

September 12, 2006

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Request for Review

CC Docket No. 02-6

CC Docket No. 96-45

The Sunnyside Unified School District 12 (“Sunnyside”), by its representative, requests that the Commission review a Schools and Libraries Division (“SLD”) decision denying E-Rate funding. This request for review relates to the following:

Billed Entity Applicant Name:	Sunnyside Unified School District 12
Funding Request Numbers:	1269503, 1269535, 1269550, 1269587, 1269622, 1269654
Form 471 Application Number:	451167
Contact Name:	Dr. John Cox
Contact Phone Number:	520-545-2011
Contact Fax Number:	520-545-2128
Contact Email:	johnc@susd12.org

Sunnyside was denied E-Rate funding for each of the above Funding Requests Numbers (FRN’s) because of an alleged contract violation for Funding Year 2005-2006. Appeal letters for each of the denied FRNs were emailed to the SLD on January 13, 2006. A letter of denial issued by the SLD was received by Sunnyside on August 10, 2006.

The SLD contends that the contracts for the requested services were not signed and dated by both the applicant and the service provide prior to the filing of the Form 471 on February 18, 2005. A copy of the SLD denial letter is attached as Attachment A.

FACTS

In anticipation of filing a 2005 funding year request for E-Rate support, Sunnyside filed a Form 470 for both Priority One and Two services. Sunnyside waited for more than 28 days, and then began the process of evaluating bidders for the requested services. After the 28 day waiting period, Dr. John Cox, Sunnyside Assistant Superintendent and designated agent for filing the district's 2005-06 E-Rate application, conducted the bid evaluation process and began the process of bid awards. Attachment B is a copy of the October 26, 2005 Governing Board action approving Dr. Cox as the Sunnyside agent with full authority for filing the 2005-2006 E-Rate application.

On February 8, 2005, the Governing Board of Sunnyside considered the bid awards and approved the recommended contracts to be submitted for E-rate funding. A copy of the February 8, 2005 agenda item approved by the Governing Board where the contract awards for 2005-2006 E-Rate Funding were authorized is attached as Attachment C. Notation: Since the Governing Board action of February 8, 2005 approved more than the six (6) contracts being referenced in this FCC appeal, the contracts applicable to this FCC appeal are identified with the corresponding FRN referenced in this appeal.

Dr. Cox, as Sunnyside agent, prepared the appropriate Award Letter and Contract for each approved contract with the awarded vendor. The date of Sunnyside Governing Board contract award approval of February 8, 2005 was used as the date for the Award Letter and Contracts for the corresponding FRN's 1269550, 1269535, 1269654, 1269622, 1269587, and 1268503. Since Dr. Cox, as Sunnyside agent, had begun the contracting process prior to the Governing Board meeting of February 8, 2005, the Award Letter and Contract issued to Mountain Telecommunications, Inc., referenced by FRN 1269503, was dated January 24, 2005 and approved as a contract on February 8, 2005.

After receiving Governing Board approval of contracts listed above, Dr. Cox proceeded to issue the Award Letter and Contract to each vendor for each of the eligible Priority One services contracted by the Governing Board. Attachment D contains a copy of each award letter and contract issued with the referenced FRN indicated on each award. Dr. Cox hereby affirms that he signed each of the dated award letters and contracts on behalf of Sunnyside and each awarded vendor signed award letter prior to the filing of the Form

471 on February 18, 2005. Attachment E contains the notarized documents of all vendors stating that the signatures on the award letters and contracts were executed prior to the Sunnyside filing of the Form 471 on February 18, 2005 and were, therefore, valid, enforceable contracts.

Under the Contract Guidance section of the SLD entitled CONTRACTS, the SLD states: “Applicants must be able to demonstrate that they had a signed contract in place before or at the time they submitted their completed Form 471, section FCC 54.504c.” Attachment F contains the Contract Guidance for Contracts in effect on 12/7/2005. To further support the fact Sunnyside had signed contracts with all service providers before signing and submitting a completed (certified) Form 471, Sunnyside contacted the law firm of DeConcini, McDonald, Yetwin, & Lacy in Tucson, Arizona to review the Procurement/Contract actions taken by “Sunnyside” prior to February 18, 2005 and to ascertain whether a valid and enforceable contract exists under applicable Arizona law when the invitation to bid, the vendor’s signed proposal and award letter are taken together .

In a letter from the DeConcini law firm dated June 16, 2005, Spencer A. Smith, attorney, issued the opinion letter contained in Attachment G. This opinion referenced pre-May 2005 and post-May 2005 procurement and contract actions applicable under Arizona law. After considering the procurement and contract actions taken prior to the February 18, 2005 filing of the Form 471, (pre-May 2005), attorney Smith concluded in paragraph 5 on page 2 as follows: “Therefore, in reviewing the District’s pre-May 2005, procurements, so long as each invitation to bid or request for proposals contained relevant terms and conditions with respect to payment, quantity and materials, and so long as the bid or proposal submitted and signed by the vendor provided the missing pricing terms, the offer contained in the signed bid or proposal of the vendor, when accepted by the issuance of the award letter signed by the District, were adequate to form a contract between the parties.

DISCUSSION

The SLD’s decision not to fund Sunnyside’s requests is clearly erroneous. As required, Sunnyside listed the services and products it wanted to procure on a Form 470 and posted

that form to the SLD's web site. As required, Sunnyside waited more than 28 days for bids to come in; evaluated bids to determine the most cost-effective bidders; received Governing Board approval for the contracts awarded; issued 5 contracts with the Governing Board approval date as the contract date accompanying the signature lines of both Sunnyside and its service providers and one (1) contract with a contract date prior to the Governing Board approval date accompanying the signature lines of both Sunnyside and its service provider; acquired signatures to each contract, Dr. John Cox for Sunnyside and the respective representative for the vendor, prior to the Sunnyside filing of Form 471 on February 18, 2005.

The pertinent portion of 47 C.F.R. II 54.504(c) states that the eligible school, "shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator." Sunnyside did exactly that. Based on the documentary evidence submitted to the SLD, there is no basis for the conclusion by the SLD that, "at the time you submitted your Form 471 application, you did not have a signed contract for services in place..." According to the FCC rules the contract to be valid must be signed by both parties. All dated contracts submitted for the referenced FRN's were signed by both parties and approved by the Sunnyside Governing Board ensuring the contracts were in place prior to the submission of the Form 471. The Governing Board approval of February 8, 2005 for all the contracts was submitted to the SLD on Form 471. Accordingly, the contracts were signed and in effect prior to the submission to the SLD on February 18, 2005 as required by the FCC rule cited above.

The SLD's ruling cannot stand because, under 54.504 (c) of the Commission's rules, the Commission has held that a district with a legally binding agreement in place when it submits its FCC Form 471 is not in violation of 54.504 (c). *Gayville-Volin School District 63-1, File No. SLD-471545, CC Docket No. 02-6, Order, DA 06-1655 (Wireline Comp. Bur. rel. August 18, 2006)*

In *Gayville-Volin*, the Commission ruled that where an applicant submits an agreement (contract) not accompanied with a contract date on the signature lines of the District and its service provider, but has a legally binding agreement in place when it submits its FCC Form 471, the District is not in violation of section 54.504 (c) of the Commission's rules.

SLD, in its decision, fails to state any reason or provide any analysis as to why the contracts furnished by Sunnyside are not valid. Sunnyside has had the contracts reviewed by counsel who has opined that the contracts are valid under Arizona law. This is consistent with the *Gayville-Volin* decision.

Even if Sunnyside had a technical defect in its contracts, which it did not, the Commission can waive strict enforcement of section 54.5049 (c) as it did in *Richmond County School District, File Nos. SLD-451211, 452514, 464649, CC Docket No. 02-06, Order, DA 06-1265 (Wireless Comp. Bur. rel. June 13, 2006)* and *Cincinnati City School District, File No. SLD-376499, CC Docket No. 02-6, Order, DA 06-1107 (Wireless Comp. Bur. rel. May 26, 2006)*. There is no reason whatsoever put forth by SLD as to why Sunnyside should be denied E-Rate funding in light of the factual showing and the Commission's rulings in *Gayville-Volin, Richmond County School District, and Cincinnati City School District*, cited above.

CONCLUSION AND REQUESTED RELIEF

Accordingly, based on the Commission's holding in *Gayville-Volin, Richmond County School District, and Cincinnati City School District*, and for the reasons set forth above, Sunnyside requests that the Commission remand this matter to the SLD with instructions to fund all of the FRNs at issue in this case, namely FRNs 1269503, 1269535, 1269550, 1269587, 1269622, 1269654.

Respectfully submitted,

On behalf of Sunnyside School District 12

By: Dr. John Cox
Dr. John Cox

Dr. John Cox
Sunnyside Unified School District No. 12
2238 East Ginter Road
Tucson, AZ 85706
520-545-2011

September 12, 2006

ATTACHMENT A - SLD DENIAL LETTER



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

August 10, 2006

Dr. John Cox
Sunnyside Unified School District No. 12
2238 East Ginter Road
Tucson, AZ 85706

Re: Applicant Name: SUNNYSIDE UNIF SCHOOL DIST 12
Billed Entity Number: 143127
Form 471 Application Number: 451167
Funding Request Number(s): 1269503, 1269535, 1269550, 1269587, 1269622,
1269654
Your Correspondence Received: January 13, 2006

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 2005 Funding Commitment Decision 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 you will receive a separate letter for each application.

Funding Request Number(s): 1269503, 1269535, 1269550, 1269587, 1269622,
1269654

Decision on Appeal: **Denied**

Explanation:

- On appeal, you seek reconsideration of SLD's decision to deny your funding request for failure to provide a contract signed and dated by both parties prior to the filing of the Form 471. You state that the school district has entered into a valid written contract with the Service Provider prior to the Form 471 filing. You also say that the District's legal counsel has reviewed the contracts and determined that they are valid and binding under Arizona law.
- During the Appeal Review, SLD thoroughly assessed the facts presented in the appeal letter, the relevant documentation on file, and the FCC Rules and Procedures before making its determination on your appeal. During the review,

you were faxed the Selective Review Information Request (SRIR) on July 11, 2005 and asked to provide copies of signed and dated contracts.

In the response provided to the SLD on August 4, 2005, the contracts were not signed and dated by both the applicant and the service provider. Therefore, SLD was not able to determine if you had an agreement with the service provider at the time of the filing of Forms 471. FCC Rules state that a contract must be signed and dated on or after the Allowable Contract Date as calculated by the Form 470 posting date, but prior to the submission of the Form 471. In this case, you have not demonstrated that you have complied with FCC Rules; therefore, the appeal is denied.

- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed and dated contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC rules further require that "both beneficiaries and service providers must retain executed contracts, signed and dated by both parties". See Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, *Fifth Report and Order and Order*, 19 FCC Rcd 15821-22, 30, FCC 04-190, ¶ 48 (rel. Aug. 13, 2004). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested. See *Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-256981, CC Docket Nos. 02-6, Order, 18 FCC Rcd. 22,994, DA 03-3526 (2003). The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services. See *Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (October 2003) at page 20.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the 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 date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

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

Schools and Libraries Division
Universal Service Administrative Company

Dr. John Cox
Sunnyside Unified School District No. 12
2238 East Ginter Road
Tucson, AZ 85706

Billed Entity Number: 143127
Form 471 Application Number: 451167
Form 486 Application Number:

ATTACHMENT B – OCTOBER 26, 2006 SUNNYSIDE BOARD ACTION
DESIGNATING DR. COX E-RATE AGENT

SUNNYSIDE UNIFIED SCHOOL DISTRICT NO. 12

2238 East Ginter Road
Tucson, Arizona 85706

OCT 27 '04 PM 3:42

BOARD AGENDA ITEM

MEETING OF October 26, 2004 BOARD AGENDA NO. Item 3)(n)(3) Consent Agenda

TITLE OF AGENDA ITEM Authorization to Prepare and Submit Funding Year 2005-2006 E-Rate Application

INFORMATION _____ ACTION X INFO/ACTION _____

PREVIOUS ACTION OF AGENDA ITEM: Authorization Provided for Previous 7 Funding Year Applications

SUBMITTED BY: Dr. John Cox, Ph.D., Assistant Superintendent, Educational Services

DESCRIPTION/JUSTIFICATION:

Respectfully request Governing Board approval to submit the District's eighth E-rate application for reimbursement from the Universal Service Fund for District expenditures for telecommunications, Internet access, and internal connections for voice, data, and video transmissions. In approving this request, the Governing Board is expressly granting full authority for Dr. John Cox to act as the District's agent in this matter. This authority includes:

- Preparing an E-rate application that supports the needs to be met in the District's Technology Plan
- Preparing and submitting the Form 470 application
- Preparing all required competitive bid documents for services and/or products to be bid
- Selecting successful bidders on the basis of the most cost-effective bid for the District
- Entering into contract to award bids to successful bidders, subject to E-rate approval and issuance of District purchase order
- Preparing and submitting the Form 471 application based on the contracts awarded and to be submitted for funding by the E-rate program
- Entering into correspondence with the E-rate funding agencies regarding all matters pertaining to the application process
- Submitting the necessary Forms 486, 500, 472, and other required forms for administering the program
- Revising, responding to, answering, and complying with all other matters regarding the E-rate program

POLICY CONSIDERATIONS:

LEGAL CONSIDERATIONS:

BUDGET INFORMATION: M&O Budget and designated E-rate account

REVIEWED BY Dr. Raúl Bejarano, Superintendent RB

SUPERINTENDENT'S RECOMMENDATION:

Recommend approval.

DOCUMENTS ATTACHED: None

APPROVED BOARD OF EDUCATION DATE 10/26/04 NOT APPROVED _____

CC: ENCINAS
KMAK
COX

ATTACHMENT C – SUNNYSIDE GOVERNING BOARD FEBRUARY 8, 2006 BID
AWARDS REFERENCED TO FRN

SUNNYSIDE UNIFIED SCHOOL DISTRICT NO. 12

2238 East Ginter Road
Tucson, Arizona 85706

BOARD AGENDA ITEM

MEETING OF February 8, 2005 BOARD AGENDA NO. Consent Agenda Item 3)(n)(4)

TITLE OF AGENDA ITEM Approval of Contract Bid Awards for 2005-2006 E-Rate Funding

INFORMATION _____ ACTION X INFO/ACTION _____

PREVIOUS ACTION OF AGENDA ITEM None

SUBMITTED BY: Dr. John Cox, Ph.D., Asst. Superintendent

DESCRIPTION/JUSTIFICATION:

Governing Board approval is requested for the referenced contract bid awards and for the inclusion of these approved amounts in the 2005-2006 school year respective budgets. These contract awards will be the basis for the E-rate funding requests made for the 2005-2006 school year.

Per previous Board approval of October 26, 2004 E-rate application agenda Item (See Attachment), Dr. Cox will proceed to contract with the approved vendors for services and products bid and to complete the Erate application filing process by February 18, 2005.

CC: COX

POLICY CONSIDERATIONS:

LEGAL CONSIDERATIONS:

BUDGET INFORMATION:

REVIEWED BY Dr. Raúl Bejarano, Superintendent

SUPERINTENDENT'S RECOMMENDATION:

Recommend approval.

DOCUMENTS ATTACHED: Listing of Contract Bid Awards & October 26, 2004 Erate Agenda Item

APPROVED BY: BOARD OF EDUCATION DATE 2/8/05 NOT APPROVED _____

SUNNYSIDE UNIFIED SCHOOL DISTRICT NO. 12

2238 East Ginter Road
Tucson, Arizona 85706

OCT 27 '04 PM 3:42

BOARD AGENDA ITEM

MEETING OF October 26, 2004 BOARD AGENDA NO. Consent Agenda (Item 3)(n)(3)

TITLE OF AGENDA ITEM Authorization to Prepare and Submit Funding Year 2005-2006 E-Rate Application

INFORMATION _____ ACTION X INFO/ACTION _____

PREVIOUS ACTION OF AGENDA ITEM: Authorization Provided for Previous 7 Funding Year Applications

SUBMITTED BY: Dr. John Cox, Ph.D., Assistant Superintendent, Educational Services

DESCRIPTION/JUSTIFICATION:

Respectfully request Governing Board approval to submit the District's eighth E-rate application for reimbursement from the Universal Service Fund for District expenditures for telecommunications, Internet access, and internal connections for voice, data, and video transmissions. In approving this request, the Governing Board is expressly granting full authority for Dr. John Cox to act as the District's agent in this matter. This authority includes:

- Preparing an E-rate application that supports the needs to be met in the District's Technology Plan
- Preparing and submitting the Form 470 application
- Preparing all required competitive bid documents for services and/or products to be bid
- Selecting successful bidders on the basis of the most cost-effective bid for the District
- Entering into contract to award bids to successful bidders, subject to E-rate approval and issuance of District purchase order
- Preparing and submitting the Form 471 application based on the contracts awarded and to be submitted for funding by the E-rate program
- Entering into correspondence with the E-rate funding agencies regarding all matters pertaining to the application process
- Submitting the necessary Forms 486, 500, 472, and other required forms for administering the program
- Revising, responding to, answering, and complying with all other matters regarding the E-rate program

POLICY CONSIDERATIONS:

LEGAL CONSIDERATIONS:

BUDGET INFORMATION: M&O Budget and designated E-rate account

REVIEWED BY Dr. Raúl Bejarano, Superintendent RB

CC: ENCINAS

KMAK

COX

SUPERINTENDENT'S RECOMMENDATION:

Recommend approval.

DOCUMENTS ATTACHED: None

APPROVED BOARD OF EDUCATION DATE 10/26/04 NOT APPROVED _____

Recommended Contract Awards to be Approved for the 2005-2006 Erate Funding Year.

FRN
1269503

Contract award for Bid B-05-250 is awarded to Mountain Telecommunications Inc. for providing single telephone lines (POTS) to each of the district schools and administration building for the period beginning July 1, 2005-June 30, 2006. Yearly cost is estimated at \$13,948.35 (\$1162.36 per month including taxes and fees at 25% of cost). This is a multi-year contract, renewable yearly for a maximum of five years.

FRN
1269535

Contract award for Bid B-05-250 is awarded to Time Warner Telecom for providing 15Mbps Internet Access Services to district's schools through the network data hub located at the administration building for the period beginning July 1, 2005-June 30, 2006. Yearly cost is estimated at \$19,202.40 (\$1600.20 Note: no taxes are accessed internet access services) This is a multi-year contract, renewable yearly for a maximum of five years.

FRN
1269550

Contract award for Bid B-05-250 is awarded to Time Warner Telecom for providing Point to Point T1's or equivalent for voice, data, and video transmission to and from each of the district's schools from the network hub located at the administration building for the period beginning July 1, 2005-June 30, 2006. Yearly cost is estimated at \$203,874.14 (\$16,989.51 per month including taxes and fees at 25% of cost) This is a multi-year contract, renewable yearly for a maximum of five years.

FRN
1269587

Contract award for Bid B-05-250 is awarded to Xspedius Communications for providing PRI's and DID numbers for the district's phone service from the district's central switch located at the administration building to Xspedius communication facilities for the period beginning July 1, 2005-June 30, 2006. Yearly cost is estimated at \$39,375 (\$3,281.25 per month including taxes and fees at 25% of cost) This is a multi-year contract, renewable yearly for a maximum of five years.

FRN
1269622

Contract renewal award for Bid B-02-193 is awarded to Xspedius Communications for providing Long Distance Services from the district's central phone switch located at the administration building through Xspedius communication facilities for the period beginning July 1, 2005-June 30, 2006. Per minute long distance service is \$0.039 per minute. Yearly cost is estimated at \$10,740 (\$895 per month including taxes and fees at 25% of cost). This contract is a multi-year contract, renewable yearly for a maximum of five years. This is the last year a contract can be awarded under this contract.

FRN
1269654

Contract renewal award for Bid B-02-190 is awarded to Verizon Wireless Communications to provide cell phone service for the period beginning July 1, 2005-June 30, 2006. Yearly cost is estimated at \$90,000 (\$7500 per month including taxes and fees at 25% of cost). This contract is a multi-year contract, renewable

yearly for a maximum of five years. This is the last year a contract can be awarded under this contract.

Contract renewal award for Bid B-04-235 is awarded to Design Business Communications dba American Telephone to provide telephone switch and line maintenance for the period beginning July 1, 2005-June 30, 2006. The funding for this award is based on approval of Erate funding. Currently, Erate funding has not been approved for the 2004-05 awarded contract. Yearly cost is estimated at \$88,000. This contract is a multi-year contract, renewable yearly for a maximum of five years. This is the second year for contract award under this bid.

Contract renewal award for Bid B-04-238 is awarded to Netsian Technologies Group to provide upgrades to the telephone switches and voice mail system for the period beginning July 1, 2005-June 30, 2006. The funding for this award is based on approval of Erate funding. Currently, Erate funding has not been approved for the 2004-05 awarded contract. The project cost is estimated at \$175,210.10. This contract is a multi-year contract, renewable yearly for a maximum of five years. This is the second year for contract award under this bid.

Contract renewal award for State Contract AD020193-018 is awarded to Compel Corporation to provide data, voice, and video network cabling services as specified for the period beginning July 1, 2005-June 30, 2006. The funding for this award is based on approval of Erate funding. Currently, Erate funding has not been approved for the 2004-05 awarded contract. The services to be provided have been estimated to cost \$180,000. The contract is issued by the State for school districts to procure services. This contract renewal award is being made to renew the bid for an additional year.

Contract renewal award for Bid B-02-192 is awarded to Genger & Associates, LLC dba Silverado Technologies to provide data network services as specified for the period beginning July 1, 2005-June 30, 2006. The funding for this award is based on approval of Erate funding. Currently, Erate funding has not been approved for the 2004-05 awarded contract. The services to be provided have been estimated to cost \$80,000. This contract is a multi-year contract, renewable yearly for a maximum of five years. This is the second year for contract award under this bid.

Contract award for Bid B-05-261 is awarded to NVision Networking Inc., to provide the voice and data equipment specified in the bid document for the New Middle, School, Elementary School, and District Office; to install and configure all equipment specified; to train for system administration; and to provide project management beginning July 1, 2005-June 30, 2006. Project cost is \$382,763.26. This is a multi-year contract, renewable yearly for a maximum of five years.

Contract award for Bid B-05-260 is awarded to Apex Southwest investments dba Tri-Tek Electronics for the Group #1- CAT 5 Cable; Group #4- Fiber Jumpers; Group #5 - Miscellaneous Tools; and Group #5 - Miscellaneous APC UPS Model

2200 battery to be provided beginning July 1, 2005-June 30, 2006. Estimated cost of items to be purchased under this contract for Erate application is \$6,000. This is a multi-year contract, renewable yearly for a maximum of five years.

Contract award for Bid B-05-260 is awarded to Grainger. Inc., for the Group #2-Ends, Power Stripes and Wiremolds to be provided beginning July 1, 2005-June 30, 2006. Estimated cost of items to be purchased under this contract for Erate application is \$6,000. This is a multi-year contract, renewable yearly for a maximum of five years.

Contract award for Bid B-05-260 is awarded to Batteries Plus/Maya Yang for the Group #5-Miscellaneous APC UPS Model 1400 Battery to be provided beginning July 1, 2005-June 30, 2006. Estimated cost of items to be purchased under this contract for Erate application is \$3,000. This is a multi-year contract, renewable yearly for a maximum of five years.

Please Note: As of this filing for the Governing Board Agenda, we are still in the process of evaluating bids for the following:

**New Middle School Special Systems Bid
New Elementary School Special Systems Bid
General Cabling of District Facilities
Maintenance of District Data Equipment and Network**

In the Governing Board's Monday Supplement, all remaining bid recommendations and contract awards will be sent for consideration with the above awards.

ATTACHMENT D – COPIES OF EACH AWARD LETTER AND CONTRACT
REFERENCED TO FRN

FRN 1269503



Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road
Tucson, AZ 85706
(520) 545-2011 Phone
(520) 545-2128 Fax
Email: johnc@susd12.org

Award Letter and Contract

January 24, 2005

Mountain Telecommunications, Inc.
1430 W. Broadway, Suite A-200
Tempe, AZ 85282

Dear Mr. Napoletano,

This letter is to confirm the District's decision to accept your bid and to purchase an estimated \$930/month including estimated Sales Tax and FCC Subscriber Line Charges for 1FB Telephone Lines (POTS) for each of our 23 school sites listed in the attachment. This contract is to start actual service beginning 07/01/05 through 06/30/06 under the terms of the Sunnyside School District Procurement Bid No. B-05-250, with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Mountain Telecommunications, Inc.

The procurement of these 23-1FB POTS lines will be dependent upon the following conditions:

1. Issuance, when applicable, of a valid purchase order for the next fiscal year

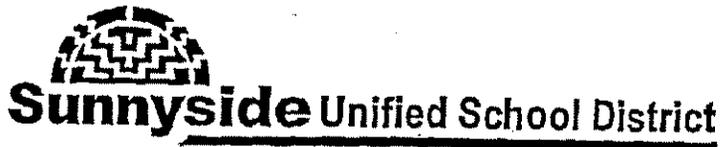
We look forward to working with Mountain Telecommunications on this project.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox,
authorized agent for the school district. *Asst. Supt.*

This contract is signed on behalf of Mountain Telecommunications by
[Signature], authorized agent for the company.

V.P. Sales

FRN 1269550



Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road
Tucson, AZ 85706
(520) 545-2011 Phone
(520) 545-2128 Fax
Email: johnc@tUSD12.org

Award Letter and Contract

February 8, 2005

Time Warner Telecom
% Michael Jones
432 S. Williams Blvd., Suite 100
Tucson, AZ 85711

Dear Mr. Jones,

This letter is to confirm the District's decision to accept your bid and to purchase an estimated \$203,874.14 yearly (\$16,989.51 per month including estimated taxes and fees at 25% of cost) of Point to Point T1's or equivalent service for voice, data, and video transmission to and from each of the district's schools from the network hub located at the administration building during our next fiscal year (07/01/2005 to 06/30/2006) under the terms of the Sunnyside School District Procurement Bid No. B-05-250. This contract is awarded as a multi-year contract with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Time Warner Telecom.

The procurement of the Point to Point T1 or equivalent service as described above will be dependent upon the following conditions:

1. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Time Warner Telecom on this project.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Time Warner Telecom by [Signature], authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,
% Dr. John Cox, Asst. Supt.,
2238 E. Ginter Road,
Tucson, AZ 85706

FRN 1269535



Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road
Tucson, AZ 85706
(520) 545-2011 Phone
(520) 545-2128 Fax
Email: johnc@suasd12.org

Award Letter and Contract

February 8, 2005

Time Warner Telecom
% Michael Jones
432 S. Williams Blvd., Suite 100
Tucson, AZ 85711

Dear Mr. Jones,

This letter is to confirm the District's decision to accept your bid and to purchase an estimated \$19,202.40 yearly (\$1600.per monthly) of 15Mbps Internet Access Services from your company to support the district's network data hub during our next fiscal year (07/01/2005 to 06/30/2006) under the terms of the Sunnyside School District Procurement Bid No. E-05-250. Note: No taxes are assessed internet access connections. This contract is awarded as a multi-year contract with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Time Warner Telecom.

The procurement of the Internet Access Services as described above will be dependent upon the following conditions:

1. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Time Warner Telecom on this project.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Time Warner Telecom by [Signature], authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,
% Dr. John Cox, Asst. Supt.,
2238 E. Ginter Road,
Tucson, AZ 85706

FRN/269622



Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road
Tucson, AZ 85706
(520) 545-2011 Phone
(520) 545-2128 Fax
Email: johnc@suid12.org

Award Letter and Contract

February 8, 2005

Xspedius Communications
% David Jimenez
33 N. Stone Avenue, Suite 1200
Tucson, AZ 85701

Dear Mr. Porter,

This letter is to confirm the District's decision to renew your bid and to purchase an estimated \$10,740 yearly (\$875 monthly including estimated taxes and fees at 25% of cost) of Long Distance Services from your company to support the district's phone service during our next fiscal year (07/01/2005 to 06/30/2006) under the terms of the Sunnyside School District Procurement Bid No. B-02-190. This contract is awarded as a multi-year contract with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Xspedius Communications. Although this contract has one year left after this year for renewal, this is the last year an Erate application can be made using this contract.

The procurement of the Long Distance Services as described above will be dependent upon the following conditions:

- 1. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Xspedius Communications on this project.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Xspedius Communications Company by David Jimenez, authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,
% Dr. John Cox, Asst. Supt.,
2238 E. Ginter Road,
Tucson, AZ 85706

FRN1269587



Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road
Tucson, AZ 85706
(520) 545-2011 Phone
(520) 545-2128 Fax
Email: johnc@suid12.org

Award Letter and Contract

February 8, 2005

Xspedius Communications
% David Jimenez
33 N. Stone Avenue, Suite 1200
Tucson, AZ 85701

Dear Mr. Jimenez,

This letter is to confirm the District's decision to accept your bid and to purchase an estimated \$39,375 yearly (\$3,281.25 monthly including estimated taxes and fees at 25% of cost) of 5 PRIs and 200 blocks of 20 DID Numbers from your company to support the district's phone service during our next fiscal year (07/01/2005 to 06/30/2006) under the terms of the Sunnyside School District Procurement Bid No. B-05-250. This contract is awarded as a multi-year contract with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Xspedius Communications.

The procurement of PRI and DID Number Service as described above will be dependent upon the following conditions:

1. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Xspedius Communications on this project.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Xspedius Communications Company by El Poo, authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,
% Dr. John Cox, Asst. Supt.,
2238 E. Ginter Road,
Tucson, AZ 85706

FRN 1269654



Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road
Tucson, AZ 85706
(520) 545-2011 Phone
(520) 545-2128 Fax
Email: johnco@susd12.org

Award Letter and Contract

February 8, 2005

Verizon Wireless Communications
% Donna Blotkamp
5151 E. Broadway, Suite 1450
Tucson, AZ 85705

Dear Ms. Blotkamp,

This letter is to confirm the District's decision to renew your bid and to purchase an estimated \$90,000 yearly (\$7500 per month including estimated taxes and fees at 25% of cost) of cellular phone services for the next fiscal year (07/01/2005 to 06/30/2006) under the terms of the Sunnyside School District Procurement Bid No. B-02-190. This contract is awarded as a multi-year contract with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Verizon Wireless Communications. Although this contract has one year left after this year for renewal, this is the last year an Erate application can be made using this contract.

The procurement of the cellular phone service as described above will be dependent upon the following conditions:

1. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Verizon Wireless Communications for this service.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Verizon Wireless Communications by Donna Blotkamp, authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,
% Dr. John Cox, Asst. Supt.,
2238 E. Ginter Road,
Tucson, AZ 85706

ATTACHMENT E – NOTARIZED DOCUMENTS PERTAINING TO AWARD
LETTER AND CONTRACT

AFFIDAVIT

STATE OF Arizona)

)

ss:

COUNTY OF Maricopa)

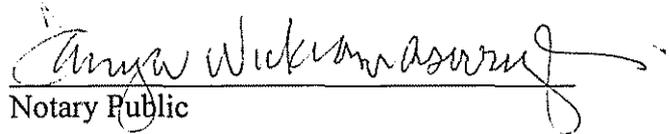
Raymond Napoletano, being first duly sworn, upon his/her oath deposes and says:

1. I am employed by Mountain Telecommunications as Vice-President for Sales
2. Prior to February 18, 2005, I executed, as authorized agent of Mountain Telecommunications, the attached Award Letter and Contracts between Mountain Telecommunications and Sunnyside Unified School District for FCC Subscriber Line Charges for 1FB Telephone Lines (POTS) for 23 school sites for the fiscal year July 1, 2005 through June 30, 2006, under Sunnyside School District Procurement Bid No. B-05-250.

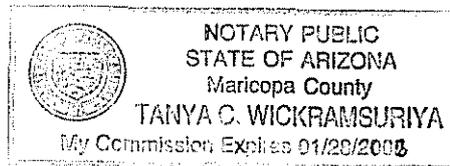

Raymond Napoletano

SUBSCRIBED AND SWORN TO before me this 19th day of September, 2006

By TANYA WICKRAMASURIYA


Notary Public

My commission Expires:
1/28/2008



FRN 1269503



Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road
Tucson, AZ 85706
(520) 545-2011 Phone
(520) 545-2128 Fax
Email: johnc@susd12.org

Award Letter and Contract

January 24, 2005

Mountain Telecommunications, Inc.
1430 W. Broadway, Suite A-200
Tempe, AZ 85282

Dear Mr. Napoletano,

This letter is to confirm the District's decision to accept your bid and to purchase an estimated \$930/month including estimated Sales Tax and FCC Subscriber Line Charges for 1FB Telephone Lines (POTS) for each of our 23 school sites listed in the attachment. This contract is to start actual service beginning 07/01/05 through 06/30/06 under the terms of the Sunnyside School District Procurement Bid No. B-05-250, with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Mountain Telecommunications, Inc.

The procurement of these 23-1FB POTS lines will be dependent upon the following conditions:

1. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Mountain Telecommunications on this project.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox,
authorized agent for the school district. *Asst. Supt.*

This contract is signed on behalf of Mountain Telecommunications by
[Signature], authorized agent for the company.

V.P. Sales

AFFIDAVIT

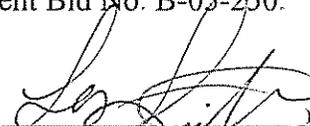
STATE OF Arizona)

COUNTY OF Pima)

ss:

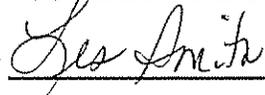
Les Smith, being first duly sworn, upon his/her oath deposes and says:

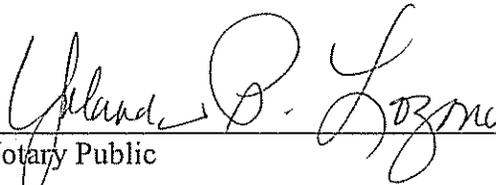
1. I am employed by Time Warner Telecom as Vice-President/General Manager.
2. Prior to February 18, 2005, I executed, as authorized agent of Time Warner Telecom, the attached Award Letter and Contracts between Time Warner Telecom and Sunnyside Unified School District for Point to Point T1 Lines and 15 Mbps Internet Access Services for the fiscal year July 1, 2005 through June 30, 2006 under Sunnyside School District Procurement Bid No. B-05-250.



Les Smith

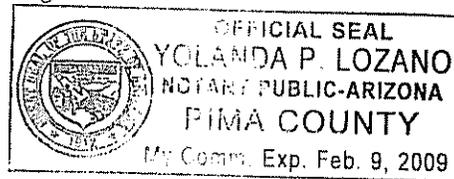
SUBSCRIBED AND SWORN TO before me this 20 day of September, 2006

By 

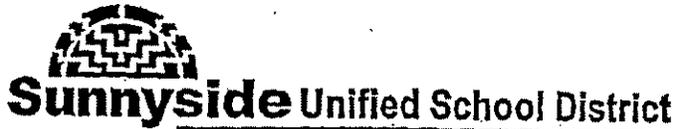


Notary Public

My commission Expires:



FRN 1269550



Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road
Tucson, AZ 85706
(520) 545-2011 Phone
(520) 545-2128 Fax
Email: johnco@surd12.org

Award Letter and Contract

February 8, 2005

Time Warner Telecom
% Michael Jones
432 S. Williams Blvd., Suite 100
Tucson, AZ 85711

Dear Mr. Jones,

This letter is to confirm the District's decision to accept your bid and to purchase an estimated \$203,874.14 yearly (\$16,989.51 per month including estimated taxes and fees at 25% of cost) of Point to Point T1's or equivalent service for voice, data, and video transmission to and from each of the district's schools from the network hub located at the administration building during our next fiscal year (07/01/2005 to 06/30/2006) under the terms of the Sunnyside School District Procurement Bid No. B-05-250. This contract is awarded as a multi-year contract with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Time Warner Telecom.

The procurement of the Point to Point T1 or equivalent service as described above will be dependent upon the following conditions:

1. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Time Warner Telecom on this project.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Time Warner Telecom by [Signature], authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,
% Dr. John Cox, Asst. Supt.,
2238 E. Ginter Road,
Tucson, AZ 85706

FRN 1269535



Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road
Tucson, AZ 85706
(520) 545-2011 Phone
(520) 545-2128 Fax
Email: johnc@suid12.org

Award Letter and Contract

February 8, 2005

Time Warner Telecom
% Michael Jones
432 S. Williams Blvd., Suite 100
Tucson, AZ 85711

Dear Mr. Jones,

This letter is to confirm the District's decision to accept your bid and to purchase an estimated \$19,202.40 yearly (\$1600.per monthly) of 15Mbps Internet Access Services from your company to support the district's network data hub during our next fiscal year (07/01/2005 to 06/30/2006) under the terms of the Sunnyside School District Procurement Bid No. B-05-250. Note: No taxes are assessed internet access connections. This contract is awarded as a multi-year contract with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Time Warner Telecom.

The procurement of the Internet Access Services as described above will be dependent upon the following conditions:

1. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Time Warner Telecom on this project.

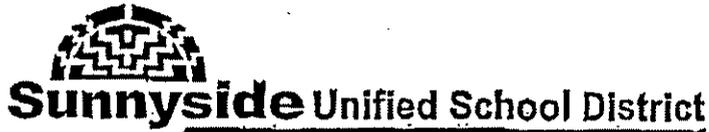
This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Time Warner Telecom by John Smith, authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,
% Dr. John Cox, Asst. Supt.,
2238 E. Ginter Road,
Tucson, AZ 85706

FRN 1269622



Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road
Tucson, AZ 85706
(520) 545-2011 Phone
(520) 545-2128 Fax
Email: johnc@juidf12.org

Award Letter and Contract

February 8, 2005

Xspedius Communications
% David Jimenez
33 N. Stone Avenue, Suite 1200
Tucson, AZ 85701

Dear Mr. Porter,

This letter is to confirm the District's decision to renew your bid and to purchase an estimated \$10,740 yearly (\$875 monthly including estimated taxes and fees at 25% of cost) of Long Distance Services from your company to support the district's phone service during our next fiscal year (07/01/2005 to 06/30/2006) under the terms of the Sunnyside School District Procurement Bid No. B-02-190. This contract is awarded as a multi-year contract with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Xspedius Communications. Although this contract has one year left after this year for renewal, this is the last year an Erate application can be made using this contract.

The procurement of the Long Distance Services as described above will be dependent upon the following conditions:

1. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Xspedius Communications on this project.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Xspedius Communications Company by Cl. Porter, authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,
% Dr. John Cox, Asst. Supt.,
2238 E. Ginter Road,
Tucson, AZ 85706

FRN1269587



Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road
Tucson, AZ 85706
(520) 545-2011 Phone
(520) 545-2128 Fax
Email: johnc@sud12.org

Award Letter and Contract

February 8, 2005

Xspedius Communications
% David Jimenez
33 N. Stone Avenue, Suite 1200
Tucson, AZ 85701

Dear Mr. Jimenez,

This letter is to confirm the District's decision to accept your bid and to purchase an estimated \$39,375 yearly (\$3,281.25 monthly including estimated taxes and fees at 25% of cost) of 5 PRIs and 200 blocks of 20 DID Numbers from your company to support the district's phone service during our next fiscal year (07/01/2005 to 06/30/2006) under the terms of the Sunnyside School District Procurement Bid No. B-05-250. This contract is awarded as a multi-year contract with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Xspedius Communications.

The procurement of PRI and DID Number Service as described above will be dependent upon the following conditions:

1. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Xspedius Communications on this project.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Xspedius Communications Company by [Signature], authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,
% Dr. John Cox, Asst. Supt.,
2238 E. Ginter Road,
Tucson, AZ 85706

AFFIDAVIT

STATE OF Arizona)

)

ss:

COUNTY OF Pima)

Donna Blotkamp, being first duly sworn, upon his/her oath deposes and says:

- 1. I am employed by Verizon Wireless Communications as Major Account Manager.
- 2. Prior to February 18, 2005, I executed, as authorized agent for Verizon Wireless Communications, the attached Award Letter and Contracts between Verizon Wireless Communications and Sunnyside Unified School District for cellular phone services for the fiscal year July 1, 2005 through June 30, 2006 under Sunnyside School District Procurement Bid No. B-02-190.

Donna Blotkamp

 Donna Blotkamp

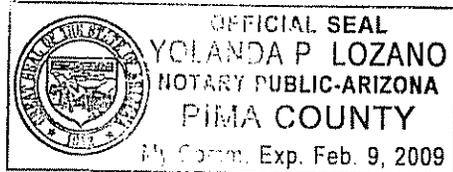
SUBSCRIBED AND SWORN TO before me this 20 day of September, 2006

By *Donna Blotkamp*

Yolanda P. Lozano

 Notary Public

My commission Expires:



FRN 1269654



Office of Dr. John Cox, Assistant Superintendent

2238 E. Ginter Road
Tucson, AZ 85706
(520) 545-2011 Phone
(520) 545-2128 Fax
Email: JohnC@susd12.org

Award Letter and Contract

February 8, 2005

Verizon Wireless Communications
% Donna Blotkamp
5151 E. Broadway, Suite 1450
Tucson, AZ 85705

Dear Ms. Blotkamp,

This letter is to confirm the District's decision to renew your bid and to purchase an estimated \$90,000 yearly (\$7500 per month including estimated taxes and fees at 25% of cost) of cellular phone services for the next fiscal year (07/01/2005 to 06/30/2006) under the terms of the Sunnyside School District Procurement Bid No. B-02-190. This contract is awarded as a multi-year contract with the option to renew this contract annually, not to exceed five years. This letter of award and the signed bid document submitted in response to the bid constitute the contract between the Sunnyside Unified School District and Verizon Wireless Communications. Although this contract has one year left after this year for renewal, this is the last year an Erate application can be made using this contract.

The procurement of the cellular phone service as described above will be dependent upon the following conditions:

1. Issuance, when applicable, of a valid purchase order for the next fiscal year

We look forward to working with Verizon Wireless Communications for this service.

This contract is signed on behalf of the Sunnyside School District by Dr. John Cox, authorized agent for the school district.

This contract is signed on behalf of the Verizon Wireless Communications by Donna Blotkamp, authorized agent for the company.

Please return the signed copy of this agreement to:

Sunnyside Unified School District #12,
% Dr. John Cox, Asst. Supt.,
2238 E. Ginter Road,
Tucson, AZ 85706

ATTACHMENT F – SLD CONTRACT GUIDANCE IN EFFECT 12/7/2005

Graphics Off



The Universal Service Administrative Company

Home / High Cost / Low Income / Rural Health Care / Schools & Libraries

Overview

SL Main > Reference Area > Contract Guidance

About the SLD

Training & Outreach

- 2005 Training
- WebEx Recordings
- Training Presentations
- Submit a Question
- Site Visits
- Schools & Libraries News Briefs

Applicants

- Process Flowchart
- Applicants
- Audits

Service Providers

- Conference Calls
- Service Providers
- Invoicing
- Disbursements
- Audits

Tools

- Commitments Search
- Data Requests
- Form 471 Application

Tools

- Billed Entry Search
- SPIN Search
- FRN Extensions
- Eligible Products Database

Forms

- Applicants PIN Request System
- Apply Online
- Applicant Forms
- Provider Forms

Forms

Contract Guidance

CONTRACTS

In general, a contract is a binding agreement, enforceable by law, between two or more parties that creates an obligation to do, or not do, something. Contract definitions and requirements are set out in each state or territory by that state's or territory's contract law.

Except for services to be delivered under non-contracted tariffed or month-to-month arrangements, an E-rate applicant must sign a contract with the service provider before signing and submitting a completed (certified) Form 471. Applicants must also comply with state contract law. Applicants must be able to demonstrate that they had a signed contract in place before or at the time they submitted their completed Form 471, section FCC 54.504c.

Establishing Forms 470. The establishing Form 470 is the Form 470 that served as the basis for the competitive bidding process. For a multi-year contract, the establishing Form 470 for that contract could have been posted in a previous funding year.

Qualified existing contracts. A qualified existing contract is

- a signed, written contract executed pursuant to the posting of a Form 470 in a previous funding year or
- a contract signed on or before July 10, 1997 and reported on a Form 470 in a previous year as an existing contract.

Tariffed services provided under a contract. A tariffed service provided under contract is a service offered under one or more tariffs but for which a contract has been signed. In all cases, funding requests for which a contract has been signed should be reported as contracted services. That is to say, the Form 471 Block 5 should feature the Contract Number in Item 15 (not a "T"), the Contract Award Date in Item 18, and the Contract Expiration Date in Item 20.

Legally binding agreements. We occasionally have used the phrase legally binding agreement as another term for contract. It is important for applicants and service providers to meet all FCC and state contract requirements. Verbal agreements and quotes do not meet these FCC requirements. Purchase orders may or may not meet state contract



QUICK LINK

- Apply Online
- Reference Ar
- Appeals
- Eligible Servi List
- Changes & Corrections
- Suspensions Debarments
- Site Visits

SITE SEARCH

SITE SEARCH

- Search Tips
- Search Tips
- CONTACT US

Submit a Question

- Submit a Question
- Contact Us
- Whistleblower
- Contract - Rep
- Whistleblower
- Abuse - Rep
- Waste, Fraud
- Abuse
- SITE HELP

SITE HELP

- Site Map
- SITE HELP
- Site Tool
- Web Site Policy
- Site Tour
- Website Policy

ATTACHMENT G – ATTORNEY OPINION REGARDING CONTRACTS UNDER
ARIZONA LAW

DECONCINI McDONALD YETWIN & LACY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

2525 EAST BROADWAY BOULEVARD • SUITE 200 • TUCSON, ARIZONA 85716-5300
(520) 322-5000 • (520) 322-5585 (Fax)

EVO DECONCINI (1901-1986)

JOHN R. McDONALD	DENNIS DECONCINI
RICHARD M. YETWIN	JOHN C. LACY
JOHN C. RICHARDSON	JAMES A. JUTRY
SPENCER A. SMITH	MICHAEL R. URMAN
DENISE M. BAINTON	GARY F. URMAN
WAYNE E. YEHLING	DAVID V. SANDERSON
SHELTON L. FREEMAN	ALAN L. STEIN
ALYCE L. PENNINGTON	LISA ANNE SMITH
NATHAN B. HANNAH	ALICE W. CALLISON
NANCY J. MARCH	ALAN N. ARIAV
IRA M. SCHWARTZ	MICHAEL A. CORDIER
HEATHER K. GAINES	SHEFALI MILCZAREK-DESAI
STACY RUPPRECHT BUTLER	SARAH LYNN WRIGHT
MICHAEL E. NEUMANN	

RICHARD C. KATZ - OF COUNSEL
SARA J. VANCE - OF COUNSEL

June 16, 2005

7310 N. 16TH STREET, SUITE 330
PHOENIX, ARIZONA 85020
(602) 282-0500
FAX: (602) 282-0520

19 WEST BIRCH AVENUE
FLAGSTAFF, ARIZONA 86001
(928) 214-0465
FAX: (928) 214-6212

517 "C" STREET, NE
WASHINGTON, D.C. 20002-7307
(202) 546-6900
FAX: (202) 543-5044

www.deconcinimcdonald.com

PLEASE REPLY TO TUCSON

ssmith@dmyl.com

Dr. John Cox
Assistant Superintendent for Educational Services
Sunnyside Unified School District
2238 E. Ginter Road
Tucson, AZ 85706

Re: SUSD Procurements/Contract Formation Issue

Dear John:

You have requested that we provide an opinion as to whether the District's procurement practices, as described below, result in the formation of a valid contract under applicable Arizona state law. In reviewing this matter, we have assumed that the procedures followed by the District are that, in each case, an invitation to bid or request for proposals is issued and furnished to all interested proposers. It is our understanding that the invitation to bid and request for proposals contain terms and conditions of the proposed procurement that are sufficient to form a binding contract, with the exception of pricing information and that upon receipt of proposals or bids from interested vendors, the District reviews the proposals or bids, as the case may be, and selects the successful vendor based upon a review of the signed proposals or bids submitted by the prospective vendors. We further understand that upon review of all submitted proposals, the District selects the successful vendor and provides the vendor with written notification of the award of the contract based upon the original invitation to bid, any relevant amendments and upon the price included in the vendor's proposal. You have asked whether a valid and enforceable contract exists under applicable Arizona law when the invitation to bid, the vendor's signed proposal and award letter are taken together.

In examining this issue, we have assumed that each individual procurement has been bid in accordance with requirements of the Arizona School District Procurement Code as set forth in the Arizona Administrative Code Rules R7-2-1001, *et seq.* We further assume that each award has been approved by the Governing Board of the District, either by delegation of appropriate procurement authority to the administration or by direct approval of an individual procurement by Board action.

DECONCINI McDONALD YETWIN & LACY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

Dr. John Cox
June 16, 2005
Page 2

The law in Arizona with regard to the validity of a contract formed by the documentation utilized by the District in its procurements changed on May 25, 2005, as a result of an Arizona Supreme Court decision in a case entitled *Ry-Tan Construction, Inc. v. Washington Elementary School District No. 6*, ___ P.3d ___, 2005, WL 1231929 (May 25, 2005). However, "contracts are made with reference to existing law and cannot be impaired by it . . . even if the law has been given a changed construction by the state court." *State of Washington v. Maricopa County, Arizona*, 152 F.2d 556, 559 (C.A.9 1946). For this reason, I will address the formation of contracts with respect to procurements awarded prior to May 25, 2005, separate from those procurements which are awarded after May 25, 2005.

With respect to procurements awarded prior to the *Ry-Tan* decision, the Arizona courts had held that "a contract may be formed even if not formally executed, if the parties clearly intended to bind themselves to the terms." *AROK Construction v. Indian Construction Services*, 174 Ariz. 291, 297, 848 P.2d 870, 876 (App. 1993). In a case involving the City of Phoenix and a developer, the Arizona Court of Appeals, Division One, recognized that the court would need to look at surrounding circumstances and conduct of the parties to determine the parties' intent if a formally executed contract was not in existence. *Johnson International, Inc. v. City of Phoenix*, 192 Ariz. 466, 967 P.2d 607 (App. Div. 1 1998). Both the *AROK* case and the *Johnson* case recognize that the Arizona courts have followed Section 27 of the *Restatement (Second) of Contracts*, which provides, in part, as follows:

Manifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof; that the circumstances may show the agreements are preliminary negotiations.

Thus, so long as the parties manifest an intention to be bound and all material terms of the intended contract are present in the documents which are intended by the parties to form the contract, a valid contract will exist under Arizona law.

Therefore, in reviewing the District's pre-May 25, 2005, procurements, so long as each invitation to bid or request for proposals contained relevant terms and conditions with respect to payment, quantity and materials, and so long as the bid or proposal submitted and signed by the vendor provided the missing pricing terms, the offer contained in the signed bid or proposal of the vendor, when accepted by the issuance of the award letter signed by the District, were adequate to form a contract between the parties.

With respect to procurements entered into after May 25, 2005, the Supreme Court case of *Ry-Tan Construction, Inc., v. Washington Elementary School District No. 6*, *supra*, is controlling. In *Ry-Tan*, the invitation to bid contemplated entering into a formal construction contract to be signed by both parties. The low bidder had been awarded a contract by a vote of the majority of the governing board, and a notice to proceed had been issued by the

DECONCINI McDONALD YETWIN & LACY

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ATTORNEYS AT LAW

Dr. John Cox
June 16, 2005
Page 3

administration. The governing board, however, later revoked the award and a formal contract was never executed. In these circumstances, the Court held that no contract had been formed. Based on this decision, it is our recommendation that for all procurements occurring after May 25, 2005, a formal contract be entered into which is comprised of a single document signed by both parties. Note that prior to the Arizona Supreme Court's decision in *Ry-Tan* described above, the Arizona Court of Appeals had ruled that the governing board's award in *Ry-Tan* did create contractual obligations, consistent with our opinion as to the state of the law prior to May 25, 2005. See, *Ry-Tan Construction, Inc. v. Washington Elementary School District No. 6*, 208 Ariz. 379, 93 P.3d 1095 (App. Div. 1 2004).

If a particular invitation to bid or request for proposal does not contemplate execution of a separate, formal contract, it can be argued that the 2005 *Ry-Tan* decision would not bar formation of a contract under the circumstances of the District's practices. However, for procurements for which an award has not been made as of May 25, 2005, it is our recommendation that a contract containing all of the material terms and conditions of the invitation to bid or request for proposals be prepared and signed by both parties in order to ensure that the District has complied with the requirements of current state law as set forth in the *Ry-Tan* case. In addition, as noted above, except as set forth below, the procurements must be in compliance with the requirements of the rules contained in the Arizona Administrative Code, R7-2-1001, *et seq.* In the case of construction procurements for CM-at-risk, design-build or job order contracting, for which rules have not yet been promulgated, those procurements must be conducted in compliance with the provisions of A.R.S. §§ 41-2577 and 41-2578.

Do not hesitate to contact me if you have any questions regarding this opinion.

Very truly yours,



Spencer A. Smith

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