

Exhibit G

Administrator's Decision on Appeal

Webster Parish School District



Universal Service Administrative Company
Schools & Libraries Division

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

June 24, 2004

Kenneth F. Sills
Hammonds and Sills
P.O. Box 65236
Baton Rouge, LA 70896

Re: Webster Parish School District

Re: Billed Entity Number: 139303
471 Application Number: 292756
Funding Request Number(s): 795284, 800324, 800347, 800473
Your Correspondence Dated: March 22, 2004

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: 795284, 800324, 800347, 800473
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 profess 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 Webster Parish School Board (Webster). Your opinion is that the statute does not apply in this case because the Webster 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 declare that the Louisiana Procurement laws do not apply to Webster 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. Essentially, you make the assertion that Webster is exempt from state procurement law. You request that the SLD nullify the issued Funding Commitment Decision Letter of January 22, 2004.

- After a thorough review of the appeal, it was determined that during the course of an Item 25 review, and through your own admission, Webster 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 Technologies, 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.

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

Schools and Libraries Division
Universal Service Administrative Company

Cc: Mark Stevenson
SEND Technologies, LLC
2904 Evangeline Street
Monroe, LA 71201

Linda Williams
Webster Parish School District
1442 Sheppard Street
Minden, LA 71055



Universal Service Administrative Company
Schools & Libraries Division

Further Explanation of the Administrator's Decision on Appeal

June 24, 2004

Appeal Decision
Webster Parish School District
Form 471 Application Number: 292756
Funding Year 2002

FRNs: 795284, 800324, 800347, 800473

I. Background

SEND Technologies, 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 technical excellence; management capability, including schedule compliance; and environmental objectives.” *Id.*

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

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 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

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.

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 flouted 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 . . .

* * * *

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.

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

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 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.

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.

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**

Exhibit H

Administrator's Decision on Appeal

Winn Parish School District



Universal Service Administrative Company
Schools & Libraries Division

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

June 24, 2004

Kenneth F. Sills
Hammonds and Sills
P.O. Box 65236
Baton Rouge, LA 70896

Re: Winn Parish School District

Re: Billed Entity Number: 139353
471 Application Number: 308580
Funding Request Number(s): 831226, 831379, 856716
Your Correspondence Dated: March 22, 2004

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: 831226, 831379, 856716
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 profess 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 Winn Parish School Board (Winn). Your opinion is that the statute does not apply in this case because the Winn 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 declare that the Louisiana Procurement laws do not apply to Winn 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. Essentially, you make the assertion that Winn is exempt from state procurement law. You request that the SLD nullify the issued Funding Commitment Decision Letter of January 22, 2004.

- After a thorough review of the appeal, it was determined that during the course of an Item 25 review, and through your own admission, Winn 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 Technologies, 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.

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

Schools and Libraries Division
Universal Service Administrative Company

Cc: Mark Stevenson
SEND Technologies, LLC
2904 Evangeline Street
Monroe, LA 71201

Jan Anyan
Winn Parish School District
304 East Court Street
Winnfield, LA 71483



Universal Service Administrative Company
Schools & Libraries Division

Further Explanation of the Administrator's Decision on Appeal

June 24, 2004

Appeal Decision
Winn Parish School District
Form 471 Application Number: 308580
Funding Year 2002

FRNs: 831226, 831379, 856716

I. Background

SEND Technologies, 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 technical excellence; management capability, including schedule compliance; and environmental objectives.” *Id.*

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

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 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

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.

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 . . .

* * * *

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.

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

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 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.

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.

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**

Exhibit I

Request for Opinion From the Louisiana Attorney General

Quad One, Suite C
1111 South Foster Drive
Baton Rouge, LA 70806



PH 225-923-3462
FX 225-923-0315
800-960-5297

mail correspondence to → P.O. Box 65236
Baton Rouge, LA 70896

E-mail: law@hamsil.com

August 16, 2004

Honorable Charles C. Foti, Jr.
Attorney General
State of Louisiana
Department of Justice
P. O. Box 94005
Baton Rouge, LA 70804-9005

Dear Mr. Foti:

The Louisiana School Boards Association (“Association”) is seeking the Louisiana Attorney General’s opinion regarding certain questions about Louisiana law raised by the Universal Service Administrative Company (“USAC”), and the Schools and Libraries Division (“SLD”) of USAC. A copy of a resolution of the Executive Committee of the Association is attached requesting your opinion. Specifically, USAC has questioned whether or not certain Louisiana parish school boards (the “PSBs”) complied with Louisiana competitive bidding laws in connection with their participation in the E-rate program. USAC and the SLD administer the E-rate program on behalf of the Federal Communications Commission (“FCC”). Based upon the SLD’s interpretation of Title 38 of the Louisiana Revised Statutes (“Revised Statutes”) the SLD denied the E-rate funding requests of 14 PSBs for the 2002-2003 funding year. The denials total \$2,156,160.00 in E-rate funding. The PSBs appealed, but USAC upheld the denials.

I. Overview.

The Universal Service Support Mechanism, commonly called the “E-rate program,” was implemented by the FCC to fulfill its statutory mandate to assist schools and libraries in obtaining affordable telecommunications and Internet services.¹ The E-rate program funds three service categories for schools and libraries: (1) telecommunications services; (2) Internet access; and (3) internal connections. Schools and libraries can apply for discounts ranging from 20 to 90

¹ 47 U.S.C. § 254.

percent off the cost of eligible services.² The discounted portion of the cost of services is paid from E-rate monies; the remaining cost is paid by the school or library.

As the attached summaries describe, each of the 14 PSBs sought E-rate funding for service that is classified as “Internet access” under the E-rate program. One (1) PSB sought only Internet access service. Four (4) PSBs sought maintenance and technical support services in addition to Internet access, and an additional nine (9) PSBs sought maintenance and technical support service, Internet access service, and the purchase and installation of related equipment or wiring. The maintenance services, equipment and wiring are designated under the E-rate program as part of “internal connections.”

In order to acquire E-rate discounts and funding, the PSBs submitted Form 470 applications to the SLD. As required by FCC and SLD/USAC rules and regulations, the PSB’s sought competitive bids for eligible products and services. FCC rules require that “an eligible school or library shall seek competitive bids... for all services eligible for support” and that such bids also must comply with state and local procurement laws (if applicable).³ The PSBs each prepared a technology plan, describing how the requested services and technology would be used to achieve specific curriculum goals or improvements, and then submitted their FCC Form 470 applications describing the services they sought. The Form 470’s were posted to USAC’s public website for the purpose of seeking competitive bids; Form 470s must be posted for a minimum of 28 days.⁴ Although not the sole factor, the price of a service is the primary factor applicants must use to choose a service provider.⁵ After the 28-day period, an applicant may enter into contracts with service providers who responded to the Form 470 application with competitive bids. Applicants like the PSBs then submit completed FCC Form 471 applications to the SLD, indicating the service providers and services for which discounts and specific funding are sought.⁶ The SLD reviews the FCC Form 471 and issues a funding commitment decision either granting or denying the funding request.

The SLD denied the E-rate funding requests filed by the 14 Louisiana PSBs for the 2002-2003 funding year because the SLD alleged that the PSBs should have complied with Sections 2212 and 2212.1 of Title 38 of the Louisiana Revised Statutes (the denial also mentioned Section 2310(7)). The denials were largely identical and an example is attached hereto as **Exhibit 1**. The PSBs appealed the denials to USAC and explained why, in their view, Sections 2212 and 2212.1 of the Revised Statutes were inapplicable to their funding requests. USAC denied the PSB appeals and upheld the funding denials, but not on the basis of violation of Sections 2212 or 2212.1 of Title 38. Rather, USAC upheld the funding denials by alleging that the PSBs “may” have violated Sections 2212 or 2212.1, but the PSB’s “clearly” violated Section 2237 of Title 38

² 47 C.F.R. §§ 54.502, 54.503, 54.505.

³ *Id.* § 54.504(a).

⁴ *Id.* § 54.504(b).

⁵ See *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso Texas*, 18 FCC Rcd 26406, 26429 (2003).

⁶ 47 C.F.R. §54.504(c).

of the Revised Statutes. These decisions were largely identical as well, and an example is attached hereto as **Exhibit 2**. The allegation regarding Section 2237 was raised for the first time in the appeal denial. The PSBs never had an opportunity to address USAC's concerns regarding Section 2237, which the PSBs believe is inapplicable to the Internet access services and the related maintenance contracts, equipment and internal wiring they sought. Section 2237 applies to "telecommunications or data processing systems," neither of which encompasses Internet access service. Even assuming, *arguendo*, that Section 2237 was applicable, the competitive bidding procedures undertaken by the PSBs should satisfy the requirements of the statute.

As the Attorney General will note in reviewing the attached summaries, each PSB request for E-rate services was specifically tailored to the individual needs of that PSB. Instead of addressing the particular facts of each PSB funding request and determining whether that PSB violated Title 38 of the Revised Statutes with respect to the specific services sought, USAC and the SLD alleged, generally, a violation of various provisions of Title 38 and summarily denied all funding requests. Given the importance of the E-rate services, the PSBs in consultation with USAC, the SLD and the FCC, request that the Attorney General review each of the brief summaries (attached) and provide an opinion as to whether any of the PSBs violated the Revised Statutes when they sought Internet access services and related internal connections for the 2002-2003 funding year, and undertook competitive bidding as required by applicable laws.

II. SLD's Interpretations of Louisiana's Competitive Bidding Laws

Initially, the SLD denied the PSB funding requests citing violations of Section 2212.1 and 2212:

Applicant did not comply with state procurement law. Definition of professional services does not include [Internet Access] or [Internal Connections], 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. (See *Exhibit 1*.)

After the PSB's appealed, USAC upheld the denials but on a somewhat different basis. USAC stated that Sections 2212.1 and 2212 "may" have required competitive bidding with respect to the PSB's funding requests, but for any funding requests that fail to meet the dollar thresholds established in Sections 2212 and 2212.1, the RFP requirements of Section 2237 "clearly" apply. Specifically, USAC stated the following:

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.

...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. (Exhibit 2).

III. PSB General Questions and Analysis.

As described above, the PSBs undertook competitive bidding in order to acquire Internet access services and related internal connections (including wiring, equipment and maintenance services). The PSBs agree that to the extent any of the equipment, wiring or maintenance contracts requested by them fall within the definitions of public works, or materials and supplies, and such requests meet the applicable dollar thresholds, Sections 2212 and 2212.1 apply. Whether the PSBs ran afoul of these regulations with respect to the specific funding requests for the 2002-2003 funding year is largely a factual question based upon the specific PSB requests described in the attached summaries.

General Questions. The following general questions result from the SLD / USAC analysis (Questions specifically related to each PSB funding request are contained on the attached summaries):

A. Question: Does Title 38, Chapter 10, Part II of the Louisiana Statutes, LA R.S. §§ 2211, 2212, 2212.1, regarding contracting for public works, the purchase of materials and/or supplies apply to a school parish’s purchase of Internet access services? Is Internet access service considered a “public work” or a “material or supply”? Or is it considered a service contract not subject to any requirement under state law to be competitively bid?

B. Question: Does Title 38, Chapter 10, Part II-B of the Louisiana Statutes, LA R.S. § 2237 *et seq.*, regarding purchase of telecommunications and data processing equipment apply to the purchase of Internet access service? Does it apply to the purchase of related internal connections? If so, is the state requirement, which allows for compliance with

“any other applicable law which governs such acquisitions . . . with respect to awarding of public contracts,” satisfied by PSB compliance with FCC / USAC regulations for electronic competitive bidding?

C. Question: Do the public, competitive bidding procedures undertaken by the PSBs, by posting their requests for Internet access services and internal connections on USAC’s website for 28 days, and entertaining any competitive bids in response thereto, satisfy the Louisiana competitive bidding requirements under the applicable Revised Statutes?

Analysis: Since the Association is not aware of any prior Attorney General decisions regarding the scope of the services or purchases covered under La. R.S. 38:2237, the following is an attempt to offer the Association’s analysis of certain issues related to this statute. La. R.S. 38:2237: Methods of procurement states in part:

La. R.S. 38:2237(A). A political subdivision may lease, rent, or purchase *telecommunications or data processing systems, including equipment, and related services*, through a request for proposals which shall conform to the following requirements: . . . (*emphasis added*)

* * *

La. R.S. 38:2237(B). 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 R.S. 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 request for proposals, written notice of that fact shall be given to all bidders and such notice shall also state that the request for proposals procedure will not be applicable (*emphasis added*).

It does not appear that Internet access services are included within the definition of “telecommunications and data processing systems” or “data processing equipment” or “related services” and therefore subject to Section 2237? “Internet access,” as used within the E-rate Program, refers to “conduit access” to the Internet and is considered an information service. An information service is “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving utilizing or making available information via telecommunications, . . . but does not include any use of any such capability for the management, control, or operation of a telecommunications systems or the management of a telecommunications service.”⁷ The E-rate Program’s description of Internet access is “access to the world-wide information resource of the Internet, and includes features typically provided for adequate functionality and performance.” Integrated services, such as high speed transmission through T-1 lines, DSL, frame relay, etc. are considered to be Internet access.⁸

⁷ 47 U.S.C. § 153(20).

⁸ See Eligible Services List of the Schools and Libraries Support Mechanism at 9 (Oct. 10, 2003).

“Internal connections,” as used within the E-rate Program, are “components located at the applicant site that are necessary to transport information to classrooms, publicly accessible rooms of a library, and to eligible administrative areas or buildings.”⁹ “Telecommunications,” as used within the E-rate Program, is the “transmission between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”¹⁰

Telecommunications

Section 2236 of Title 38 of the Louisiana Revised Statutes defines “telecommunications equipment, systems and related services” to include electronic transmission facilities, data transmission systems, voice transmission systems, telephone services, fax systems, paging services, mobile telephone services, and “systems based on emerging and future telecommunication technologies related to these facilities, systems and services.”¹¹

Internet access, as defined under the E-rate Program, is an unregulated information service separate and apart from regulated telecommunications services. The Louisiana Public Service Commission (the “PSC”), the ultimate authority in Louisiana on telecommunications services, defines “telecommunications service” as “the offering and/or providing of telecommunications for compensation or monetary gain to the public or to such classes of users as to be effectively available to the public regardless of the facilities used.”¹² It defines “telecommunications” as:

The bi-directional transmission of information of the users choosing between or among points specified by the user including voice, data, image, graphics and video *without changing the form or content of the information as sent and received*, by means of an electronic magnetic and/or fiber optic transmission medium including all instrumentalities, facilities, apparatus and services (including the collection, storage, forwarding, switching and delivery of such information) essential to such telecommunications.¹³

These definitions substantially mirror the federal definitions of telecommunications service and telecommunications which are distinct from the definitions of Internet access or information / enhanced services. The PSC requires providers of telecommunications services to receive operating authority and comply with certain regulatory requirements prior to providing service in Louisiana. As noted above, Internet access, and related internal connections by which Internet access is provided, is an enhanced service that does not fall within the definition of telecommunications services. There is no record of the PSC ever regulating Internet access

⁹ See *id.* at 13.

¹⁰ See *id.* at 1 (citing 47 U.S.C. § 153(43)).

¹¹ LA R.S. 38:2236 A. (1) (a)-(i).

¹² *In re: Regulations for Competition in the Telecommunications Market, General Order*, Louisiana PSC (Mar. 15, 1996).

¹³ *Id.* (emphasis added).

bundled with internal connections as a telecommunications service. In fact, the U.S. Court of Appeals for the Fifth Circuit has confirmed that Internet access and related internal connections are not telecommunications services.¹⁴

Data Processing

The Louisiana Statutes do not specifically define “data processing” service or equipment. Section 2236 simply defines data as “recorded information, regardless of form or characteristic.” Other provisions of the Louisiana Statutes refer to data processing, but fail to explicitly define it. It appears, however, that “data processing” relates to automatic computing functions rather than Internet access and related internal connections, which provide more than automatic computer functions.

For example, the Louisiana Criminal Code’s provisions regarding computer related crimes defines “computer” as “an electronic, magnetic, optical or other high-speed *data processing device or system performing logical arithmetic, and storage functions.*”¹⁵ Similarly, Louisiana’s Insurance Code refers to data processing systems as electronic and mechanical machines similar to accounting systems.¹⁶ The Louisiana Code provisions regarding the availability of public documents refer to electronic processing systems separately from information technology systems or telecommunications networks.¹⁷

Furthermore, the Louisiana Attorney General also has indicated that “electronic data processing equipment” refers generally to computers.¹⁸ The Attorney General also has noted that “computer software and hardware” is data processing equipment subject to the procurement rules of Section 2236 *et seq.*¹⁹ The US District Court for the Eastern District of Columbia has indicated that a computer service contract sought by a state political entity is subject to Section 2236.²⁰ The US Court of Appeals for the Fifth Circuit also has noted that “data processing equipment includes a range of devices such as central processing units, magnetic tape drives, line printers, card readers or remote terminals.”²¹

Commonly used federal definitions and industry use of the terms “data processing” and “Internet service” are also distinct. The North American Industry Classification System, which is released by the US Office of Management and Budget, offers the following: “Data processing establishments provide complete processing and specialized reports from data supplied by clients

¹⁴ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 441-443 (5th Cir. 1999) (confirming that Internet access and internal connections are unregulated information services rather than regulated telecommunication services).

¹⁵ LA R.S. 14:73.1(2) (emphasis added).

¹⁶ LA R.S. 22:855(11).

¹⁷ LA R.S. 44:1(A)(2).

¹⁸ See La Atty. Gen. Op. No. 2001-82 (Feb. 26, 2002).

¹⁹ See La Atty. Gen. Op. No. 93-129 (Mar. 8, 1993); see also La Atty. Gen. Op. No. 83-180 (Mar. 15, 1983) (referring to computer equipment and systems as data processing equipment).

²⁰ *Lockheed Martin IMS Corp. v. Jefferson Parish School Board*, 2000 US Dist. Lexis 7935 (E.La. 2000).

²¹ See *Datapoint Corp. v. Lee Way Motor Freight, Inc.*, 572 F.2d 1128, 1132 (5th Cir. 1978).

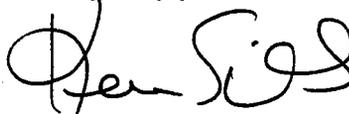
or provide automated data processing and data entry services.”²² Establishments in the Internet service provider industry provide “clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”²³

Accordingly, it appears that neither the federal government, nor industry, nor the Attorney General of Louisiana, nor the courts, nor the Louisiana PSC have ever equated “Internet access” and related internal connections with “data processing” services. Rather, it is common industry practice to equate data processing with mainframe data process services, automated computing services and related software and hardware.

Attached is a description of the services requested by each of the 14 PSBs with related questions about whether the PSBs complied with Louisiana procurement laws when they requested specific Internet access services and related internal connections. The Association respectfully requests the Attorney General’s advice on the general questions set forth in this cover memorandum and the specific questions set forth on each PSB summary.

With kindest personal regards, I remain

Very truly yours,



KENNETH F. SILLS

KFS/mf
Enclosures

²² Executive Office of the President Office of Management and Budget, North American Industry Classification System United States, 2002, “Data Processing, Hosting, and Related Services,” *available at* <http://www.census.gov/epcd/naics02/def/ND518210.HTM>.

²³ Executive Office of the President Office of Management and Budget, North American Industry Classification System United States, 2002, “Internet Service Providers,” *available at* <http://www.census.gov/epcd/naics02/def/ND518111.HTM>.

School Parish #1 (Lincoln)

Description of Services Requested by Schools:

On November 1, 2001, the PSB submitted a bid request (FCC Form 420), posted on USAC's website for 28 days, seeking competitive bids for Internet access service for 20 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 20 schools, Internet centralized e-mail support bundled with the Internet access, and school level networking support services for Internet service.

Specific Request with Dollar Amounts:

Internet Access Service:	\$94,800
--------------------------	----------

Questions for Attorney General:

Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access service?

School Parish #2 (DeSoto)

Description of Services Requested by Schools:

On November 16, 2001, the PSB submitted a bid request (FCC Form 470), posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 17 school sites in the parish. The Internet access service requested by the PSB included Internet access and e-mail for schools. The PSB also requested internal connections for 5 individual schools including individual maintenance and services agreements for each school site to provide technical services and support for software maintenance and periodic updates of server, router, switch and related equipment.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$51,480
(2) Internal Connections:	
Network equipment maintenance contract (Individual request for each of 5 school sites)	\$ 6,000

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections (maintenance contracts)?
2. Was there any requirement in Louisiana law to advertise for bids for the internal connections (maintenance contracts)?

3. May PSB purchase equipment on the State bid list without the requirement for advertising for bids?

School Parish #3 (Franklin)

Description of Services Requested by Schools:

On October 10, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 11 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 11 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections including network equipment maintenance for six schools including Internet network support and installation services.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$112,200
(2) Internal Connections for each of 6 school sites: Network equipment maintenance contract	\$ 6,000

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections (maintenance contracts)?
2. Was there any requirement in Louisiana law to advertise for bids for the internal connections (maintenance contracts)?
3. May PSB purchase equipment on the State bid list without the requirement for advertising for bids?

School Parish #4 (Morehouse)

Description of Services Requested by Schools:

On October 10, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 17 school sites in the parish. In addition, the PSB advertised the request three times. The Internet access service requested by the PSB included high speed T1 access for 17 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections including individual contracts for network equipment maintenance for Internet access and onsite technical support for each of the 17 school sites, and Category 5 (CAT 5) network wireplan maintenance for each school site.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$104,400
(2) Internal Connections for each of 15 school sites:	
(a) Network equipment maintenance contract	\$ 3,400
(b) CAT 5 network wireplan maintenance	\$ 2,625

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections (network maintenance and wireplan maintenance contracts)?
2. Was there any requirement in Louisiana law to advertise for bids for the internal connections (network maintenance and wireplan maintenance contracts)?
3. May PSB purchase equipment on the State bid list without the requirement for advertising for bids?

School Parish #5 (Richland)

Description of Services Requested by Schools:

On October 12, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 14 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 14 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also made separate requests for internal connections including wireplan maintenance for several sites and onsite technical support.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$72,180
(2) Internal Connections for each of the 11 school sites:	
Network equipment maintenance contract	\$ 6,000

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections (maintenance contract)?
2. Was there any requirement in Louisiana law to advertise for bids for the internal connections (maintenance contracts)?

3. May PSB purchase equipment on the State bid list without the requirement for advertising for bids?

School Parish #6 (Bienville)

Description of Services Requested by Schools:

On November 13, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 11 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 11 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections and minor product purchases. The PSB sought a contract for materials and labor to install Category 5 (CAT 5 Drop Installations) network wiring for 10 school sites in the parish, maintenance services for 2 Cisco network routers (Cisco 3640 and Cisco 1600) that route Internet access service to the PSB's central site and the schools; an uninterruptible power supply (APC UPS 1400) as battery backup for the servers and routers that support the Internet access service to all school sites; and joint school level maintenance for Internet access services including on-site maintenance and technical support for 11 school sites.

Specific Requests with Dollar Amounts:

(1)	Internet Access Service	\$94,400
(2)	Internal Connections	
	(a) CAT 5 Drop Installations	\$15,000
	(b) Cisco 3640 Maintenance	\$ 950
	(c) Cisco 1600 Maintenance	\$ 2,160
	(d) APC UPS 1400	\$ 6,600
	(e) Router and Network Installation and Maintenance	\$62,400

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections (network wiring, server maintenance, power supply purchase, router and network maintenance)?
2. Since the CAT 5 Drop installations did not exceed \$100,000.00 was there any requirement to comply with La. R.S. 38:2212?
3. Was there any requirement in Louisiana law to advertise for bids for the internal connections (network wiring, server maintenance, power supply purchase, router and network maintenance)?
4. May PSB purchase equipment on the State bid list without the requirement for advertising for bids?

School Parish #7 (Caldwell)

Description of Services Requested by Schools:

On October 10, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 7 school sites in the parish. The PSB requested high speed Internet access service and email support for all schools including support for Internet installation and setup in each school. The PSB also requested internal connections and minor product purchases. The PSB sought individual contracts for school level maintenance, upgrades and support for Internet access for each of the 7 sites; an uninterruptible power supply for emergency power / battery back-up for the Internet router in each school (APC UPS#SU1400RMU); and mini hubs / switches for each school to allow shared Internet access to multiple computers without additional wiring upgrades.

Specific Requests with Dollar Amounts:

(1) Internet Access Service	\$61,560
(2) Internal Connections for each of 7 school sites:	
(a) Network Equipment Maintenance Contract	\$ 3,000
(b) APC <u>UPS#SU1400RMU</u> (for router)	\$ 651
(c) Mini-switch, generic 5 port	\$ 225

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections (maintenance contracts, power supply purchase, and mini-switches for schools)?
2. Was there any requirement in Louisiana law to advertise for bids for the internal connections (maintenance contracts, power supply purchase, and mini-switches for schools)?
3. May PSB purchase equipment on the State bid list without the requirement for advertising for bids?

School Parish #8 (Catahoula)

Description of Services Requested by Schools:

On December 6, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 11 school sites in the parish. The Internet access service requested by the PSB included high speed Internet access for 11 school sites, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections and minor product purchases. The PSB sought individual contracts for school level maintenance for Internet and network services and equipment for 11 sites; it sought the purchase and installation of central network switches for each of 11 schools sites (HP 4000 Switch) for the Internet access service; and it sought the purchase and installation two battery backup units at each school site to provide enhanced speed throughput for Internet traffic and backup power for the Internet routers (APC 1400 UPS).

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$69,780
(2) Internal Connections for each of the 11 school sites:	
(a) Network Equipment Maintenance Contract	\$ 3,000
(b) HP 4000 Switch or equivalent	\$ 1,640
(c) APC 1400 UPS	\$ 1,100

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections (maintenance contracts, switch purchases and power back-up)?
2. Was there any requirement in Louisiana law to advertise for bids for the internal connections (maintenance contracts, switch purchases and power back-up)?
3. May PSB purchase equipment on the State bid list without the requirement for advertising for bids?

School Parish #9 (Claiborne)

Description of Services Requested by Schools:

On December 17, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 13 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 13 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections and minor product purchases. The PSB sought a single, shared contract for school level technical support and maintenance for Internet services for all 13 school sites, and installation of Category 5 (CAT 5) network wiring, including materials and labor, for 3 schools in the PSB.

Specific Requests with Dollar Amounts:

(1) Internet Access Service	\$82,080
(2) Internal Connections:	
(a) Network equipment maintenance contract	\$30,000
(b) CAT 5 installation per construction (Homer High)	\$ 9,375
(c) CAT 5 installation per construction (Homer Jr)	\$ 9,375
(d) CAT 5 Installation per construction (Homer Elem)	\$13,125

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections (maintenance contract and installation of network wiring)?
2. Was there any requirement in Louisiana law to advertise for bids for the internal connections (maintenance contract and installation of network wiring)?
3. May a school Board purchase equipment on the State bid list without the requirement for advertising for bids?

School Parish #10 (Madison)

Description of Services Requested by Schools:

On October 8, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 8 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 8 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections and minor product purchases including purchase and installation of mini hubs / switches for each school to allow shared Internet access to multiple computers without additional wiring upgrades, and shared maintenance services and technical support for Internet access to all 8 school sites.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$82,680
(2) Internal Connections:	
(a) Mini-hubs, 5 port generic (50)	\$ 2,750
(b) Mini-hubs, 8 port generic (50)	\$ 4,250
(c) Network equipment, installation and maintenance	\$62,500

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections (purchase and installation of mini-hubs / switches and a maintenance contract)?

2. Was there any requirement in Louisiana law to advertise for bids for the internal connections (purchase and installation of mini-hubs / switches and a maintenance contract)?
3. May PSB purchase equipment on the State bid list without the requirement for advertising for bids?

School Parish #11 (Tensas)

Description of Services Requested by Schools:

On October 10, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 7 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 7 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also made requests for internal connections and minor product purchases including a joint request for network maintenance service for the Internet services for all 7 school sites, onsite technical support, and the purchase and installation of switch upgrades for enhanced network and Internet services (Nortel 350).

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$76,080
(2) Internal Connections:	
(a) Network Equipment maintenance contract	\$31,200
(b) Nortel 350 – 24 port switches or equivalent (6 @ \$1,370)	\$ 8,220
(Purchased under state bid list.)	

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections (purchase and installation of switch upgrades and a maintenance contract)?

2. Was there any requirement in Louisiana law to advertise for bids for the internal connections (purchase and installation of switch upgrades and a maintenance contract)?
3. May PSB purchase equipment on the State bid list without the requirement for advertising for bids?

School Parish #12 (Webster)

Description of Services Requested by Schools:

On November 9, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 23 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 23 school sites, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also made requests for internal connections and product purchases including, for 2 school sites, purchasing, installing and maintaining telephone switches (not including telephone sets) in each location which included re-cabling buildings and installation of components. The telephone switches were purchased by the PSBs under the Louisiana State bid list. For each school site, the PSB made individual requests for network equipment maintenance including maintenance of servers, wiring, routers, hubs, switches, and related equipment for Internet access service at each location. The PSB also requested installation of switches in each school location (Nortel Baystack 450) to enhance Internet performance, and the purchase and installation of an uninterruptible power supply in each school location (APC UPS #SU1400RM2U) to provide protection to the router and central switch for Internet access.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$130,980
(2) Internal Connections:	
(a) Nortel Networks telephone switch (Minden)	\$ 18,255
(b) Nortel Networks telephone switch (Springhill Jr)	\$ 15,030
(Both bought pursuant to the Louisiana State bid list)	

For each of 22 school sites, the PSB requested:

(c) Network Equipment Maintenance Contract	\$ 4,000
(d) Nortel Baystack 450 or equiv. 24 port switch	\$ 1,370
(e) APC UPS #SU1400RM2U (for router)	\$ 651

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections?
2. Was there any requirement in Louisiana law to advertise for bids for the internal connections?
3. May PSB purchase equipment on the State bid list without the requirement for advertising for bids?

School Parish #13 (Winn)

Description of Services Requested by Schools:

On December 5, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 12 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 12 school sites, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also made requests for internal connections and product purchases including for each of the 12 school sites, separate requests for school level maintenance for Internet service and on-site technical support; and for 10 of the school sites, the PSB sought a complete overhaul of the internal wiring for each site including installation of new Category 5 network wiring, labor and materials.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$51,480
(2) Internal Connections:	
(a) Network router, server, switch maintenance for each of 10 sites	\$ 3,000
(b) School wireplan installation per quote (Atlanta Elem & High)	\$24,190
(c) School wireplan installation per quote (Calvin Elem & High)	\$18,440
(d) School wireplan installation per quote (Dodson Elem & High)	\$18,480
(e) School wireplan installation per quote (Winnfield Intermed)	\$12,072
(f) School wireplan installation per quote (Winnfield Kind.)	\$ 6,583
(g) School wireplan installation per quote (Winnfield Middle)	\$17,705
(h) School wireplan installation per quote (Winnfield Primary)	\$ 9,506
(i) School wireplan installation per quote (Winnfield Senior)	\$13,118
(j) School wireplan installation per quote (Kindergarden Annex)	\$18,798
(k) School wireplan installation per quote (District Shared)	\$ 3,459

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections (maintenance contracts and installation of internal wiring)?
2. Was there any requirement in Louisiana law to advertise for bids for the internal connections (maintenance contracts and installation of internal wiring)?
3. May PSB purchase equipment on the State bid list without the requirement for advertising for bids?

School Parish #14 (Concordia)

Description of Services Requested by Schools:

On November 29, 2001, the PSB submitted a bid request, posted on USAC's website for 28 days, seeking competitive bids for Internet access service and internal connections for 13 school sites in the parish. The Internet access service requested by the PSB included high speed T1 access for 13 schools, Internet e-mail support bundled with the Internet access, and school level maintenance and installation for Internet service. The PSB also requested internal connections and minor product purchases for individual schools as detailed below. The individual requests for each school included maintenance service contracts, technical service and support for PSB Internet access equipment and telephone switches in each of the 13 schools; purchase, installation, and maintenance of network servers (36 GB SCSI Seagate Baracuda, for Dell Server), memory upgrades for such servers (256 MB upgrade for Dell Server); and installation of fiber optic modules or links, including construction, materials and labor, to upgrade the Internet network between building segments at selected school sites as described below in order to provide faster network speed.

Specific Requests with Dollar Amounts:

(1) Internet Access Service:	\$74,880
(2) Different Internal Connections requests were made for each school as follows:	
(a) Network & Telephone Maintenance Contract	\$ 3,000
(b) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(c) 256 MB upgrade for Dell Server	\$ 135
Total – Ferriday Education Center	\$ 3,740
<hr/>	
(d) Network & Telephone Maintenance Contract	\$ 3,000
(e) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(f) 256 MB upgrade for Dell Server	\$ 135
(g) Install fiber optics run; materials & labor (New Building)	\$ 1,950
(h) Install fiber optics run; materials & labor (Bus Ed Room)	\$ 3,100
Total – Ferriday High	\$ 8,970
(i) Network & Telephone Maintenance Contract	\$ 3,000
(j) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(k) 256 MB upgrade for Dell Server	\$ 135
(l) Install fiber optics run; materials & labor (Ed Annex)	\$ 4,300
Total – Ferriday Jr. High	\$ 8,040
(m) Network & Telephone Maintenance Contract	\$ 3,000
(n) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(o) 256 MB upgrade for Dell Server	\$ 135
(p) Install 3 fiber optics runs; materials & labor	\$ 5,560

Total – Ferriday Lower Elem	\$ 9,300
(q) Network & Telephone Maintenance Contract	\$ 3,000
(r) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(s) 256 MB upgrade for Dell Server	\$ 135
(t) Install 2 fiber optics runs; materials & labor	\$ 3,400
Total – Ferriday Lower Elem	\$ 7,140
(u) Network & Telephone Maintenance Contract	\$ 3,000
(v) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(w) 256 MB upgrade for Dell Server	\$ 135
(x) Install fiber optics run; materials & labor (lower wing)	\$ 2,700
(y) Install fiber optics run; materials & labor (upper wing)	\$ 2,700
(z) Install fiber optics run; materials & labor (new wing)	\$ 1,400
Total – Monterey Elem-High	\$10,540
(aa) Network & Telephone Maintenance Contract	\$ 3,000
(bb) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(cc) 256 MB upgrade for Dell Server	\$ 135
(dd) Install fiber optics run; materials & labor	\$ 1,100
Total – Ridgecrest Elem	\$ 4,840
(ee) Network & Telephone Maintenance Contract	\$ 3,000
(ff) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(gg) 256 MB upgrade for Dell Server	\$ 135
(hh) Install fiber optics run; materials & labor (wing)	\$ 1,600
(ii) Install fiber optics run; materials & labor (Library)	\$ 1,400
Total – Vidalia High	\$ 6,740
(jj) Network & Telephone Maintenance Contract	\$ 3,000
(kk) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(ll) 256 MB upgrade for Dell Server	\$ 135
(mm) Install fiber optics run; materials & labor (wing)	\$ 1,500
(nn) Install fiber optics run; materials & labor (Library)	\$ 1,700
(oo) Install fiber optics run; materials & labor (Library)	\$ 2,900
Total – Vidalia High	\$ 9,840
(pp) Network & Telephone Maintenance Contract	\$ 3,000
(qq) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(rr) 256 MB upgrade for Dell Server	\$ 135
(ss) Install fiber optics run; materials & labor (new wing)	\$ 2,300
(tt) Install fiber optics run; materials & labor (annex)	\$ 2,300
Total – Vidalia Lower Elem	\$ 8,340

(uu) Network & Telephone Maintenance Contract	\$ 3,000
(vv) 36 GB SCSI Seagate Baracuda, for Dell Server	\$ 605
(ww) 256 MB upgrade for Dell Server	\$ 135
(xx) Install fiber optics run; materials & labor (new wing)	\$ 1,700
(yy) Install fiber optics run; materials & labor (2 wings)	\$ 1,300
Total – Vidalia Upper Elem	\$ 8,040
(zz) Network & Telephone Maintenance Contract	\$ 3,000
Total – PSB Service	\$ 3,000

Questions for Attorney General:

1. Was there any requirement under Louisiana law (Revised Statutes 2212, 2212.1 or 2237) for the PSB to bid for or provide a request for proposals before contracting for the foregoing Internet access services or internal connections?
2. Was there any requirement in Louisiana law to advertise for bids for the internal connections?
3. May a PSB purchase equipment on the State bid list without the requirement for advertising for bids?

LOUISIANA SCHOOL BOARDS ASSOCIATION

RESOLUTION:

On motion of John Beck, seconded by Brenda Shelling and with the unanimous vote of the Executive Committee, the Executive Committee of the Louisiana School Boards Association authorizes the Board's law firm, Hammonds and Sills, to contact the office of the Attorney General for an opinion concerning the applicability of certain sections of Louisiana Title 38 in connection with e-rate funding requests filed by parish school boards in the State of Louisiana.

CERTIFICATE

I, the undersigned Executive Director-Treasurer of the Louisiana School Boards Association, do hereby certify that the above and foregoing is a true copy of a Resolution adopted by the Executive via a telephone conference call and that the same is in full force and effect.

BATON ROUGE, LOUISIANA, this 9th day of July 2004.



**W.F. "Freddie" Whitford
Executive Director-Treasurer
Louisiana School Boards Association**



FUNDING COMMITMENT DECISION LETTER

(Funding Year 2002: 07/01/2002 - 06/30/2003)

January 22, 2004

LINCOLN PARISH SCHOOL DISTRICT
Debbie Sandidge
410 S FARMERVILLE ST
RUSTON, LA 71270-4655

Re: Form 471 Application Number: 302051
Funding Year 2002: 07/01/2002 - 06/30/2003
Billed Entity Number: 139324
Applicant's Form Identifier: 031A5

Thank you for your Funding Year 2002 E-rate application and for any assistance you provided throughout our review. We have completed review of your Form 471. This letter is to advise you of our decision(s).

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. We have reviewed each Discount Funding Request on your Form 471 application and have assigned a Funding Request Number (FRN) to each Block 5. The enclosed report includes a list of the FRNs from your application. The SLD is also sending this information to your service provider(s) so preparations can be made to begin implementing your E-rate discount(s) upon the filing of your Form 486. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

NEXT STEPS

FILE FORM 486. Once you have reviewed this letter and have determined that some or all of your requests have been funded, your next step to facilitate receipt of discounts as featured in this letter will be to file an FCC Form 486 with the SLD. The Form 486 notifies the SLD to begin payment to your service provider and provides certified indication that your technology plan(s) has been approved by an SLD certified Technology Plan Approver. The Form 486 and instructions and the list of SLD certified Technology Plan Approvers can be found on the SLD web site at <www.sl.universalservice.org> or you can call the SLD Client Service Bureau at 1-888-203-8100 and ask that the form be sent to you. The Form 486 dated August 2003 in the lower right corner MUST be used for ALL Funding Years. Submissions of earlier versions of the Form 486 will be returned to you and will not be able to be processed. As you complete Form 486, you should also contact your service provider to verify they have received notice from the SLD of your funding commitments. After the SLD processes your Form 486, we can process invoices for services that have been provided to you.

DEADLINE FOR FORM 486. Form 486 must be postmarked no later than 120 days after the Service Start Date featured on the Form 486 or no later than 120 days after the date of the Funding Commitment Decision Letter, whichever is later. If the Form 486 is postmarked after the later of those two dates, the date 120 days before the Form 486 postmark date will become the start date for discounted services. If the service start date is moved, your funding commitment may be reduced. You are advised to keep proof of the date of mailing of your form(s).

EXHIBIT

tabbles

REVIEW CIPA REQUIREMENTS. On December 21, 2000, the Children's Internet Protection Act (CIPA) was signed into law. That law requires schools and libraries that receive Universal Service discounts for certain services to adopt an Internet safety policy incorporating the use of filtering or blocking technology on computers with Internet access as a condition of receiving those discounts. Funding Year 2002 may be the Second Funding Year for purposes of CIPA for one or more schools and/or libraries represented on your Form 486. (Funding Year 2002 is the Second Funding Year for purposes of CIPA for a school or library if a Form 486 for Internet access or internal connections was successfully data entered for Funding Year 2001. See the section of the Form 486 Instructions entitled "Impact of CIPA Requirements on Form 486" for more information on First, Second and Third Funding Years.) If Funding Year 2002 is the Second Funding Year for purposes of CIPA for one or more schools and/or libraries represented on your Form 486, those school(s) and/or library(ies) must certify that they are in compliance with CIPA unless state or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required. A school or library so prevented may request a waiver for Funding Year 2002. Certification(s) for purposes of CIPA and CIPA waiver request(s) must be made on the Form 486 or the Form 479, whichever is appropriate. See the Form 486 Instructions and the Form 479 Instructions for more information. You may also refer to the SLD web site at <www.sl.universalservice.org> or call the Client Service Bureau at 1-888-203-8100 for more information about Form 486, Form 479, and the requirements of CIPA.

FILE FORM 472 (APPLICANT) or FORM 474 (SERVICE PROVIDER). After a Form 486 has been properly filed, the SLD must receive an invoice from either the applicant or the service provider in order to make payments for approved discounts on eligible services. Form 472, Billed Entity Applicant Reimbursement (BEAR) Form, is filed by the applicant; Form 474, Service Provider Invoice Form, is filed by the service provider.

NEW DEADLINES FOR INVOICES. Invoices must be postmarked no later than 120 days after the last date to receive service or no later than 120 days after the date of the Form 486 Notification Letter, whichever is later. If an invoice is postmarked after the later of those two dates, payment will be denied.

TO APPEAL THESE FUNDING COMMITMENT DECISIONS

If you wish to appeal the decision indicated in this letter, your appeal must be POSTMARKED within 60 days of the above date on 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 Funding Commitment Decision(s) you are appealing. Indicate the relevant funding year and the date of the FC DL. Your letter of appeal must also include the Billed Entity Name, the Form 471 Application Number, and the Billed Entity Number from the top of your FC DL.
3. ~~When explaining your appeal, copy the language or text from the Funding Commitment Report that is at the heart of your appeal to allow the SLD to more readily understand appeal and respond appropriately. 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 or by contacting the Client Service Bureau. We encourage the use of either the e-mail or fax filing options.

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 No. 02-6 on the first page of your appeal to the FCC. Your appeal must be 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 calling the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the universal service mechanisms for schools and libraries. FCC Form 471 Applicants who have received funding commitments continue to be subject to audits and other reviews that SLD or the Federal Communications Commission may undertake periodically to assure that funds have been committed and are being used in accordance with all such requirements. If the SLD subsequently determines that its commitment was erroneously issued due to action or inaction, including but not limited to that by SLD, the Applicant, or Service Provider, and that the action or inaction was not in accordance with such requirements, SLD may be required to cancel these funding commitments and seek repayment of any funds disbursed not in accordance with such requirements. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC), may pursue enforcement actions and other means of recourse to collect erroneously disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

We look forward to continuing our work with you on connecting our schools and libraries through advanced telecommunications services.

Sincerely,

Schools and Libraries Division
Universal Service Administrative Company

Enclosures

A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each E-rate funding request from your application. We are providing the following definitions.

FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each 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.

FUNDING STATUS: Each FRN will have one of the following definitions:

1. An FRN that is "Funded" will be approved at the level that SLD determined is appropriate for that item. The funding level will generally be the level requested unless the SLD determines during the application review process that some adjustment is appropriate.
2. An FRN that is "Not Funded" is one for which no funds will be committed. The reason for the decision will be briefly explained in the "Funding Commitment Decision," and amplification of that explanation may be offered in the section, "Funding Commitment Decision Explanation." An FRN may be "Not Funded" because the request does not comply with program rules, or because the total amount of funding available for this Funding Year was insufficient to fund all requests.
3. An FRN that is "As Yet Unfunded" reflects a temporary status that is assigned to an FRN when the SLD is uncertain at the time the letter is generated whether there will be sufficient funds to make commitments for requests for internal connections at a particular discount level. For example, if your application included requests for discounts on both telecommunications services and internal connections, you might receive a letter with our funding commitment for your telecommunications funding requests and a message that your internal connections requests are "As Yet Unfunded." You would receive a subsequent letter(s) regarding the funding decision on your internal connections requests.

SERVICES ORDERED: The type of service ordered from the service provider, as shown on 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 mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

SERVICE PROVIDER NAME: 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.

~~**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 Form 471.~~

EARLIEST POSSIBLE EFFECTIVE DATE OF DISCOUNT: The first possible date of service for which the SLD will reimburse service providers for the discounts for the service.

CONTRACT EXPIRATION DATE: The date the contract expires. This will be present only if a contract expiration date was provided on Form 471.

SITE IDENTIFIER: The Entity Number listed in Form 471, Block 5, Item 22a will be listed. This will appear only for "site specific" FRNs.

ANNUAL PRE-DISCOUNT AMOUNT FOR ELIGIBLE RECURRING CHARGES: Eligible monthly pre-discount amount approved for recurring charges multiplied by number of months of recurring service provided in the funding year.

ANNUAL PRE-DISCOUNT AMOUNT FOR ELIGIBLE NON-RECURRING CHARGES: Annual eligible non-recurring charges approved for the funding year.

PRE-DISCOUNT AMOUNT: Amount in Form 471, Block 5, Item 23, Column I, as determined through the application review process.

DISCOUNT PERCENTAGE APPROVED BY THE SLD: This is the discount rate that the SLD has approved for this service.

FUNDING COMMITMENT DECISION: This represents the total amount of funding that the SLD has reserved to reimburse service providers for the approved discounts for this service for this funding year. It is important that you and the service provider both recognize that the SLD should be invoiced and the SLD may direct disbursement of discounts only for eligible, approved services actually rendered.

FUNDING COMMITMENT DECISION EXPLANATION: This entry may amplify the comments in the "Funding Commitment Decision" area.

FUNDING COMMITMENT REPORT

Form 471 Application Number: 302051
Funding Request Number: 776890 Funding Status: Not Funded
Services Ordered: Internet Access
SPIN: 143010002 Service Provider Name: Send Technologies, L.L.C.
Contract Number: SEND2002-15
Billing Account Number: 318-255-1430
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2005
Annual Pre-discount Amount for Eligible Recurring Charges: \$94,800.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$94,800.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision 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: 852128 Funding Status: Not Funded
Services Ordered: Internal Connections
SPIN: 143024670 Service Provider Name: Ronnie C. Smith dba RCS Networki
Contract Number: 10310
Billing Account Number: 318-255-1430
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Site Identifier: 81678
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$3,500.00
Pre-discount Amount: \$3,500.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision 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: 852227 Funding Status: Not Funded
Services Ordered: Internal Connections
SPIN: 143024670 Service Provider Name: Ronnie C. Smith dba RCS Network:
Contract Number: 10310
Billing Account Number: 318-255-1430
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Site Identifier: 81624
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$3,500.00
Pre-discount Amount: \$3,500.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision 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: 852320 Funding Status: Not Funded
Services Ordered: Internal Connections
SPIN: 143024670 Service Provider Name: Ronnie C. Smith dba RCS Network:
Contract Number: 10310
Billing Account Number: 318-255-1430
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Site Identifier: 211852
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$3,500.00
Pre-discount Amount: \$3,500.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision 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 COMMITMENT REPORT

Form 471 Application Number: 302051
 Funding Request Number: 852336 Funding Status: Not Funded
 Services Ordered: Internal Connections
 SPIN: 143024670 Service Provider Name: Ronnie C. Smith dba RCS Networks
 Contract Number: 10310
 Billing Account Number: 318-25501430
 Earliest Possible Effective Date of Discount: 07/01/2002
 Contract Expiration Date: 06/30/2003
 Site Identifier: 81677
 Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$3,500.00
 Pre-discount Amount: \$3,500.00
 Discount Percentage Approved by the SLD: N/A
 Funding Commitment Decision: \$0.00 - Bidding Violation
 Funding Commitment Decision 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: 852599 Funding Status: Not Funded
 Services Ordered: Internal Connections
 SPIN: 143022153 Service Provider Name: Howard Computers
 Contract Number: TC234174
 Billing Account Number: 318-255-1430
 Earliest Possible Effective Date of Discount: 07/30/2002
 Contract Expiration Date: 06/30/2003
 Site Identifier: 81678
 Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$4,516.00
 Pre-discount Amount: \$4,516.00
 Discount Percentage Approved by the SLD: N/A
 Funding Commitment Decision: \$0.00 - Bidding Violation
 Funding Commitment Decision 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: 852633 Funding Status: Not Funded
 Services Ordered: Internal Connections
 SPIN: 143022153 Service Provider Name: Howard Computers
 Contract Number: TC234174
 Billing Account Number: 318-255-1430
 Earliest Possible Effective Date of Discount: 07/01/2002
 Contract Expiration Date: 06/30/2003
 Site Identifier: 81624
 Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$4,516.00
 Pre-discount Amount: \$4,516.00
 Discount Percentage Approved by the SLD: N/A
 Funding Commitment Decision: \$0.00 - Bidding Violation
 Funding Commitment Decision 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: 852692 Funding Status: Not Funded
 Services Ordered: Internal Connections
 SPIN: 143022153 Service Provider Name: Howard Computers
 Contract Number: TC234174
 Billing Account Number: 318-255-1430
 Earliest Possible Effective Date of Discount: 07/01/2002
 Contract Expiration Date: 06/30/2003
 Site Identifier: 211852
 Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$4,516.00
 Pre-discount Amount: \$4,516.00
 Discount Percentage Approved by the SLD: N/A
 Funding Commitment Decision: \$0.00 - Bidding Violation
 Funding Commitment Decision 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.

~~852692~~

FUNDING COMMITMENT REPORT

Form 471 Application Number: 302051
Funding Request Number: 852708 Funding Status: Not Funded
Services Ordered: Internal Connections
SPIN: 143022153 Service Provider Name: Howard Computers
Contract Number: TC234174
Billing Account Number: 318-255-1430
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Site Identifier: 81677
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$4,516.00
Pre-discount Amount: \$4,516.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision 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.



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

June 24, 2004

Kenneth F. Sills
Hammonds and Sills
P.O. Box 65236
Baton Rouge, LA 70896

Re: Lincoln Parish School District

Re: Billed Entity Number: 139324
471 Application Number: 302051
Funding Request Number(s): 776890
Your Correspondence Dated: March 22, 2004

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: 776890
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 profess 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 Lincoln Parish School Board (Lincoln). Your opinion is that the statute does not apply in this case because the Lincoln 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 declare that the Louisiana Procurement laws do not apply to Lincoln 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. Essentially, you make the assertion that Lincoln is exempt from state procurement law. You request that the SLD nullify the issued Funding Commitment Decision Letter of January 22, 2004.

- After a thorough review of the appeal, it was determined that during the course of an Item 25 review, and through your own admission, Lincoln 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 Technologies, 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.

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

Schools and Libraries Division
Universal Service Administrative Company

Cc: Mark Stevenson
SEND Technologies, LLC
2904 Evangeline Street
Monroe, LA 71201

Debbie Sandidge
Lincoln Parish School District
410 South Farmerville Street
Ruston, LA 71270



Universal Service Administrative Company
Schools & Libraries Division

Further Explanation of the Administrator's Decision on Appeal

June 24, 2004

Appeal Decision
Lincoln Parish School District
Form 471 Application Number: 302051
Funding Year 2002

FRNs: 776890

I. Background

SEND Technologies, 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 technical excellence; management capability, including schedule compliance; and environmental objectives.” *Id.*

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

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 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

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.

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 . . .

* * * *

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.

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

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 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.

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.

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**