

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 02-6
Consolidated Request for Review of)	
Decisions of the Universal Service)	
Administrator)	
)	
DeSoto Parish School Board)	FRN Nos. 748439, 798470, 798480
)	
Tensas Parish School Board)	FRN Nos. 794135, 794165, 794202,
)	794211, 794261, 794295
)	

To: The Commission

CONSOLIDATED REQUEST FOR REVIEW

DeSoto Parish School Board (“DeSoto”) and Tensas Parish School Board (“Tensas”) (collectively referred to herein as the “Schools”), through counsel, and pursuant to Section 54.719(c) of the Commission’s rules,¹ submit this Consolidated Request for Review (“Request for Review”) seeking reversal of two decisions of the Administrator of the Universal Service Administrative Company (“USAC”), issued on May 28, 2004.² USAC upheld two decisions of the Schools and Libraries Division (“SLD”) denying funding requests for the Schools through the

¹ 47 C.F.R. § 54.719(c).

² Letters from the Universal Service Administrative Company to Kenneth F. Sills, Counsel to the Schools (May 28, 2004) (“*Administrator’s Decisions on Appeal*”), attached hereto as Exhibits A and B.

Schools and Libraries Universal Service Program (“E-rate Program” or “Program”) for Internet access service and internal connections.³

The funding requests were denied by the SLD, and the denials were upheld by USAC, due to perceived violations of Title 38 of the Louisiana Revised Statutes (state procurement law), as interpreted by the SLD and USAC. Whether the Schools complied with Louisiana’s procurement requirements is arguably a matter of state law, within the province of the Louisiana Attorney General (“Louisiana AG”), and not within the province of federal agencies or quasi-federal agencies. Both USAC and FCC staff have acknowledged in conversations with co-counsel in this matter that the Louisiana AG is the proper arbiter of whether the Schools complied with Louisiana procurement law with respect to their specific E-rate funding requests that are subject to this Request for Review.⁴ USAC and FCC staff both agreed that the Schools should seek the advice of the Louisiana AG in this matter.⁵ Accordingly, the Schools hereby request that the FCC hold in abeyance its consideration of this Request for Review until the Louisiana AG renders an opinion.

The SLD initially denied the subject funding requests on September 2, 2003 by stating that, in the SLD’s view, the Schools had not complied with Sections 2212 and 2212.1 of Title 38 of the Louisiana Revised Statutes when they sought bids for Internet access service and internal connections.⁶ On October 30, 2003, the Schools appealed the SLD’s denials to USAC through their counsel, who is also counsel to the Louisiana School Board Association and is familiar with

³ Send Technologies, LLC (“Send”) is the service provider with whom the Schools contracted for Internet access service and internal connections.

⁴ Jennifer Richter, counsel to Send, discussed the utility of seeking the Louisiana AG’s advice, and holding the Schools’ appeals in abeyance, with Cynthia Schultz, Director of Service Provider Support at USAC, and Narda Jones, Acting Division Chief of the Telecommunications Access Policy Division, Wireline Competition Bureau.

⁵ *Id.*

⁶ LA RS §§ 38:2212 and 38:2212.1.

Louisiana state procurement laws. The Schools explained in their appeals that Sections 2212 and 2212.1 did not apply to the Internet access service and internal connections that they sought through the E-rate Program. Nevertheless, USAC denied the Schools' appeals and upheld the funding denials, but in doing so raised new charges that were not alleged in the SLD's initial denial of the funding requests (i.e., perceived violation of Sections 2212 or 2212.1). Rather, when USAC denied the Schools' appeals, it admitted that the SLD's interpretation of Sections 2212 and 2212.1 may have been wrong and that such statutes only "may" have required competitive bidding with respect to the Schools' funding requests. Instead, USAC claimed for the first time in the appeal denials that the Schools' E-rate funding requests should have been denied because the Schools may have violated Section 2237 of Title 38 of the Louisiana Revised Statutes.⁷ According to the appeal denials, USAC interpreted Louisiana law to mean that any E-rate funding request that fails to meet the dollar thresholds established for Sections 2212 and 2212.1 is nevertheless "clearly" subject to the bidding requirements of Section 2237.⁸ The Schools disagree with this interpretation, but never had an opportunity to respond to the allegation that they had violated Section 2237.

It is counsel's understanding, based upon Louisiana state law and interpretations thereof, that Sections 2212, 2212.1 and 2237 do not apply to the specific Internet access services and internal connections the Schools sought through the E-rate Program. Specifically, DeSoto sought funding for Internet access services (FRN 794135). DeSoto also sought funding for internal connections at five different school campuses (FRNs 794165, 794202, 794211, 794261 and 794295), the cost of which was \$6,000.00 each. Neither Section 2212 nor Section 2212.1 applies to Internet access services because these statutes apply to public works or the purchase of materials or

⁷ LA RS § 38:2237.

⁸ See Further Explanation of the Administrator's Decision on Appeal at pp.5-6, attached to *Administrator's Decisions on Appeal*.

supplies. Internet access services do not fall under either category. The internal connections also were not required to be bid in accordance with Section 2212.1, because the cost of the internal connections did not exceed \$6,000.00 at each site. (The threshold that triggers some form of bidding under Section 2212.1 was \$7,500.00 at the time the funding requests were filed.) Finally, the Internet access service and the internal connections are not subject to the requirements of Section 2237 of the Louisiana Revised Statutes which relates to “telecommunications” or “data processing” systems, equipment or services. Internet access service, and internal connections to provide Internet access service, are not “telecommunications” or “data processing” services.

Similarly, Tensas sought funding for Internet access services (FRN 748439). With respect to the remaining FRNs subject to this Request for Review, Tensas sought funding for internal connections including maintenance services (FRN 798470), and Nortel 350 switches (6 switches valued at a total of \$7,398.00). Both the Internet access service and the maintenance services are service contracts and, as discussed above, there are no state requirements to bid for such contracts under the Louisiana laws cited by the SLD and USAC. Furthermore, given the value of the switches sought by Tensas, the minimum threshold requirements were not met and Section 2212.1 did not apply.

Again, whether the Schools complied with Louisiana state procurement requirements with respect to their E-rate funding requests is a matter of state law to be decided by the Louisiana AG. The Schools therefore request that the FCC refrain from processing this Request for Review until it receives the Louisiana AG’s decision in this matter.

Irrespective of the Louisiana AG’s opinion, USAC’s decisions also raise serious notice and due process concerns. First, as discussed above, the Schools’ appeals were denied on a different basis than the initial denial of their funding requests. The Schools never had an opportunity to address the potential, alleged violation of Section 2237. Violation of this statute was raised for the

first time in USAC's denials of the Schools' appeals, thus depriving the Schools' of due process in this matter.

Similarly, the SLD's initial denials did not challenge the validity of the Schools' funding requests on the basis of failing to meet the Commission's competitive bidding requirements. Rather, the initial denials were based solely on perceived violations of Louisiana procurement law as discussed above. The Schools' appeals addressed the specific state laws the SLD alleged were violated. The Schools' appeals to USAC understandably did not address (nor were they required to do so under Program or Commission rules) whether they complied with the Commission's competitive bidding requirements because there was no known issue. Yet USAC, in denying the Schools' appeals, stated "[y]our appeal did not indicate that the FCC's competitive bidding requirements were met and is therefore denied."⁹ Again, USAC raised new charges against the Schools without providing them with an opportunity to respond to USAC's allegations. Furthermore, USAC's denials are devoid of any explanation as to how the Schools might have violated the Commission's competitive bidding rules.

Contrary to USAC's claims, the Schools fully complied with Program and Commission competitive bidding requirements. Specifically, the Schools submitted Form 470 applications to the SLD and sought competitive bids for eligible products and services listed in the applications. The Form 470's were posted to the SLD's website for a minimum of 28 days for the purpose of seeking competitive bids. After the 28-day period, the Schools entered into contracts with eligible service providers who responded to the Form 470 applications with competitive bids.

In view of the foregoing, the Schools request that the FCC hold in abeyance its processing of this Request for Review pending receipt of the Louisiana AG's decision. The Schools will

⁹ See *Administrator's Decisions on Appeal* at p.2.

supplement the record regarding the Title 38 and due process issues noted above once the Louisiana AG has rendered an opinion in this case.

Respectfully submitted,

/s/ Kenneth F. Sills

Kenneth F. Sills
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(225) 923-3462

Counsel to the DeSoto and Tensas Parish
School Boards

July 27, 2004

CERTIFICATE OF SERVICE

I, Kenneth F. Sills, hereby certify on this 27th day of July, 2004, a copy of the foregoing Request for Review has been served via electronic mail (*) or first class mail, postage pre-paid, to the following:

Narda Jones*
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Narda.Jones@fcc.gov

Cynthia Schultz*
Director - Service Provider Support
Universal Service Administrative Company
2000 L Street, N.W.
Suite 200
Washington, DC 20036
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Universal Service Administrative Company
Letter of Appeal
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Counsel to Send Technologies, LLC

/s/ Kenneth F. Sills

Exhibit A

Administrator's Decision on Appeal

Tensas Parish School Board



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2002-2003

May 28, 2004

Kenneth F. Sills
Hammonds and Sills
1111 South Foster Drive, Suite C
Baton Rouge, LA 70806

Re: Tensas Parish School District

Re: Billed Entity Number: 139341
471 Application Number: 288236
Funding Request Number(s): 748439, 798470, 798480, 799010
Your Correspondence Dated: October 30, 2003 and October 31, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Funding Year 2002 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 748439, 798470, 798480
Decision on Appeal: **Denied in full**
Explanation:

- You have stated in your letter that this appeal will provide clarifying information that corrects an assumption the SLD made during the initial review process because there was insufficient documentation at that time. The exhibits that you claim to provide clarifying information are statements by the Attorney General for Louisiana that discuss various Louisiana Revised Statutes as they apply, or do not apply, to various entities other than Tensas Parish School Board (Tensas). Your opinion is that the statute does not apply in this case because the Tensas Parish School Board is a political subdivision of the State of Louisiana and the statute only applies to those professional services to be performed by an architect, engineer or landscape architect. In sum, you claim that the Louisiana procurement laws do not apply to Tensas regarding requirements to advertise for bids for Internet access and Internal Connections or to allow a political subdivision to purchase through a local vendor

items at the state bid price. Specifically, you explain that the school board as a political subdivision is not required by Louisiana State law to use the competitive bidding process for contracting with SEND Technologies, LLC (SEND). Essentially, you make the argument that Tensas is exempt from state procurement law. You request that the SLD rescind and nullify the Commitment Adjustment Letter of September 2, 2003.

- After a thorough review of the appeal, it was determined that during the course of an Item 25 review, and through your own admission, Tensas did not comply with the Louisiana Revised Statutes pertaining to public contracts, specifically for the procurement of Internet access and Internal Connections. The vendor, SEND, referred to its entire Internet access and Internal Connections contracts as professional service contracts. You note that Internet access and Internal Connections are not considered professional services under Louisiana law. Review of the applicable provisions of Louisiana law do not support your contention that Louisiana law does not require competitive bids for equipment, supplies, and services related to the provision of Internet access and Internal Connections. Consequently, the appeal is denied. For a discussion of the applicable provisions of Louisiana law upon which the decision is based, please see the attached document titled "Further Explanation of the Administrator's Decision on Appeal."
- The FCC's rules for the Schools and Libraries Universal Service Support Mechanism undisputedly require competitive bidding. The FCC's rules state, "[A]n eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under Sec. 54.502 and 54.503. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements" (47 C.F.R § 54.504(a), emphasis added). Your appeal did not indicate that the FCC's competitive bidding requirements were met and is therefore denied.

Funding Request Number: 799010
Decision on Appeal: Denied in full
Explanation:

- You have stated on appeal that there are certain circumstances under which the SLD can grant an appeal, one of which is applicable to this case as this appeal will provide clarifying information that corrects an assumption the SLD made during the initial review process because there was insufficient documentation at that time. The clarifying information is the included statement by William E. Fletcher of the Tensas Parish School Board which states that the school did consider price as the primary factor. Newton Telephone Service sent in a quote that did not contain a SPIN making it ineligible to participate in the E-rate program; therefore, it was not selected even though it may have had the lowest price. You note that the contract

was awarded in accordance with the goals of the support mechanism and did not violate program rules. You claim that the contract was awarded on the primary basis of cost being the main factor. You request that the SLD nullify the issued Commitment Adjustment Letter of September 2, 2003.

- Upon a thorough review of the appeal, it was determined that the applicant failed to demonstrate that price was the primary factor in selecting the service provider, which is required by program rules. FCC rules require that the entity selecting a service provider "shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers but price should be the primary factor considered." 47 C.F.R. § 54.511(a). These instructions are also found on the SLD website (www.sl.universalservice.org/whatsnew/reminders-F470.asp#F470R2) and state: "When you examine and evaluate the bids you receive for eligible services, you must select the most cost-effective bid. This means that the price should be the primary factor, but does not have to be the sole factor, in evaluating the bids. Other relevant factors may include: prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives." The documentation submitted by the applicant during the Item 25 review indicates that price was not the primary factor used in vendor selection; therefore, the Billed Entity, Tensas Parish School District is in violation of the competitive bidding requirements of the support mechanism for the funding request noted above.
- SLD's review of the Form 471 application submitted by the Tensas Parish School District determined that price was not the primary factor when you selected your service provider. You did not demonstrate in your appeal that price was the primary factor when you selected your service provider. Consequently, SLD denies your appeal.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Dr. William Fletcher
Tensas Parish School District
504 Plank Road
Saint Joseph, LA 71366

Mr. Mark Stevenson
Send Technologies, LLC
2904 Evangeline Street
Monroe, LA 71201



Universal Service Administrative Company
Schools & Libraries Division

Further Explanation of the Administrator's Decision on Appeal

May 28, 2004

COMAD Appeal Decision
Tensas Parish School District
Form 471 Application Number: 288236
Funding Year 2002

FRNs: 748439, 798470, 798480

I. Background

SEND Technology, LLC (SEND) is the service provider for certain Funding Year 2002 funding requests for Internet access and Internal Connections for applicants located in Louisiana. All applicants associated with SEND in Funding Year 2002 underwent Item 25/competitive bidding reviews. In response to SLD's questions regarding the competitive bidding process, all but one applicant associated with SEND responded that Louisiana law does not require competitive bidding for the provided equipment and services.

II. Summary of Decision on Appeal

Notwithstanding SLD program rules which undisputedly require competitive bidding, review of the applicable provisions of Louisiana law do not support the applicants' contentions that Louisiana law does not require competitive bids for equipment, supplies, and services related to the provision of Internet access and Internal Connections.

III. Applicable Law

A. Schools and Libraries Universal Service Support Mechanism Competitive Bidding Requirements

In preparing request(s) for funding, applicants seeking discounted services through the Schools and Libraries Universal Service Support Mechanism must follow certain competitive bidding requirements. See 47 C.F.R. § 54.504. Section 54.504(a) provides in relevant part (emphasis added):

[A]n eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under Sec. Sec. 54.502 and

54.503. These competitive bid requirements apply *in addition to state and local competitive bid requirements* and are not intended to preempt such state or local requirements.

An applicant initiates the competitive bidding process when an applicant submits an FCC Form 470 to USAC for posting on the SLD portion of the USAC website. See 47 C.F.R. § 54.504(b); *Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470*, OMB 3060-0806 (April 2002) (FCC Form 470). This posting enables prospective service providers to bid on the equipment and services for which the applicant will request universal service support. After the Form 470 has been posted, the applicant must wait at least 28 days before entering into agreements with service providers, must comply with all applicable state and local procurement laws, and must comply with the other competitive bidding requirements established by the Federal Communications Commission (FCC). See 47 C.F.R. §§ 54.504, 54.511; *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, ¶ 575 (rel. May 8, 1997) (*Universal Service Order*).

FCC rules require applicants to “submit a complete description of the services they seek so that it may be posted for competing service providers to evaluate.” *Universal Service Order*, ¶ 570. The FCC requires “the application to describe the services that the schools and libraries seek to purchase in sufficient detail to enable potential providers to formulate bids.” *Id.* ¶ 575. A description of the Internet access and Internal Connections services being sought must be provided in Items 9 and 10 of the FCC Form 470. The instructions for FCC Form 470 state that these items “must be completed to provide potential bidders with particular information about the services you are seeking.” See *FCC Form 470 Instructions*, April 2002 at 10.¹ The instructions for Item 9(b) state that this box should be checked if the applicant does not have an RFP, and that, if this box is checked, the applicant “must fill in details in the space provided about the specific Internet access services or functions and quantity and/or capacity of service” that is being sought. *Id.* at 12. The Form 470 instructions for Item 10(b) state that this box should be checked if the applicant does not have an RFP, and that, if this box is checked, the applicant “*must* fill in details in the space provided about the specific internal connections services or functions and quantity and/or capacity of service.” *Id.* (emphasis added).

FCC regulations further require that the entity selecting a service provider “carefully consider all bids submitted and may consider relevant factors other than the pre-discount prices submitted by providers.” 47 C.F.R. § 54.511(a). In regard to these competitive bidding requirements, the FCC nevertheless mandates that “price should be the primary factor in selecting a bid.” *Universal Service Order*, ¶ 481. When permitted pursuant to state and local procurement rules, other relevant factors an applicant may consider include “prior experience, including past performance; personnel qualifications, including

¹ The FCC Form 470 and Instructions were revised in April 2002. The language cited here was not changed when the instructions were revised.

technical excellence; management capability, including schedule compliance; and environmental objectives." *Id.*

B. Louisiana State Law

Louisiana Revised Statutes (LARS) Title 38 – Public Contracts, Works and Improvements (2004) sets out, among other things, the competitive bidding requirements for public contracts awarded by public entities, and covers contracts for “materials and supplies,” “public works,” and “telecommunications equipment and services.” Section 38:2211(11) defines “public entity” to include a public school board.

1. Materials and Supplies

Section 38:2212.1 provides that all purchases of materials or supplies in excess of \$20,000 must be advertised and awarded to the “lowest responsible bidder”; for purchases of between \$10,000 and \$19,999, the purchaser must obtain at least three telephone or facsimile quotations, must provide written confirmation of the accepted offer, and must record the reasons for rejecting any quotes lower than the accepted quote. *See id.* This provision has been interpreted as applying to, for example, the purchase of vending machines on parish property. *LA Attorney General Opinion No. 00-322 (2000).*² Although the Louisiana Supreme Court has held that a contract for telecommunications services was not for materials and thus not subject to the bidding requirements of Section 38:2212.1, the contract at issue involved leasing rather than purchasing telecommunications equipment from a regulated public utility. *See Stevens v. LaFourche Parish Hospital*, 323 So.2d 794, 796 (1975).

2. Public Works

Section 2211(12) defines “public work” as “the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity.” Public works contracts over \$100,000 must be advertised and awarded in accordance with requirements set forth in Section 2212A.³ The *Stevens* decision, however, raises some question whether a contract to provide telecommunications equipment and services would necessarily be considered a “public work.” For example, the Louisiana Attorney General (AG) has opined, based upon the *Stevens* case, that “public work” “does not include telecommunications services that may

²Although the Attorney General (AG) explained that there were no competitive bidding requirements for contracts below the lower statutory threshold (at that time \$7500), the AG, in this opinion, nonetheless recommended obtaining at least three quotations.

³ 2212A(1)(a) provides:

All public work exceeding the contract limit as defined in this Section, including labor and materials, to be done by a public entity shall be advertised and let by contract to the lowest responsible bidder who had bid according to the contract, plans, and specifications as advertised, and no such public work shall be done except as provided in this Part.

be provided in a building or in connection with its use.” *LA Attorney General Opinion No. 84-729* (1984) citing *Stevens*, 323 So.2d at 796 (1975). On the other hand, as noted, the holding in *Stevens* dates from a time when telecommunications equipment and services were almost exclusively provided by regulated public utilities and where the Court in that case considered the contract at issue as being exclusively for services. See *Stevens*, 323 So.2d at 796-97. Thus, *Stevens* arguably would not apply today to large contracts that involve the purchase and installation of telecommunications equipment that also involve the ongoing provision of related services.

3. Services

Contracts for services, including “Professional Services,” do not require the public bidding otherwise required by Section 2212. See *Browning-Ferris Inc. v. City of Monroe*, 465 So.2d 882, 884 (La.App. 2d Cir. 1985); see also *LA Attorney General Opinion No. 02-0418* (2002). Moreover, and as noted above, the Louisiana Supreme Court has expressly held that a contract for “telephone services” awarded to a public utility did not require competitive bidding. See *Stevens*, 323 So.2d at 796.

Nevertheless, where a public entity purchases equipment and subsequently contracts for services associated with the use of that equipment, the Louisiana AG has opined that the public bid requirement applies to the provision of the related services:

[A] bid as to a maintenance contract (if one is reasonably foreseen as needed) should be sought at the same time [as the purchase of the equipment to be maintained]; otherwise the public policy behind the public bid could be intentionally or inadvertently flaunted by separately and non-competitively entering into a substantial second contract.

See *LA Attorney General Opinion No. 81-465* (1981).

4. Telecommunications Equipment and Related Services

Louisiana law explicitly addresses the advertisement and award of contracts for telecommunications and data processing equipment and related services. See LARS §§ 38:2236 (defining telecommunication equipment), 38:2237.⁴ Section 38:2237 provides:

A political subdivision may lease, rent, or purchase telecommunications or data processing systems, including equipment, and related services, through a request for proposals [(RFP)] which shall conform to following requirements . . .

* * * *

⁴ Added in 1988, this law further calls into question whether the holding in *Stevens* is good law.

Political subdivisions may, at their option, procure telecommunications and data processing equipment, systems, or related services in accordance with the provisions of any other applicable law which governs such acquisitions or purchases by political subdivisions of the state, including but not limited to [LARS] 38:2211 et seq., with respect to awarding of public contracts. However, in the event an invitation for bids is used in lieu of a [RFP], written notice of that fact shall be given to all bidders and such notice shall also state that the [RFP] procedure will not be applicable.

Notably, although Section 38:2237 does not require public entities to procure telecommunications equipment and services pursuant to an RFP, they can do so only "in accordance with the provisions of any other applicable law which governs such acquisitions or purchases." Because it would be absurd to construe the phrase "other applicable law governing such acquisitions and purchases" as meaning no applicable law whatsoever, it is clear that Section 38:2237 contemplates either an RFP or a bid process.

C. Local Law

Local law for each applicant was not reviewed as part of this analysis. There may be local requirements that apply in addition to the state requirements discussed here.

IV. Discussion

Contracts for Internet access and/or Internal Connections may fall within the definition of "public work" to the extent that these contracts include "the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity." Nevertheless, such contracts clearly fall within the RFP requirements for the purchase of "telecommunications or data processing systems, including equipment, and related services" set forth in Section 38:2237. Insofar as such contracts are also contracts for "materials or supplies," Section 38:2237 alternatively provides for the application of the competitive bidding requirements set forth in Section 38:2212.1.

Section 38:2212.1 provides, among other things, that all purchases of materials or supplies in excess of \$20,000 must be advertised and awarded to the "lowest responsible bidder" and that purchases of between \$10,000 and \$19,999 must be made by obtaining at least three telephone or facsimile quotations. Nevertheless, because Section 38:2237 contemplates that either RFP or competitive bidding shall apply, in the event a contract fails to meet the \$10,000 threshold for materials and supplies set forth in Section 38:2212.1, the RFP requirement of Section 38:2237 applies.⁵

Finally, insofar as a contract for Internet access includes the provision of services associated with the purchase of related equipment, Louisiana law provides that such

⁵ Where multiple contracts for one applicant each fall under a Section 38:2212.1 dollar threshold, but where the sum of the contracts exceeds the threshold, if necessary, SLD will make a determination regarding whether the contracts should be construed as a single contract.

services be included or treated as part of the same contract. *See LA Attorney General Opinion No. 81-465 (1981)*. However, even where a contract is truly and solely for services without the provision of related equipment, because Section 38:2237 explicitly applies to the provision of “telecommunications . . . systems . . . and related services”, the RFP requirement of Section 38:2237 applies.

V. Conclusion

Louisiana state law requires either an RFP or other competitive bidding process in the procurement of telecommunications and data processing equipment, systems, or related services. Although other competitive bidding procedures may be used as an alternative to an RFP, the decision not to use an RFP process must be provided in writing to potential bidders. For contracts solely for services, but where those services are provided in connection with related non-leased equipment, an RFP or other competitive bidding procedure is clearly required for both the services and equipment together. For contracts solely for services, an RFP is required pursuant to Louisiana law expressly governing the purchase of telecommunications services.

Accordingly, statements by applicants associated with SEND that Louisiana law does not require competitive bidding for the contracts at issue is not supported by Louisiana law.

**Universal Service Administrative Company
Schools and Libraries Division**



Universal Service Administrative Company
Schools & Libraries Division

COMMITMENT ADJUSTMENT LETTER

September 2, 2003

William Fletcher
 TENSAS PARISH SCHOOL DISTRICT
 504 PLANK ROAD
 SAINT JOSEPH, LA 71366

Re: COMMITMENT ADJUSTMENT
 Funding Year: 2002 -2003
 Form 471 Application Number: 288236

Dear Applicant:

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, SLD must now adjust your overall funding commitments. The purpose of this letter is to make the adjustments to your funding commitments required by program rules.

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the FRNs from your application for which adjustments are necessary. The SLD is also sending this information to your service provider(s), so preparations can be made to implement this decision. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. The amount is shown as Funds to be Recovered. If funds must be recovered, we will be sending your service provider a letter describing the process for recovering these funds in the near future, and we will send a copy of the letter to you. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount.

Box 128, Correspondence Unit, 80 South Jefferson Road, Whippany, NJ, 07981
 visit us online at www.sluniversityservice.org



TO APPEAL THESE FUNDING COMMITMENT DECISIONS

If you wish to appeal the Funding Commitment Decision(s) indicated in this letter, your appeal must be made in writing and RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE DATE AT THE TOP OF THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Commitment Adjustment Letter you are appealing. Your letter of appeal must include the applicant name and the Form 471 Application Number from the top of this Commitment Adjustment Letter.
3. Identify the particular Funding Request Number(s) (FRN) that is the subject of your appeal. When explaining your appeal, include the precise language or text from the Commitment Adjustment Letter that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, you will enable us to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125- Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site www.sl.universalservice.org or by calling the Client Service Bureau at 1-(888)-203-8100. We encourage the use of either the e-mail or fax filing options to expedite filing your appeal.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket Nos. 96-45 and 97-21 on the first page of your appeal to the FCC. Your appeal must be RECEIVED BY THE FCC WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, www.sl.universalservice.org or by calling the Client Service Bureau at 1-(888)-203-8100. We strongly recommend that you use either the e-mail or fax filing options because of continued substantial delays in mail delivery to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each funding request from your application for which a commitment adjustment is required. We are providing the following definitions.

- **FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each request in Block 5 of your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.
- **SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs.
- **SERVICE PROVIDER:** The legal name of the service provider.
- **CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.
- **SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.
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- **FUNDS DISBURSED TO DATE:** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- **FUNDS TO BE RECOVERED:** This represents the amount of Funds Disbursed to Date that exceed the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- **FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This entry provides a description of the reason the adjustment was made.

Funding Commitment Report for Application Number 288236

Funding Request Number 798439 SPIN: 143010002

Service Provider: Send Technologies, L.L.C.

Contract Number: SEND2002-23

Services Ordered: INTERNET ACCESS

Site Identifier:

Billing Account Number: (318)766-3269

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$0.00

Funds to be Recovered: \$0.00

Funding Commitment Adjustment Explanation:

Applicant did not comply with state procurement law. Definition of professional services does not include IA or IC, LA RS 38:2310(7). Competitive bidding required for purchases over \$7500, LA RS 38:2212.1, and for public works contracts over \$100,000. LA RS 38:2212.

Funding Request Number 798470 SPIN: 143010002

Service Provider: Send Technologies, L.L.C.

Contract Number: SEND2002-24

Services Ordered: INTERNAL CONNECTIONS

Site Identifier:

Billing Account Number: (318)766-3269

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$0.00

Funds to be Recovered: \$0.00

Funding Commitment Adjustment Explanation:

Applicant did not comply with state procurement law. Definition of professional services does not include IA or IC, LA RS 38:2310(7). Competitive bidding required for purchases over \$7500, LA RS 38:2212.1, and for public works contracts over \$100,000. LA RS 38:2212.

Funding Request Number 798480 SPIN: 143010002

Service Provider: Send Technologies, L.L.C.

Contract Number: SEND2002-24

Services Ordered: INTERNAL CONNECTIONS

Site Identifier:

Billing Account Number: (318)766-3269

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$0.00

Funds to be Recovered: \$0.00

Funding Commitment Adjustment Explanation:

Applicant did not comply with state procurement law. Definition of professional services does not include IA or IC, LA RS 38:2310(?). Competitive bidding required for purchases over \$7500, LA RS 38:2212.1, and for public works contracts over \$100,000. LA RS 38:2212.

Funding Request Number 799010 SPIN: 143010845

Service Provider: Communication Services LLC

Contract Number: 261

Services Ordered: INTERNAL CONNECTIONS

Site Identifier:

Billing Account Number: (318)766-3269

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$0.00

Funds to be Recovered: \$0.00

Funding Commitment Adjustment Explanation:

After a thorough review it was determined that price was not the primary factor in the vendor selection process. The rules of the Schools and Libraries Division Support Mechanism stipulate that price must be the primary factor when choosing a vendor. Therefore the request is in violation of the rules of this Support Mechanism. Accordingly, the commitment has been rescinded in full.

Exhibit B

Administrator's Decision on Appeal

DeSoto Parish School Board



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2002-2003

May 28, 2004

Kenneth F. Sills
Hammonds and Sills
1111 South Foster Drive, Suite C
Baton Rouge, LA 70806

Re: De Soto Parish School District

Re: Billed Entity Number: 139301
471 Application Number: 291803
Funding Request Number(s): 794135, 794165, 794202, 794211, 794261,
794295
Your Correspondence Dated: October 30, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Funding Year 2002 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 794135, 794165, 794202, 794211, 794261, 794295
Decision on Appeal: **Denied in full**
Explanation:

- You have stated in your letter that this appeal will provide clarifying information that corrects an assumption the SLD made during the initial review process because there was insufficient documentation at that time. The exhibits that you claim to provide clarifying information are statements by the Attorney General for Louisiana that discuss various Louisiana Revised Statutes as they apply, or do not apply, to various entities other than De Soto Parish School District (De Soto). Your opinion is that the statute does not apply in this case because the De Soto Parish School Board is a political subdivision of the State of Louisiana and the statute only applies to those professional services to be performed by an architect, engineer or landscape architect. In sum, you claim that the Louisiana procurement laws do not apply to

De Soto regarding requirements to advertise for bids for Internet access and Internal Connections or to allow a political subdivision to purchase through a local vendor items at the state bid price. Specifically, you explain that the school board as a political subdivision is not required by Louisiana State law to use the competitive bidding process for contracting with SEND Technologies, LLC (SEND). Essentially, you make the argument that De Soto is exempt from state procurement law. You request that the SLD rescind and nullify the Commitment Adjustment Letter of September 2, 2003.

- After a thorough review of the appeal, it was determined that during the course of an Item 25 review, and through your own admission, De Soto did not comply with the Louisiana Revised Statutes pertaining to public contracts, specifically for the procurement of Internet access and Internal Connections. The vendor, SEND, referred to its entire Internet access and Internal Connections contracts as professional service contracts. You note that Internet access and Internal Connections are not considered professional services under Louisiana law. Review of the applicable provisions of Louisiana law do not support your contention that Louisiana law does not require competitive bids for equipment, supplies, and services related to the provision of Internet access and Internal Connections. Consequently, the appeal is denied. For a discussion of the applicable provisions of Louisiana law upon which the decision is based, please see the attached document titled "Further Explanation of the Administrator's Decision on Appeal."
- The FCC's rules for the Schools and Libraries Universal Service Support Mechanism undisputedly require competitive bidding. The FCC's rules state, "[A]n eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under Sec. 54.502 and 54.503. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements" (47 C.F.R § 54.504(a), emphasis added). Your appeal did not indicate that the FCC's competitive bidding requirements were met and is therefore denied.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

**Schools and Libraries Division
Universal Service Administrative Company**

cc: Mr. Steven Stanfield
De Soto Parish School District
201 Crosby Street
Mansfield, LA 71052

Mr. Mark Stevenson
Send Technologies, LLC
2904 Evangeline Street
Monroe, LA 71201



Universal Service Administrative Company
Schools & Libraries Division

Further Explanation of the Administrator's Decision on Appeal

May 28, 2004

COMAD Appeal Decision
Tensas Parish School District
Form 471 Application Number: 288236
Funding Year 2002

FRNs: 748439, 798470, 798480

I. Background

SEND Technology, LLC (SEND) is the service provider for certain Funding Year 2002 funding requests for Internet access and Internal Connections for applicants located in Louisiana. All applicants associated with SEND in Funding Year 2002 underwent Item 25/competitive bidding reviews. In response to SLD's questions regarding the competitive bidding process, all but one applicant associated with SEND responded that Louisiana law does not require competitive bidding for the provided equipment and services.

II. Summary of Decision on Appeal

Notwithstanding SLD program rules which undisputedly require competitive bidding, review of the applicable provisions of Louisiana law do not support the applicants' contentions that Louisiana law does not require competitive bids for equipment, supplies, and services related to the provision of Internet access and Internal Connections.

III. Applicable Law

A. Schools and Libraries Universal Service Support Mechanism Competitive Bidding Requirements

In preparing request(s) for funding, applicants seeking discounted services through the Schools and Libraries Universal Service Support Mechanism must follow certain competitive bidding requirements. *See* 47 C.F.R. § 54.504. Section 54.504(a) provides in relevant part (emphasis added):

[A]n eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under Sec. Sec. 54.502 and

54.503. These competitive bid requirements apply *in addition to state and local competitive bid requirements* and are not intended to preempt such state or local requirements.

An applicant initiates the competitive bidding process when an applicant submits an FCC Form 470 to USAC for posting on the SLD portion of the USAC website. See 47 C.F.R. § 54.504(b); *Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470*, OMB 3060-0806 (April 2002) (FCC Form 470). This posting enables prospective service providers to bid on the equipment and services for which the applicant will request universal service support. After the Form 470 has been posted, the applicant must wait at least 28 days before entering into agreements with service providers, must comply with all applicable state and local procurement laws, and must comply with the other competitive bidding requirements established by the Federal Communications Commission (FCC). See 47 C.F.R. §§ 54.504, 54.511; *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, ¶ 575 (rel. May 8, 1997) (*Universal Service Order*).

FCC rules require applicants to “submit a complete description of the services they seek so that it may be posted for competing service providers to evaluate.” *Universal Service Order*, ¶ 570. The FCC requires “the application to describe the services that the schools and libraries seek to purchase in sufficient detail to enable potential providers to formulate bids.” *Id.* ¶ 575. A description of the Internet access and Internal Connections services being sought must be provided in Items 9 and 10 of the FCC Form 470. The instructions for FCC Form 470 state that these items “must be completed to provide potential bidders with particular information about the services you are seeking.” See *FCC Form 470 Instructions*, April 2002 at 10.¹ The instructions for Item 9(b) state that this box should be checked if the applicant does not have an RFP, and that, if this box is checked, the applicant “must fill in details in the space provided about the specific Internet access services or functions and quantity and/or capacity of service” that is being sought. *Id.* at 12. The Form 470 instructions for Item 10(b) state that this box should be checked if the applicant does not have an RFP, and that, if this box is checked, the applicant “*must* fill in details in the space provided about the specific internal connections services or functions and quantity and/or capacity of service.” *Id.* (emphasis added).

FCC regulations further require that the entity selecting a service provider “carefully consider all bids submitted and may consider relevant factors other than the pre-discount prices submitted by providers.” 47 C.F.R. § 54.511(a). In regard to these competitive bidding requirements, the FCC nevertheless mandates that “price should be the primary factor in selecting a bid.” *Universal Service Order*, ¶ 481. When permitted pursuant to state and local procurement rules, other relevant factors an applicant may consider include “prior experience, including past performance; personnel qualifications, including

¹ The FCC Form 470 and Instructions were revised in April 2002. The language cited here was not changed when the instructions were revised.

technical excellence; management capability, including schedule compliance; and environmental objectives." *Id.*

B. Louisiana State Law

Louisiana Revised Statutes (LARS) Title 38 – Public Contracts, Works and Improvements (2004) sets out, among other things, the competitive bidding requirements for public contracts awarded by public entities, and covers contracts for "materials and supplies," "public works," and "telecommunications equipment and services." Section 38:2211(11) defines "public entity" to include a public school board.

1. Materials and Supplies

Section 38:2212.1 provides that all purchases of materials or supplies in excess of \$20,000 must be advertised and awarded to the "lowest responsible bidder"; for purchases of between \$10,000 and \$19,999, the purchaser must obtain at least three telephone or facsimile quotations, must provide written confirmation of the accepted offer, and must record the reasons for rejecting any quotes lower than the accepted quote. *See id.* This provision has been interpreted as applying to, for example, the purchase of vending machines on parish property. *LA Attorney General Opinion No. 00-322 (2000).*² Although the Louisiana Supreme Court has held that a contract for telecommunications services was not for materials and thus not subject to the bidding requirements of Section 38:2212.1, the contract at issue involved leasing rather than purchasing telecommunications equipment from a regulated public utility. *See Stevens v. LaFourche Parish Hospital*, 323 So.2d 794, 796 (1975).

2. Public Works

Section 2211(12) defines "public work" as "the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity." Public works contracts over \$100,000 must be advertised and awarded in accordance with requirements set forth in Section 2212A.³ The *Stevens* decision, however, raises some question whether a contract to provide telecommunications equipment and services would necessarily be considered a "public work." For example, the Louisiana Attorney General (AG) has opined, based upon the *Stevens* case, that "public work" "does not include telecommunications services that may

²Although the Attorney General (AG) explained that there were no competitive bidding requirements for contracts below the lower statutory threshold (at that time \$7500), the AG, in this opinion, nonetheless recommended obtaining at least three quotations.

³ 2212A(1)(a) provides:

All public work exceeding the contract limit as defined in this Section, including labor and materials, to be done by a public entity shall be advertised and let by contract to the lowest responsible bidder who had bid according to the contract, plans, and specifications as advertised, and no such public work shall be done except as provided in this Part.

be provided in a building or in connection with its use.” *LA Attorney General Opinion No. 84-729* (1984) citing *Stevens*, 323 So.2d at 796 (1975). On the other hand, as noted, the holding in *Stevens* dates from a time when telecommunications equipment and services were almost exclusively provided by regulated public utilities and where the Court in that case considered the contract at issue as being exclusively for services. See *Stevens*, 323 So.2d at 796-97. Thus, *Stevens* arguably would not apply today to large contracts that involve the purchase and installation of telecommunications equipment that also involve the ongoing provision of related services.

3. Services

Contracts for services, including “Professional Services,” do not require the public bidding otherwise required by Section 2212. See *Browning-Ferris Inc. v. City of Monroe*, 465 So.2d 882, 884 (La.App. 2d Cir. 1985); see also *LA Attorney General Opinion No. 02-0418* (2002). Moreover, and as noted above, the Louisiana Supreme Court has expressly held that a contract for “telephone services” awarded to a public utility did not require competitive bidding. See *Stevens*, 323 So.2d at 796.

Nevertheless, where a public entity purchases equipment and subsequently contracts for services associated with the use of that equipment, the Louisiana AG has opined that the public bid requirement applies to the provision of the related services:

[A] bid as to a maintenance contract (if one is reasonably foreseen as needed) should be sought at the same time [as the purchase of the equipment to be maintained]; otherwise the public policy behind the public bid could be intentionally or inadvertently flaunted by separately and non-competitively entering into a substantial second contract.

See *LA Attorney General Opinion No. 81-465* (1981).

4. Telecommunications Equipment and Related Services

Louisiana law explicitly addresses the advertisement and award of contracts for telecommunications and data processing equipment and related services. See LARS §§ 38:2236 (defining telecommunication equipment), 38:2237.⁴ Section 38:2237 provides:

A political subdivision may lease, rent, or purchase telecommunications or data processing systems, including equipment, and related services, through a request for proposals [(RFP)] which shall conform to following requirements . . .

* * * *

⁴ Added in 1988, this law further calls into question whether the holding in *Stevens* is good law.

Political subdivisions may, at their option, procure telecommunications and data processing equipment, systems, or related services in accordance with the provisions of any other applicable law which governs such acquisitions or purchases by political subdivisions of the state, including but not limited to [LARS] 38:2211 et seq., with respect to awarding of public contracts. However, in the event an invitation for bids is used in lieu of a [RFP], written notice of that fact shall be given to all bidders and such notice shall also state that the [RFP] procedure will not be applicable.

Notably, although Section 38:2237 does not require public entities to procure telecommunications equipment and services pursuant to an RFP, they can do so only "in accordance with the provisions of any other applicable law which governs such acquisitions or purchases." Because it would be absurd to construe the phrase "other applicable law governing such acquisitions and purchases" as meaning no applicable law whatsoever, it is clear that Section 38:2237 contemplates either an RFP or a bid process.

C. Local Law

Local law for each applicant was not reviewed as part of this analysis. There may be local requirements that apply in addition to the state requirements discussed here.

IV. Discussion

Contracts for Internet access and/or Internal Connections may fall within the definition of "public work" to the extent that these contracts include "the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity." Nevertheless, such contracts clearly fall within the RFP requirements for the purchase of "telecommunications or data processing systems, including equipment, and related services" set forth in Section 38:2237. Insofar as such contracts are also contracts for "materials or supplies," Section 38:2237 alternatively provides for the application of the competitive bidding requirements set forth in Section 38:2212.1.

Section 38:2212.1 provides, among other things, that all purchases of materials or supplies in excess of \$20,000 must be advertised and awarded to the "lowest responsible bidder" and that purchases of between \$10,000 and \$19,999 must be made by obtaining at least three telephone or facsimile quotations. Nevertheless, because Section 38:2237 contemplates that either RFP or competitive bidding shall apply, in the event a contract fails to meet the \$10,000 threshold for materials and supplies set forth in Section 38:2212.1, the RFP requirement of Section 38:2237 applies.⁵

Finally, insofar as a contract for Internet access includes the provision of services associated with the purchase of related equipment, Louisiana law provides that such

⁵ Where multiple contracts for one applicant each fall under a Section 38:2212.1 dollar threshold, but where the sum of the contracts exceeds the threshold, if necessary, SLD will make a determination regarding whether the contracts should be construed as a single contract.

services be included or treated as part of the same contract. *See LA Attorney General Opinion No. 81-465 (1981)*. However, even where a contract is truly and solely for services without the provision of related equipment, because Section 38:2237 explicitly applies to the provision of "telecommunications . . . systems . . . and related services", the RFP requirement of Section 38:2237 applies.

V. Conclusion

Louisiana state law requires either an RFP or other competitive bidding process in the procurement of telecommunications and data processing equipment, systems, or related services. Although other competitive bidding procedures may be used as an alternative to an RFP, the decision not to use an RFP process must be provided in writing to potential bidders. For contracts solely for services, but where those services are provided in connection with related non-leased equipment, an RFP or other competitive bidding procedure is clearly required for both the services and equipment together. For contracts solely for services, an RFP is required pursuant to Louisiana law expressly governing the purchase of telecommunications services.

Accordingly, statements by applicants associated with SEND that Louisiana law does not require competitive bidding for the contracts at issue is not supported by Louisiana law.

**Universal Service Administrative Company
Schools and Libraries Division**



Universal Service Administrative Company
Schools & Libraries Division

COMMITMENT ADJUSTMENT LETTER

September 2, 2003

Mark Stevenson
Send Technologies, L.L.C.
2904 Evangeline Street
Monroe, LA 71201 2613

Re: COMMITMENT ADJUSTMENT

Funding Year: 2002 -2003

Form 471 Application Number: 291803

Applicant Name DE SOTO PARISH SCHOOL DIST

Contact Person: John L. Hill

Contact Phone: 318-872-2836

Dear Service Provider Contact:

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, SLD must now adjust these funding commitments. The purpose of this letter is to inform you of the adjustments to these funding commitments required by program rules.

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the FRNs from the application for which adjustments are necessary. The SLD is also sending this information to applicant, so that you may work with them to implement this decision. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. The amount is shown as Funds to be Recovered. We expect to send you a letter describing the process for recovering these funds in the near future, and we will send a copy of the letter to the applicant. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount.

TO APPEAL THESE FUNDING COMMITMENT DECISIONS

If you wish to appeal the Funding Commitment Decision(s) indicated in this letter, your appeal must be made in writing and **RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE DATE AT THE TOP OF THIS LETTER.** Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Commitment Adjustment Letter you are appealing. Your letter of appeal must include the applicant name and the Form 471 Application Number from the top of this Commitment Adjustment Letter.
3. Identify the particular Funding Request Number(s) (FRN) that is the subject of your appeal. When explaining your appeal, include the precise language or text from the Commitment Adjustment Letter that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, you will enable us to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

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Attached to this letter will be a report for each funding request from your application for which a commitment adjustment is required. We are providing the following definitions.

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- **SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs.
- **SERVICE PROVIDER:** The legal name of the service provider.
- **CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.
- **SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER:** The Entity Number listed in Form 471 for "site specific" FRNs.
- **BILLING ACCOUNT NUMBER:** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.
- **ADJUSTED FUNDING COMMITMENT:** This represents the adjusted total amount of funding that SLD has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.
- **FUNDS DISBURSED TO DATE:** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- **FUNDS TO BE RECOVERED:** This represents the amount of Funds Disbursed to Date that exceed the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- **FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This entry provides a description of the reason the adjustment was made.

Funding Commitment Report for Application Number: 291803

Funding Request Number 794135 ✓ SPIN: 143010002

Service Provider: Send Technologies, L.L.C.

Contract Number: SEND2002-31

Services Ordered: INTERNET ACCESS

Site Identifier:

Billing Account Number: (318)872-2836

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$0.00

Funds to be Recovered: \$0.00

Funding Commitment Adjustment Explanation:

Applicant did not comply with state procurement law. Definition of professional services does not include IA or IC, LA RS 38:2310(7). Competitive bidding required for purchases over \$7500, LA RS 38:2212.1, and for public works contracts over \$100,000. LA RS 38:2212.

Funding Request Number 794165 ✓ SPIN: 143010002

Service Provider: Send Technologies, L.L.C.

Contract Number: SEND2002-32

Services Ordered: INTERNAL CONNECTIONS

Site Identifier: 81364 COOL SPRINGS SCHOOL

Billing Account Number: (318)872-2836

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$0.00

Funds to be Recovered: \$0.00

Funding Commitment Adjustment Explanation:

Applicant did not comply with state procurement law. Definition of professional services does not include IA or IC, LA RS 38:2310(7). Competitive bidding required for purchases over \$7500, LA RS 38:2212.1, and for public works contracts over \$100,000. LA RS 38:2212.

Funding Request Number 794202 ✓ SPIN: 143010002

Service Provider: Send Technologies, L.L.C.

Contract Number: SEND2002-32

Services Ordered: INTERNAL CONNECTIONS

Site Identifier: 81368 MANSFIELD MIDDLE SCHOOL

Billing Account Number: (318)872-2836

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$0.00

Funds to be Recovered: \$0.00

Funding Commitment Adjustment Explanation:

Applicant did not comply with state procurement law. Definition of professional services does not include IA or IC, LA RS 38:2310(7). Competitive bidding required for purchases over \$7500, LA RS 38:2212.1, and for public works contracts over \$100,000. LA RS 38:2212.

Funding Request Number 794211 ✓ SPIN: 143010002

Service Provider: Send Technologies, L.L.C.

Contract Number: SEND2002-32

Services Ordered: INTERNAL CONNECTIONS

Site Identifier: 81387 PELICAN ALL SAINTS HIGH SCHOOL

Billing Account Number: (318)872-2836

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$0.00

Funds to be Recovered: \$0.00

Funding Commitment Adjustment Explanation:

Applicant did not comply with state procurement law. Definition of professional services does not include IA or IC, LA RS 38:2310(7). Competitive bidding required for purchases over \$7500, LA RS 38:2212.1, and for public works contracts over \$100,000. LA RS 38:2212.

Funding Request Number 794261 ✓ SPIN: 143010002

Service Provider: Send Technologies, L.L.C.

Contract Number: SEND2002-32

Services Ordered: INTERNAL CONNECTIONS

Site Identifier: 157526 MANSFIELD ELEMENTARY SCHOOL PK-2

Billing Account Number: (318)872-2836

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$0.00

Funds to be Recovered: \$0.00

Funding Commitment Adjustment Explanation:

Applicant did not comply with state procurement law. Definition of professional services does not include IA or IC, LA RS 38:2310(7). Competitive bidding required for purchases over \$7500, LA RS 38:2212.1, and for public works contracts over \$100,000. LA RS 38:2212.

Funding Request Number 794295 ✓ SPIN: 143010002

Service Provider: Send Technologies, L.L.C.

Contract Number: SEND2002-32

Services Ordered: INTERNAL CONNECTIONS

Site Identifier: 195154 DESOTO PARISH ALTERNATIVE SCHOOL

Billing Account Number: (318)872-2836

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$0.00

Funds to be Recovered: \$0.00

Funding Commitment Adjustment Explanation:

Applicant did not comply with state procurement law. Definition of professional services does not include IA or IC, LA RS 38:2310(7). Competitive bidding required for purchases over \$7500, LA RS 38:2212.1, and for public works contracts over \$100,000. LA RS 38:2212.