond that it could pass on, including subcontractors, etc. Friend asked Shultz if he had anything else to add about the risk of qualifying for the Wildlife, Parks, and Tourism.

<George Stewart, Managing Direct, PayIt joined the call.>

Shultz responded that he wasn't sure that INK could qualify on its own, nor KIC, but if there could be some collaboration with NIC, then there is the potential that it would allow INK to qualify. The real question becomes the risks that accompany that for INK. There is a question as to whether or not INK wants to try to bootstrap in NIC's experience in other states through a collaboration with KIC and INK to try to qualify, or INK wants to decide to allow KIC to refer this to NIC.

Friend confirmed that Jones had sent a request to Friend to ask the Board to exercise this provision and allow them to refer the project to NIC to bid. Friend noted that there was a mobile component to the project, so the motion would restrict the scope of its implementation to that envisioned in the RFP unless they came back to the Board for approval, with the idea this would prohibit them from expanding that to compete with INK.

Kite indicated he had a question. He noted that there are statutes in place that indicate that they chose a single provider to provide work for the Board. He continued that he didn't know that this was an organic problem with their enabling statutes, but he wanted to ask Shultz if “we were okay if we want to do this on a one-project-only basis?” Friend interjected indicating he would refer the question to Shultz, but then clarifying that the “we” in that statement, just to draw a distinction, if it was Friend as INK and Jones group' KIC and just did it with their resources, yes they would be OK doing it. If they wanted to somehow involved NIC, they would have to be brokered in through the contract with perhaps some supplementary agreements. He then deferred to Shultz.

Information Network of Kansas Board Meeting Minutes

Shultz responded that he assumed Kite was asking whether the underlying statutes establishing INK would enable a kind of collaboration through KIC to NIC for INK, or whether they would basically run afoul of that as it was Kite's view that the enabling statutes limited INK to one provider to oversee the network for INK. Shultz continued that, if he was understanding Kite's question correctly, he did think that there would need to be more evaluation of those enabling statutes and a discussion amongst the Board as to how, from a legal perspective, the enabling statutes do or do not apply or prohibit these kind of situations. Keeping in mind that, he continued, that under KSA 74-9302(d), the enabling statute does tell INK that part of its purpose is to explore ways and means of expanding the amount and kind of public information provided, increasing the utility of public information, expanding the base of users, and that type of thing. And, so, the enabling statute do give INK a specific purpose to find ways to expand its efforts in Kansas. Shultz stated that he thought responding to an RFP in partnerships could be a means by which INK is deemed to be expanding public access to information.

Friend said he wanted to add that while that seemed like an investigation they should take upon themselves, it was not one they're ready on the drop of a dime right now to know. To a question from Kite, Friend clarified that the motions he was going to ask for from the Board today were to make the election against responding to the RFPs and allow KIC to refer the project to NIC to bid, with the restriction limiting any mobile apps to the scope of the RFPs.

Shultz then added that he felt it was important for the Board to know the specific language from the Master contract with KIC that applied. In Section 38.3 it says that "If the INK Board determines that INK will not participate in the expansion," – which this would be an expansion of the overall network – "KIC may proceed with the business expansion by creating a subsidiary of its own, or KIC may refer the business opportunity to NIC for implementation." He continued, stating that the last phrase was the effective one in the current situation, that being, KIC has asked for the authorization from INK to allow it to refer the Wildlife, Parks, and Tourism opportunity to NIC for implementation. So, the motion as he understood it would be that INK is not going to participate in the Wildlife, Parks, and Tourism RFP so therefore KIC could refer the business to NIC.

Kite asked Friend if he had a recommendation. Friend responded that, while it was not the motion, he recommended that INK does refer it to KIC to refer it to NIC for the reasons previously stated. He feels like Shultz agrees, as well as Jones, that they do need to do some further research to see what things would look like if INK does try to take something like this on as a collaboration in the future – and to get the Board's input on that, perhaps at the next meeting, as a call like this is not the optimal venue for that.

Action Taken: Kite moved to grant approval pursuant to Section 38.3 of the Master Contract with the Kansas Information Consortium to permit NIC, the parent company of the Kansas Information Consortium, to submit responses to and contract for products and services specified in State of Kansas RFP for Software, Automated Licenses/Permit Issuance - Event ID EVT0007606 (KDWPT License and Permit Solution) without the participation of KIC or INK. This approval includes the restriction that any expansion of the scope or purpose of any mobile applications implemented by NIC beyond that specified in the initial RFP shall require additional further approval of the Information Network of Kansas and this motion does not establish precedent for future RFP's or potential collaboration between INK, KIC or NIC as to other RFP's that may be issued by any Kansas State agency. The motion was seconded by Gaumer. There was no

Information Network of Kansas Board Meeting Minutes

further discussion. Friend called the roll of members who were present at the direction of the chair. Approved unanimously.

2) State of Kansas RFP for Expanded COVID Testing - Event ID 17300-EVT0007649

Kite asked Friend to continue with the next project. Friend began, stating that the general concept as far as the Master contract provisions that had been previously discussed was the same here. Jones, on behalf of KCI has asked, like the previous project, to refer this to NIC to bid. However, unlike the other project, this just came up on the RFP list for the state on October 7, since the last Board meeting on October 1. It is for the Department of Health and Environment. As Friend reads it, the RFP in its first two sections is mainly for expanded lab testing for COVID-19, something that is not really an INK thing, in that INK does not have relationships with labs and it is not really about public information. However, in the third part they ask for innovative solutions that could involve a software layer. So, he supposed that there might be a way that INK and KIC could partner with some labs to try to make public information available there – but that sounds challenging. However, NIC has formed a partnership and is actually doing this, he believes, in the State of Florida. The partnership, TourHealth, is with Impact Health, who does have access to labs, and Next Marketing, and they provide the scheduling software through NIC. Friend doesn't feel that this opportunity is something in the bailiwick of what INK would be in a position to do, especially given that the RFP is only open for 2 weeks for responses. The application they use for scheduling is Gov2Go, so the motion would also need a restriction on using that beyond the COVID testing scope. So, Friend continued, he was recommending here with an almost identical proposed motion, that the Board allows KIC to refer this to NIC. He then indicated he was happy to stand for questions or defer to Jones if anyone had questions for him.

Kite asked if the Board needed to take action on this. Friend responded that he believed so and that he had asked Board Counsel as this was a partnership of NIC that was potentially bidding versus a “pure NIC play” when he looks at the contract, but while he can defer to him, he thinks he agrees that this would fall under that provision. So, Friend's recommendation is to approve the draft motion he would be glad to read again, which is very similar to the first one just approved.

Action Taken: Kite moved to grant approval pursuant to Section 38.3 of the Master Contract with the Kansas Information Consortium to permit NIC, the parent company of the Kansas Information Consortium, to submit responses to and contract for products and services specified in State of Kansas RFP for Expanded COVID Testing - Event ID 17300-EVT0007649 (COVID Testing) without the participation of KIC or INK. This approval includes the restriction that any expansion of the scope or purpose any mobile applications implemented by NIC beyond that specified in the initial RFP shall require additional further approval of the Information Network of Kansas and this motion does not establish precedent for future RFP's or potential collaboration between INK, KIC or NIC as to other RFP's that may be issued by any Kansas State agency. The motion was seconded by Gaumer. There was no further discussion. Friend called the roll of members who were present at the direction of the chair. The motion was approved by all members present, excluding Yancey who abstained.

There was no additional business for discussion.

Adjourn

The meeting adjourned at 3:43 p.m.