

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Requests for Review of the Decision of the)
Universal Service Administrator by)
)
Bienville Parish School Board) File No. SLD-288199
Arcadia, Louisiana)
)
Caldwell Parish School District) File No. SLD-289493
Columbia, Louisiana)
)
Catahoula Parish School Board) File No. SLD-306666
Harrisburg, Louisiana)
)
Clairborne Parish School Board) File No. SLD-304992
Homer, Louisiana)
)
Concordia Parish School Board) File No. SLD-287856
Vidalia, Louisiana)
)
DeSoto Parish School Board) File No. SLD-291803
Mansfield, Louisiana)
)
Franklin Parish School District) File No. SLD-288635
Winnsboro, Louisiana)
)
Lincoln Parish School Board) File No. SLD-302051
Ruston, Louisiana)
)
Madison Parish School Board) File No. SLD-287193
Tallulah, Louisiana)
)
Tensas Parish School District) File No. SLD-288236
Saint Joseph, Louisiana)
)
Webster Parish School Board) File No. SLD-292756
Minden, Louisiana)
)
Winn Parish School Board) File No. SLD-308580
Winnfield, Louisiana)
)

Schools and Libraries Universal Service) CC Docket No. 02-6
 Support Mechanism)

ORDER

Adopted: February 3, 2006

Released: February 3, 2006

By the Deputy Chief, Wireline Competition Bureau:

1. Twelve Louisiana parish school districts (Petitioners) filed Requests for Review¹ of decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator).² The SLD decisions denied funding for discounted services for Funding Year 2002 under the schools and libraries universal service mechanism. For the reasons set forth below, we grant Petitioners' Requests for Review and remand the relevant applications to SLD for appropriate action consistent with this Order.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.⁴ In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, an FCC Form 470 requesting discounted services, such as tariffed telecommunications services, month-to-month Internet access, cellular services, or paging services, and any services for which the applicant is seeking a new contract.⁵ An applicant must either provide specific details about the services or functions they are seeking directly on the FCC Form 470 or indicate that it has a Request for Proposal (RFP) that provides additional detail on the services the applicant is seeking and include information on how to obtain a copy of the RFP.⁶ The applicant must wait 28 days before entering into an agreement with a

¹The 12 school districts consolidated their appeals into three filings with the Commission: Requests for Review by Caldwell Parish School District, SLD File No. 289493, Catahoula Parish School Board, SLD File No. 306666, Clairborne Parish School Board, SLD File No. 304992, Concordia Parish School Board, SLD File No. 287856, Franklin Parish School District, SLD File No. 288635, Lincoln Parish School Board, SLD File No. 302051, Webster Parish School Board, SLD File No. 292756, and Winn Parish School Board, SLD File No. 308580, to Federal Communications Commission, filed August 23, 2004; Requests for Review by Bienville Parish School Board, SLD File No. 288199, and Madison Parish School Board, SLD File No. 287193, to Federal Communications Commission, filed August 17, 2004; and Requests for Review by DeSoto Parish School Board, SLD File No. 291803, and Tensas Parish School Board, SLD File No. 288236, to Federal Communications Commission, filed July 27, 2004 (collectively, Requests for Review).

²Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. § 54.719(c).

³47 C.F.R. §§ 54.501-54.503.

⁴47 C.F.R. §§ 54.504, 54.511(c).

⁵47 C.F.R. § 54.504(b); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

⁶FCC Form 470.

service provider for the requested services.⁷ Once the school or library has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the service providers with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁸ Under our rules, applicants must select the most cost-effective bids.⁹ The Commission's rules also state, "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."¹⁰

3. The State of Louisiana also requires schools and libraries to follow its Public Bid Law.¹¹ Louisiana Public Bid Law requires that contracts for public works projects costing more than \$100,000 must be advertised and signed over by contract to the lowest responsible and responsive bidder.¹² Public works means the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used or leased by a public entity.¹³ Public works contracts that are estimated to cost less than \$100,000 are not subject to the advertisement and bidding requirements of the Public Bid Law and may be negotiated with one or more contractors or undertaken by the public entity with its own employees.¹⁴ Contracts for the purchase of materials and supplies exceeding \$20,000 must be advertised and let by contract to the lowest responsible and responsive bidder.¹⁵ Contracts for purchases less than \$20,000 but more than \$10,000 must be made by obtaining at least three telephone or facsimile quotations.¹⁶ There are no Louisiana Public Bid Law provisions for purchases of materials and supplies less than \$10,000.¹⁷ Louisiana Public Bid Law also describes the procedures for using requests for

⁷47 C.F.R. § 54.504(b)-(c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2001) (FCC Form 471).

⁸47 C.F.R. § 54.504(c). See FCC Form 471. The FCC Form 471 is broken up into "blocks" that group related or interdependent requests for information, called "items," together.

⁹*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029-30, para. 481 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

¹⁰47 C.F.R. § 54.504(a).

¹¹La. Rev. Stat. § 38:2211, *et. seq.*

¹²La. Rev. Stat. §§ 38:2212(1)(a) & (d); Letter from Kenneth F. Sills, Hammond & Sills Attorneys at Law, to Federal Communications Commission, filed December 21, 2004 (Requests for Review Supplement), attachment B (Letter from Charles C. Foti, Jr., Attorney General, State of Louisiana Department of Justice, to Kenneth F. Sills, Louisiana School Boards Association, Opinion No. 04-0275, dated November 23, 2004, at 2) (Attorney General Advisory Opinion).

¹³La. Rev. Stat. § 38:2211(11); Attorney General Advisory Opinion at 2.

¹⁴La. Rev. Stat. § 38:2212B; Attorney General Advisory Opinion at 2.

¹⁵La. Rev. Stat. § 38:2212.1A(1)(a); Attorney General Advisory Opinion at 3.

¹⁶La. Rev. Stat. § 38:2212.1A(1)(b); Attorney General Advisory Opinion at 3.

¹⁷Attorney General Advisory Opinion at 3.

proposals for telecommunications and data processing procurement as an alternative to the required bid procedures.¹⁸ While school boards are subject to Louisiana Public Bid Law when contracting for public works and for purchase of materials and supplies, schools boards' contracts for services, professional or otherwise, are not subject to the requirements of Louisiana statute.¹⁹

4. Petitioners sought funding in funding year 2002 for Internet access and internal connections from SEND Technologies, LLC and posted the appropriate FCC Forms 470 for these contracts consistent with the Commission's competitive bidding rules by providing details about the specific Internet access services and functions that were being sought on the FCC Form 470 to be posted on USAC's web site.²⁰ Petitioners did not indicate that it had RFPs available.²¹ While reviewing the Petitioners' applications, USAC determined that the Petitioners had not complied with Louisiana Public Bid Law and, because program rules establish that state laws apply in addition to the federal competitive bidding requirements, USAC denied their requests for support.²² Specifically, USAC noted that Internet access and internal connections were not covered under Louisiana Public Bid Law's definition of exempt professional services and that "[c]ompetitive bidding [was] required for purchases over \$7,500 . . . and for public works contracts over \$100,000."²³ The Petitioners appealed these decisions to USAC.²⁴ On appeal, USAC clarified its rationale and noted that the Petitioners' requests for Internet access and internal connections, while perhaps not under the definition of a "public work" that requires adherence to Louisiana Public Bid Laws, are telecommunications and data processing systems that must be procured through the RFP process under Section 38:2237.²⁵ USAC also noted that Petitioners must follow Section

¹⁸La. Rev. Stat. §§ 38:2234-2238; Attorney General Advisory Opinion at 3.

¹⁹Attorney General Advisory Opinion at 3 (citing *Lafourche Parish Water District No. 1 v. Carl Heck Engineers, Inc.* (La.App. 1st Cir. 1977) 346 So.2d 769; *BFI, Inc. v. City of Monroe* (La.App. 2d Cir. 1985) 465 So.2d 882).

²⁰*See, e.g.*, FCC Form 470, Clairborne Parish School District, posted December 17, 2001.

²¹*Id.*

²²*See, e.g.*, Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mark Stevenson, SEND Technologies, LLC, for DeSoto Parish School District, dated September 2, 2003 (Commitment Adjustment Letters). *See also* Letter from Kenneth F. Sills, Hammond & Sills Attorneys at Law, on behalf of Bienville Parish School Board, Caldwell Parish School Board, Catahoula Parish School Board, Clairborne Parish School Board, Concordia Parish School Board, Franklin Parish School Board, Lincoln Parish School Board, Madison Parish School Board, Morehouse Parish School Board, Richland Parish School Board, Webster Parish School Board, Winn Parish School Board, to Schools and Libraries Division, Universal Service Administrative Company, dated March 22, 2004; Letter from Kenneth F. Sills, Hammond & Sills Attorneys at Law, on behalf of DeSoto Parish School Board, to Schools and Libraries Division, Universal Service Administrative Company, dated October 30, 2003; Letter from Kenneth F. Sills, Hammond & Sills Attorneys at Law, on behalf of Tensas Parish School District, to Schools and Libraries Division, Universal Service Administrative Company, dated October 30, 2003 (collectively, Letters of Appeal).

²³Commitment Adjustment Letters (citing La. Rev. Stat. §§ 38:2310(7) & 38:2212).

²⁴Letters of Appeal.

²⁵La. Rev. Stat. §§ 38:2237. Letter from Schools and Libraries Division, Universal Service Administrative Company, to Caldwell Parish School District, dated June 24, 2004 (Further Explanation of the Administrator's Decision on Appeal) at 5; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Catahoula Parish School District, dated June 24, 2004 (Further Explanation of the Administrator's Decision on Appeal) at 5; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Clairborne Parish School District, dated June 24, 2004 (Further Explanation of the Administrator's Decision on Appeal) at 5; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Concordia Parish School

38:2212.1, which requires that Petitioners obtain at least three telephone or facsimile quotes for purchase of materials and supplies between \$10,000 and \$19,999.²⁶ In addition, USAC stated that purchases for telecommunications and data processing systems materials and supplies that are under \$10,000 are subject to the RFP process under Section 38:2237.²⁷ USAC concluded that since the Petitioners did not follow the RFP procedures but instead provided specific details about the services or functions they are seeking on the FCC Form 470, Petitioners were in violation of Louisiana Public Bid Law and thus not eligible for funding.²⁸

5. Pursuant to our rules, upon receiving USAC's appeal decision, Petitioners requested review of USAC's decision from the Commission. In their petitions, Petitioners argued that the question of whether the schools complied with Louisiana procurement procedures was a matter of state law, within the province of the Louisiana Attorney General (Attorney General) and not USAC or the Commission.²⁹ Petitioners requested that the Commission hold in abeyance its decision until the Attorney General could determine whether the Petitioners complied with the state's procurement requirements.³⁰ On November 23, 2004, the State of Louisiana's Attorney General's office filed an opinion letter interpreting the relevant portions of the Louisiana Public Bid Law.³¹ The Attorney General concluded that the telecommunications and data processing RFP provisions of 38:2234-2237 were optional and serve as an alternative to the required bid procedures in 38:2212 and 2212.1.³² The Attorney General further stated that if a procurement for telecommunications or data processing equipment does not need to be bid pursuant to Louisiana Public Bid Law, there is no requirement that an RFP be used.³³ While the Attorney

District, dated June 24, 2004 (Further Explanation of the Administrator's Decision on Appeal) at 5; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Franklin Parish School District, dated June 24, 2004 (Further Explanation of the Administrator's Decision on Appeal) at 5; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lincoln Parish School District, dated June 24, 2004 (Further Explanation of the Administrator's Decision on Appeal) at 5; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Webster Parish School District, dated June 24, 2004 (Further Explanation of the Administrator's Decision on Appeal) at 5; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Winn Parish School District, dated June 24, 2004 (Further Explanation of the Administrator's Decision on Appeal) at 5; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Tensas Parish School District, dated May 28, 2004 (Further Explanation of the Administrator's Decision on Appeal) at 5; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bienville Parish School District, dated May 10, 2004 (Further Explanation of the Administrator's Decision on Appeal) at 5; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Madison Parish School District, dated May 10, 2004 (Further Explanation of the Administrator's Decision on Appeal) at 5; Letter from Schools and Libraries Division, Universal Service Administrative Company, to DeSoto Parish School District, undated (Further Explanation of the Administrator's Decision on Appeal) at 5 (collectively, Further Explanations of the Administrators Decision on Appeal).

²⁶La. Rev. Stat. § 38:2212.1. Further Explanations of the Administrators Decision on Appeal at 5.

²⁷La. Rev. Stat. § 38:2237. Further Explanations of the Administrators Decision on Appeal at 5.

²⁸Further Explanations of the Administrators Decision on Appeal at 6.

²⁹Requests for Review.

³⁰*Id.*

³¹Attorney General Advisory Opinion at 1.

³²Attorney General Advisory Opinion at 3.

³³*Id.*

General noted that the RFP described in 38:2237 is a legally acceptable procurement method, the Attorney General also concluded that the posting of the bid proposal on the USAC website “certainly appear[s] to be an acceptable process that would assure a competitive bid process.”³⁴

6. Upon review of the record, we grant Petitioners’ Requests for Review. As an initial matter, we note that the Commission has traditionally refrained from acting or deferred action in matters of alleged violations of local or state laws where the matters have not been presented to or acted upon by the authority charged with the responsibility of interpreting and enforcing those laws.³⁵ In this instance, however, the Attorney General drafted an opinion letter interpreting the state laws that are pertinent to the alleged legal problems raised by USAC. We therefore defer to this authority and conclude that Petitioners followed Louisiana Public Bid Law and, thus, were in compliance with state and local competitive bid requirements. In reaching this conclusion, we note that USAC interpreted Louisiana Public Bid Law to require either an RFP or other statutory bid procedure for all telecommunications and data processing procurements even if the procurement did not require bidding under Louisiana Public Bid Law.³⁶ The Attorney General, however, notes that the use of an RFP is merely optional under Louisiana Public Bid Law.³⁷ Furthermore, the Attorney General concludes that the posting of the bid proposal on the USAC website is an acceptable means of assuring a competitive bidding process.³⁸ Because all the requests for funding at issue followed USAC and the Commission’s competitive bidding rules and regulations, as well as applicable state laws, as required by program rules, we conclude that Petitioners were in compliance with section 54.504(a) of the Commission’s rules. Accordingly, we grant Petitioners’ Requests for Review.

IV. ORDERING CLAUSE

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Requests for Review filed by Petitioners on August 23, 2004, August 17, 2004, and July 27, 2004, ARE GRANTED, and the applications are REMANDED to SLD for further consideration consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer
Deputy Chief
Wireline Competition Bureau

³⁴Attorney General Advisory Opinion at 4.

³⁵See *Banger Broadcasting Corporation*, Memorandum Opinion and Order, 23 RR 2d 883, para. 5 (1972).

³⁶Further Explanations of the Administrators Decision on Appeal at 6; Attorney General Advisory Opinion at 3.

³⁷Attorney General Advisory Opinion at 3.

³⁸Attorney General Advisory Opinion at 4.