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### Syringa Networks v. Idaho Department of Administration Clerk's Record v. 3 Dckt. 38735

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Defendant Qwest Communications Company, LLC ("Qwest") respectfully submits this Memorandum of Law in support of its Motion for Summary Judgment on Counts Four and Five of the Complaint filed by Plaintiff Syringa Networks, LLC ("Syringa").

#### **INTRODUCTION**

The material allegations against Qwest in Syringa's Complaint are extremely sparse and made on "information and belief." In summary, Syringa alleges that Qwest and an "IEN Alliance," in which Syringa was a participant with Education Networks of America ("ENA") as set forth in their Teaming Agreement, submitted competing bids in response to a Request for Proposals ("RFP") to develop a statewide high-bandwidth education network in Idaho, known as the Idaho Education network ("IEN"). According to the Complaint, "Qwest officials" met with Idaho Department of Administration ("DOA") employees and somehow – Syringa's Complaint does not say how – conspired with and unduly influenced these DOA employees so that Qwest would be awarded a contract and Syringa would be left out. Based on these meager allegations, Syringa alleges that Qwest engaged in tortious interference with contract and with prospective economic advantage by somehow improperly influencing state officials.

Months of discovery have revealed no factual basis for Syringa's claims against Qwest. The claims are groundless, speculative and unsupported by the evidence. After having received tens of thousands of pages of documents from the DOA, ENA, and Qwest, and after taking numerous depositions in this case, Syringa has no evidence – none whatsoever – supporting a claim that Qwest in any way acted improperly.

There is no evidence that Qwest conspired with anyone. There is no evidence that Qwest attempted to influence state officials, whether politically, through incentives or bribes, through threats or intimidation, or otherwise. And there is no evidence that Qwest offered anything of value to anybody to influence any decision regarding the IEN.

To the contrary, the evidence establishes that Qwest submitted a bid for the IEN contract to the DOA, Qwest was awarded a contract, and then Qwest was allocated certain tasks under that contract by the unilateral decision of the DOA. At its core, therefore, Syringa's claim is that competition for a government contract is somehow tortious and improper. As a matter of law, competition cannot establish a claim for tortious interference.

#### STANDARD OF REVIEW

Summary judgment should be granted if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Lattin v. Adams County*, 236 P.3d 1257, 1260 (Idaho 2010) (quoting I.R.C.P. 56(c)). "Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the nonmoving party to show the existence of a genuine issue of material fact." *Chandler v. Hayden*, 215 P.3d 485, 489 (Idaho 2009). To do so, the nonmoving party must produce competent evidence "that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact." *Id.* Although the record should be construed in the light most favorable to the party opposing a motion for summary judgment, with reasonable inferences drawn in that party's favor, a "mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment." *Wesco Autobody Supply v. Ernest*, 2010 Ida. LEXIS 146, at \*17-18 (Idaho July 28, 2010).

Syringa has utterly failed to support the thin allegations of its Complaint with facts. After substantial written and testimonial discovery, the record is bereft of any *evidence* that Qwest improperly influenced state officials with respect to the IEN contract award. To the contrary, the evidence establishes that Qwest did not interfere with any contract or economic advantage of Syringa, and that it did nothing tortious or otherwise improper with respect to the IEN project.

The evidence establishes that (1) Qwest and ENA each submitted responses to the IEN RFP; (2) Qwest and ENA were each awarded an IEN contract; (3) the DOA solicited recommendations from both ENA and Qwest as to how to allocate the responsibilities for the IEN project; (4) the DOA then unilaterally determined how it would allocate responsibilities for the IEN project between Qwest and ENA; and (5) the DOA then issued amended purchase orders to reflect that allocation. As a result, Qwest was awarded the network technical services portion of the IEN project, ENA was awarded the remaining portions, and the parties were instructed to work together to create the IEN network. There is no evidence – just rank speculation – to support Syringa's claim that some sort of conspiracy caused this allocation.

#### **ARGUMENT**

A. Summary Judgment Should Be Granted to Qwest on Count Four Because the Undisputed Material Facts Show That Qwest Did Not Tortiously Interfere with Any Contract.

To establish a prima facie case of tortious interference with contract, a plaintiff must prove: (1) the existence of a contract, (2) knowledge of the contract on the part of the defendant, (3) intentional interference causing a breach of the contract, and (4) injury to the plaintiff resulting from the breach. *Bybee v. Isaac*, 178 P.3d 616, 624 (Idaho 2008); *Barlow v. Int'l Harvester*, 522 P.2d 1102, 1114 (Idaho 1974). Assuming that the plaintiff can establish intentional interference by the defendant causing a breach of contract, liability only arises from *improper* interference with a contract. *Beco Constr. Co. v. J-U-B Eng'rs, Inc.*, 184 P.3d 844, 848 (Idaho 2008) (citing *Jensen v. Westberg*, 772 P.2d 228, 234 (Idaho Ct. App. 1988) (citing RESTATEMENT (SECOND) OF TORTS § 766A, cmt. e (1977))). The undisputed material facts make clear that Syringa cannot establish a prima facie case of tortious interference with contract here.

<sup>&</sup>lt;sup>1</sup> If the plaintiff establishes a prima facie case, the burden shifts to the defendant to prove that its "conduct is justifiable under the circumstances; whether upon a consideration of the relative significance

### 1. The Teaming Agreement is not a valid contract under Idaho law because it is merely an agreement to agree.

The first element of a claim for tortious interference with contract is the existence of a contract. *Bybee*, 178 P.3d at 624. Syringa alleges that it was party to a Teaming Agreement with ENA, and that Qwest interfered with that contract by causing the DOA to award Qwest the technical network portion of the IEN contract. However, the Teaming Agreement is not a contract and therefore cannot provide a basis for a tortious interference claim.

A contract must be "sufficiently definite and certain in its terms and requirements so that it can be determined what acts are to be performed and when performance is complete." Spokane Structures, Inc. v. Equitable Inv., LLC, 226 P.3d 1263, 1268 (Idaho 2010) (internal citation omitted). "Generally, an agreement to agree is unenforceable, as its terms are so indefinite that it fails to show a mutual intent to create an enforceable obligation." Maroun v. Wyreless Sys., 114 P.3d 974, 984 (Idaho 2005). No contract "comes into being when parties leave a material term for future negotiations, creating a mere agreement to agree." Id.; Spokane Structures, 226 P.3d at 1268. "In order for a contract to be formed, there must be a meeting of the minds on all material terms to the contract." Univ. of Idaho Found., Inc. v. Civic Partners, Inc., 199 P.3d 102, 111 (Idaho 2008).

In *Spokane Structures*, 226 P.3d at 1264, the parties executed a document entitled, "Design/Build Agreement," which set forth "the scope of the work to be performed by [Spokane Structures] in the design and construction of an office and warehouse. . . ." In the Design/Build Agreement, "Spokane Structures, Inc. agree[d] to design, engineer, and draft plans in preparation

of the factors involved, his conduct should be permitted despite its expected effect of harm to another." *Barlow*, 522 P.2d at 1114 (citing RESTATEMENT OF TORTS § 767, cmt. a (1939)); *McEnroe v. Morgan*, 678 P.2d 595, 599 (Idaho Ct. App. 1984). Since Plaintiff cannot establish the elements of a prima facie case of tortious interference with contract here, Qwest reserves its arguments regarding justification.

of all documents/drawings required to enable the owner and contractor to agree on a final design and cost of construction to be performed." *Id.* The district court held that the Design/Build Agreement was a contract, but the Supreme Court of Idaho reversed, noting that "the parties left for future agreement both the plans and specifications describing the scope of the work to be done and the contract price, which were essential, interrelated terms." *Id.* at 1268. Therefore, the parties had merely agreed to agree and had not formed a contract. *Id.* Similarly, in the Teaming Agreement, ENA and Syringa left for future agreement the amount of money each would receive—in essence, the price for their services—and the details of how the work would be performed. Because such "essential, interrelated terms" were left for future agreement, the Teaming Agreement is merely an agreement to agree.

In a case involving a Teaming Agreement similar to the one at issue here, the court in *Trianco, LLC v. IBM*, 2008 U.S. App. LEXIS 7117 (3d Cir. Pa. Apr. 2, 2008) (unpublished)<sup>2</sup>, affirmed the district court's dismissal of a breach of contract claim. Under the Teaming Agreement, IBM was responsible for preparing the bid proposal for the prime contract. *Id.* at \*2. Subcontractor Trianco agreed to submit "cost/price" and "technical" proposals for subcontract work to IBM and assist in drafting the bid, collaborating exclusively with IBM. *Id.* at \*4. If IBM were awarded the prime contract, the parties were then obligated to negotiate in good faith mutually acceptable terms and conditions of a subcontract. *Id.* at \*5. After being awarded the prime contract, IBM asked Trianco to "re-bid" its initial pricing and solicited an alternative bid for the subcontract work. *Id.* 

Although the *Trianco* Teaming Agreement provided that "[u]pon award to IBM of a prime contract for the [Project], IBM will award a subcontract to Trianco," the court found that

<sup>&</sup>lt;sup>2</sup> Although *Trianco*, 2008 U.S. App. LEXIS 7117, is not binding authority, its factual similarity to the present case makes it informative and persuasive.

IBM's promise to grant a subcontract, subject to the parties' future agreement on its terms, conditions, and pricing, was merely an agreement to agree and not a contract:

While the Teaming Agreement provided that Trianco "will" and "shall" be awarded a subcontract, a material term of that promise was missing – namely, the price that IBM would pay Trianco for performing the subcontract. The agreement also contains no method for determining this price. While the Teaming Agreement states that Trianco will have a right of first refusal to reject the subcontract if it submitted "competitive pricing," the Teaming Agreement also does not define the term "competitive" nor does it refer to any extrinsic method for determining whether Trianco's pricing was, in fact, "competitive."

We are also not persuaded by Trianco's assertion that IBM accepted its pricing as competitive when it submitted its bid to the Government. Nothing in the Teaming Agreement states that Trianco's proposed pricing, when submitted by IBM to the Government, would constitute a definitive or even an approximate basis for determining Trianco's price. Again, while the doctrine of definiteness is not a rigid concept, there must be some objective method for supplying a missing material term. No such method existed here.

Id. at \*8-9 (footnote and citation omitted; emphasis added); see also Clifford R. Gray, Inc. v. Le Chase Constr. Servs., LLC, 819 N.Y.S.2d 182 (N.Y. App. Div. 2006) (subcontractor's pricing proposals to the prime contractor to secure a bid did not, without more, supply the missing essential term of the subcontractor's pricing).

The Teaming Agreement here is not a contract. Under the Teaming Agreement, Syringa and ENA left for future negotiations and agreement critical terms of any future relationship.

Specifically, ENA and Syringa provided that "[i]f ENA or Syringa are awarded the Prime

Contract [for the IEN project], ENA and Syringa shall enter into an agreement pursuant to which Syringa shall provide connectivity services statewide to ENA." As the Rule 30(6) representative of Syringa testified, the Teaming Agreement addressed the "workflow" or "division of labor"

between ENA and Syringa should ENA be awarded the IEN contract.<sup>3</sup> (Ex. 5 to Aff. of Meredith A. Johnston, Lowe Dep. at 176:17-177:10).<sup>4</sup> However, the Teaming Agreement failed to address how the two signatories would divide the \$571,000 monthly recurring charge the state would pay under the bid. That was left to subsequent negotiations:

- Q. ... And if I understand your testimony correctly, there is not within this Teaming Agreement a division of money?
- A. There is not the logistics of how all of that would work.
- Q. And at the time you entered into this Teaming Agreement, how did you expect that to be worked out?
- A. In subsequent negotiations upon winning. We knew what things cost. We didn't know the way the money would flow.
- Q. Did you at any time enter into a second contract with ENA delineating how the money would flow?
- A. We did not.

(*Id.* at 177:11-25). By failing to delineate how any money received from the state with respect to the IEN project would be divided, ENA and Syringa effectively failed to agree on the *price* for their respective services.

Moreover, Syringa and ENA never entered into any agreement with respect to order entry, billing, and other logistical terms associated with their relationship. (*Id.* at 178:1-7, 176:13-177:3). In essence, Syringa and ENA did not agree on *how* work would be performed. Given the complexity of the IEN project – which was designed to serve at least 136 schools in the first phase alone – such matters cannot be considered immaterial. The Teaming Agreement

<sup>&</sup>lt;sup>3</sup> There are several additional fatal flaws inherent in the Teaming Agreement, including an unfulfilled condition precedent and termination of any obligations according to its express terms. Those flaw are not addressed in this Motion. Qwest does not intend to waive any such arguments by focusing this Motion on one of the flaws in Syringa's claims, and reserves those arguments for a later time.

<sup>&</sup>lt;sup>4</sup> Hereinafter, all citations to "Exhibits" refer to Exhibits to the Affidavit of Meredith A. Johnston.

is therefore not "sufficiently definite and certain in its terms and requirements so that it can be determined what acts are to be performed and when performance is complete" with respect to the construction of the IEN. *See Spokane Structures*, 226 P.3d at 1268.

For these reasons, the Teaming Agreement is merely an agreement to agree and not a contract. Because Syringa cannot establish the existence a contract with which Qwest allegedly interfered, its tortious interference with contract claim should be dismissed.

### 2. Even if the Teaming Agreement were a valid contract, Qwest did not interfere with it or cause ENA not to perform.

The second essential element in a claim for tortious interference with a contract is proof that the defendant engaged in "intentional interference causing a breach of the contract" at issue. Here, Syringa does not allege that Qwest influenced anyone who had a contract with Syringa. Instead, Syringa alleges that Qwest influenced the DOA, and this influence had collateral consequences for Syringa's alleged agreement with ENA. The evidence is undisputed, however, that Qwest did nothing to influence or induce the DOA to award Qwest the technical network portion of the IEN contract other than submit a bid.

After the DOA issued the dual award to ENA and Qwest, the DOA specifically *asked*Qwest (and ENA) to provide suggestions and recommendations regarding IEN implementation.

(*Id.* at 163:22-164:14, 180:14-181:6). Qwest then provided its written recommendation that

Qwest be the designated IEN network provider, with ENA providing certain training, filing

assistance and application support. ENA provided its own recommendation that ENA be the

designated IEN network provider. The DOA essentially ignored Qwest's recommendation. (Ex.

15, Hill Dep. at 164:17-165:8, 176:9-179:11). In fact, the DOA instead designated ENA as the

service provider for the IEN project and placed ENA in charge of "coordinat[ing] overall

delivery of all IEN network services and support," with Qwest designated as the "general contractor for all IEN technical network services." (Ex. 19 ¶¶ 1-2; Ex. 18 ¶ 1).

Moreover, according to its Director, the DOA "unilaterally determined how best to divide the work between the two awardees/contractors . . . based upon the individual strengths of each awardees/contractors' proposals . . . [and] what Administration believed would best serve the State of Idaho and the schools." (Ex. 22, Letter from M. Gwartney to G. Lowe (July 24, 2009) at 2 (emphasis added)). There is no evidence that Qwest in any way influenced the DOA in its division of responsibilities between ENA and Qwest. (Ex. 5, Lowe Dep. at 269:1-7).

Under such circumstances, it is impossible to conclude that Qwest influenced or induced ENA to breach a contract with Syringa. It is also impossible to conclude that Qwest somehow influenced or induced the DOA to cause ENA to breach a contract with Syringa. There is no record evidence to support such speculation, let alone prove it. Syringa's tortious interference with contract claim therefore should be dismissed.

3. Even if Qwest did interfere with the Teaming Agreement, Qwest was competing with ENA for the business of a third party, the state, and cannot be liable for tortious interference absent improper means.

The evidence establishes that the primary thing Qwest did after receiving the IEN contract award is respond to the DOA's request for a recommendation as to how to allocate responsibilities for the project between ENA and Qwest. Therefore, in essence, Syringa's claim is that Qwest should have stood idly by while ENA acquired the entirety of the IEN project for itself and Syringa, even after Qwest had been awarded an equal share of it. The law does not impose such an obligation.

"One does not induce another to commit a breach of contract with a third person under the rule stated in this Section when he merely enters into an agreement with the other with knowledge that the other cannot perform both it and his contract with the third person. . . ." RESTATEMENT (SECOND) OF TORTS § 766 cmt. n (1977).<sup>5</sup> Therefore, even if Qwest and *ENA* had agreed to allocate the IEN dual award between them—and they did not—this would not constitute tortious interference with a contract between ENA and any third party such as Syringa. However, that is not what happened – Qwest's agreement is with the DOA, not ENA. And the DOA unilaterally allocated the award between Qwest and ENA. Qwest cannot be found to have induced ENA to breach any agreement with Syringa merely by performing its agreement with the state. Therefore, as a matter of law, Qwest cannot be held liable for tortious interference with the Teaming Agreement.

### 4. Even if Qwest did interfere with the Teaming Agreement, its interference was not improper.

Even if Qwest did interfere with the Teaming Agreement, its interference would not be improper. Section 767 of the RESTATEMENT (SECOND) OF TORTS (1977) identifies several factors courts consider in determining whether interference with a contract is improper:

In determining whether an actor's conduct in intentionally interfering with a contract or a prospective contractual relation of another is improper or not, consideration is given to the following factors:

- (a) the nature of the actor's conduct,
- (b) the actor's motive,
- (c) the interests of the other with which the actor's conduct interferes.
- (d) the interests sought to be advanced by the actor,
- (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other,
- (f) the proximity or remoteness of the actor's conduct to the interference and

<sup>&</sup>lt;sup>5</sup> RESTATEMENT (SECOND) OF TORTS § 766 was applied by the Idaho Supreme Court in *Wesco Autobody Supply v. Ernest*, 2010 Ida. LEXIS 146, at \*32 (Idaho July 28, 2010).

(g) the relations between the parties.

See Beco Constr. Co., 184 P.3d at 848 (applying Section 767 factors). Consideration of the relevant factors in this list and the undisputed evidence makes clear that Qwest's conduct cannot be considered improper interference with any contract of Syringa's as a matter of law.

"The nature of the actor's conduct is a chief factor in determining whether the conduct is improper or not, despite its harm to the other person. . . . The issue is not simply whether the actor is justified in causing the harm, but rather whether he is justified in causing it in the manner in which he does cause it." RESTATEMENT (SECOND) OF TORTS § 767 cmt. c. Examples of conduct that may be impermissible depending on the circumstances include threats of physical violence, fraudulent misrepresentations, litigation and the threat of litigation, criminal prosecutions or the threat of prosecution, conduct in violation of statutory provisions or contrary to established public policy, such conduct that is in violation of the antitrust laws, the exertion of economic pressure, or a violation of recognized business ethics. *Id.* These examples demonstrate that this case is an easy one – not one of them is even remotely present here, at least with respect to Qwest.

To the extent that Syringa has identified any conduct as the basis for its claims in this case, the claim appears to be premised entirely on Qwest's responding to the DOA's request that Qwest provide a recommendation as to how responsibilities for the IEN project should be allocated between ENA and Qwest. Responding to such a request cannot be considered improper under the circumstances of this case. The RESTATEMENT (SECOND) OF TORTS notes that "[t]he question of who was the moving party in the inducement may also be important. A's active solicitation of B's business is more likely to make his interference improper than his mere response to an inquiry from B." § 767 cmt. c. Section 772 of the RESTATEMENT (SECOND) OF

TORTS also specifically provides that "[o]ne who intentionally causes a third person not to perform a contract or not to enter into a prospective contractual relation with another does not interfere improperly with the other's contractual relation, by giving the third person . . . honest advice within the scope of a request for the advice." Under this rule, it is immaterial that the actor may profit by the advice. *Id.* cmt. c.

The evidence is undisputed that the DOA *solicited* Qwest's recommendation regarding the division of responsibilities between ENA and Qwest after the DOA awarded both of them an IEN contract. DOA employee Laura Hill testified that the DOA "asked both the primes [ENA and Qwest] to come back with suggestions to the draft strategic visions that we had" with respect to IEN implementation, and then asked the Qwest representatives to put "their concerns and their recommendations" in writing. (Ex. 5, Hill Dep. at 163:22-164:14, 180:14-181:6). Qwest cannot be held liable for merely responding to the state's request.

Moreover, in considering whether Qwest did anything improper, it is helpful to consider the conduct of the other parties to this action. ENA, for example, did far more to advance the cause of the IEN Alliance, in which Syringa participated, than Qwest did on its own behalf. Immediately after the DOA issued its letter of intent (LOI), ENA met repeatedly with the DOA officials responsible for implementing the IEN project. ENA, not Qwest, offered the DOA unsolicited free paperwork filing assistance for the project while "working up a draft teaming agreement, with ENA as the Lead, supported by two subcontractors, Qwest and Syringa," and "a proposed governance model, where ENA would serve as the overall lead and responsible entity for this network." (Ex. 12, Email from L. Hill to G. Zickau & T. Luna (Jan. 21, 2009)). There is no evidence that Qwest offered similar inducements or engaged in such conduct.

Syringa's conduct offers even more contrast. Syringa is the only party in this action that has sought to advance its cause thorough litigation and the threat of litigation, and it is the only one who has accused others of potentially criminal activity by raising the threat of criminal prosecution. Moreover, Syringa continued to lobby state officials even after Qwest was awarded the technical network services portion of the IEN contract. As late as July 2009, Syringa and its lobbyist met with the DOA to request that the state either award ENA the technical network services portion of the IEN contract so Syringa could perform those services instead of Qwest, or hold a separate bid competition for each school. (Ex. 5, Lowe Dep. at 137:7-24, 140:11-142:17). And Syringa even submitted an unsolicited bid for several IEN sites to the IEN Technical Director in an attempt to take that business away from Qwest. (Ex. 21, Email from G. Lowe to B. Collie (July 8, 2009)).

Moreover, Qwest's motive in pursuing the IEN contract was to advance its own economic interests, not to harm Syringa in any way. Unlike "[a] motive to injure another or to vent one's ill will on him," which "serves no socially useful purpose," Qwest had a valid economic purpose in maximizing its IEN award. RESTATEMENT (SECOND) OF TORTS § 767 cmt. d, § 766 cmt. j.

Indeed, the RESTATEMENT (SECOND) OF TORTS specifically recognizes that where "the actor's interest will be economic, seeking to acquire business for himself," the interest "is important and will normally prevail over a similar interest of the other if the actor does not use wrongful means." § 767 cmt. f. Once Qwest was awarded at least some of the IEN project, Qwest's economic interest in the project was "consolidated into the binding legal obligation of a contract," an interest that "will normally outweigh [another] actor's own interest in taking that established right from [it]." *Id*.

Moreover, even if Qwest had influenced the DOA to allocate the technical network services portion of the IEN contract to Qwest, Qwest would have been within its rights to do so:

If the actor is not acting criminally nor with fraud or violence or other means wrongful in themselves but is endeavoring to advance some interest of his own, the fact that he is aware that he will cause interference with the plaintiff's contract may be regarded as such a minor and incidental consequence and so far removed from the defendant's objective that as against the plaintiff the interference may be found to be not improper.

RESTATEMENT (SECOND) OF TORTS § 766 cmt. j. There is no evidence that Qwest engaged in fraud, violence, or other means wrongful in themselves to induce the DOA to bar Syringa from the IEN project, and any efforts by Qwest to secure the IEN technical network portion of the award were intended to advance Qwest's interests, not to interfere with any interests of Syringa.

In short, Qwest and Syringa were each acting in their own economic self-interest in pursuing the IEN project. If Syringa's conduct is blameless, Qwest's must certainly be as well.

B. Summary Judgment Should Be Granted to Qwest on Count Five Because There Is No Evidence Indicating That Qwest Tortiously Interfered with Syringa's Prospective Business Advantage.

To establish a prima facie case for tortious interference with a prospective economic advantage, a plaintiff must show: (1) the existence of a valid economic expectancy, (2) knowledge of the expectancy on the part of the interferer, (3) intentional interference inducing termination of the expectancy, (4) the interference was wrongful by some measure beyond the fact of the interference itself (i.e. that the defendant interfered for an improper purpose or improper means), and (5) resulting damage to the plaintiff whose expectancy has been disrupted. *Commercial Ventures, Inc. v. Rex M. Lynn Lea Family Trust*, 177 P.3d 955, 964 (Idaho 2008) (quoting *Highland Enters. v. Barker*, 986 P.2d 996, 1004 (Idaho 1999)). Wrongful means include conduct that violates a statute or regulation, a recognized rule of common law (such as violence, threats of other intimidation, deceit or misrepresentation, bribery, or

disparaging falsehood), or an established standard of trade or profession. *Idaho First Nat'l Bank* v. *Bliss Valley Foods*, 824 P.2d 841, 860 & 861 n.16 (Idaho 1991).

As with tortious interference with contract, if the plaintiff establishes a prima facie case, the burden shifts to the defendant to establish that its conduct was privileged. *Bliss*, 824 P.2d at 861. Privilege only becomes relevant when "the interference would be wrongful but for the privilege; it becomes an issue only if the facts charged would be tortious on the part of an unprivileged defendant." *Id.* (internal citation omitted).

For purposes of this Motion only, Qwest assumes that Syringa could establish the existence of a valid economic expectancy, knowledge of the expectancy by Qwest, and damages. Regardless, Syringa cannot establish intentional or wrongful interference with any business expectancy by Qwest. Moreover, any such interference clearly would be privileged here.

### 1. Qwest did not interfere with any valid economic expectancy on the part of Syringa.

As discussed previously, there is no evidence that Qwest (1) influenced or induced ENA not to do business with Syringa, or (2) influenced or induced the DOA to award Qwest the technical network portion of the IEN contract, other than by submitting a bid for the IEN project. Moreover, although the DOA asked Qwest (and ENA) to provide a recommendation regarding IEN implementation and Qwest provided one, the DOA essentially ignored it. (Ex. \*\*, Hill Dep. at 163:22-164:14, 164:17-165:8, 176:9-179:11, 180:14-181:6). In fact, the DOA essentially did the opposite of what Qwest requested and placed ENA in charge of "coordinat[ing] overall delivery of all IEN network services and support," with Qwest designated as the "general contractor for all IEN technical network services." (Ex. 19 ¶¶ 1-2; Ex. 18 ¶ 1).

Moreover, the DOA "unilaterally determined how best to divide the work between the two awardees/contractors." (Ex. 22, Letter from M. Gwartney to G. Lowe (July 24, 2009) at 2

(emphasis added)). There is no evidence that Qwest in any way influenced the DOA in its determining how to divide responsibilities between ENA and Qwest. (Ex. 5, Lowe Dep. at 269:1-7).

Under such circumstances, Qwest did not cause Syringa to miss out on the opportunity to participate in the IEN project. Syringa's tortious interference claim should be dismissed.

#### 2. Any interference by Qwest was not "wrongful."

Even assuming that Syringa could prove that Qwest interfered with Syringa's ability to participate in the IEN project and caused the DOA to terminate the expectancy, it must further show that Qwest engaged in conduct that would be wrongful by some measure beyond the fact of the interference itself. *See Commercial Ventures*, 177 P.3d at 964. A plaintiff may show that interference was wrongful by proof that the defendant either: (1) had an improper objective or purpose to harm the plaintiff; or (2) used wrongful means to cause injury to the prospective business relationship. *Quality Res. & Servs. v. Idaho Power Co.*, 2010 U.S. Dist. LEXIS 16036 (D. Idaho Feb. 23, 2010).

Wrongful means include such things as the breach of fiduciary duties to plaintiff, *Wesco Autobody Supply*, 2010 Ida. LEXIS 146, at \*30, or conduct in violation of: a statute or other regulation, a recognized rule of common law, such as violence, threats of other intimidation, deceit, misrepresentation, bribery, or disparaging falsehood, or an established standard of trade or profession, *Quality Resource*, 2010 U.S. Dist. LEXIS 16036, at \*28-33. Absent proof of such an improper objective or the use of wrongful means, a plaintiff cannot support a claim for interference with prospective business.

For example, in *Quality Resource*, the plaintiff agency provided temporary contract workers to the defendant, a utility. After an RFP process, the defendant selected an alternative company as its primary supplier of temporary labor, and informed existing contract workers they

would be dismissed unless they joined the new supplier. *Id.* at \*6. Six workers then left plaintiff, joined the new agency, and continued to work for defendant. *Id.* 

Although the plaintiff had shown the existence of a valid economic expectancy, knowledge of the expectancy on the part of the defendant, and intentional interference inducing termination of the expectancy, the court entered summary judgment in favor of defendant. The court concluded that the defendant's interference was not accomplished by wrongful means because, among other things, (1) the defendant did not breach the parties' agreement by contacting the plaintiff's employees directly regarding their employment; (2) the defendant did not force employees to join the new contractor through any threats, intimidation, deceit, misrepresentation, bribery, or disparaging falsehood; and (3) the defendant did not violate an established standard of trade or profession. *Id.* at \*28-32. Moreover, when advising the employees that they would have to move to the new agency or be dismissed, the defendant was acting on behalf of plaintiff's competitor and did not use wrongful means to induce the transfer.

Syringa has not alleged and there is no evidence that Qwest's conduct violated a statute or regulation, a recognized rule of common law, an established standard of trade or profession, or was otherwise wrongful. In the absence of evidence showing that Qwest's conduct was wrongful beyond the fact of any alleged interference itself, Syringa's claim should be dismissed. *Lexington Heights Dev. v. Crandlemire*, 92 P.3d 526, 536 (Idaho 2004) (dismissal of plaintiff's claim for tortious interference with prospective economic advantage was proper because plaintiff did not explain how the conduct was wrongful or point to evidence in the record supporting its allegation); *Rudd v. Mingo Tribal Preservation Trust*, No. CV-05-467-E-BLW, 2007 U.S. Dist. LEXIS 23263, at \* 17-18 (D. Idaho Mar. 29, 2007) (accusations supported only by speculation

and unsupported conclusions are "not enough to create a genuine issue of material fact as to whether Defendants interfered for an improper purpose or improper means").

### 3. Qwest's conduct is privileged under the business competition privilege.

Even if Syringa could prove that Qwest intentionally and wrongfully interfered with a business expectancy of Syringa, any such interference was privileged. Idaho courts recognize that competitors are privileged to interfere with prospective contractual relationships under RESTATEMENT (SECOND) OF TORTS § 768 (1977), which provides:

- (1) One who intentionally causes a third person not to enter into a prospective contractual relation with another who is his competitor or not to continue an existing contract terminable at will does not interfere improperly with the other's relation if
  - (a) the relation concerns a matter involved in the competition between the actor and the other and
  - (b) the actor does not employ wrongful means and
  - (c) his action does not create or continue an unlawful restraint of trade and
  - (d) his purpose is at least in part to advance his interest in competing with the other.
- (2) The fact that one is a competitor of another for the business of a third person does not prevent his causing a breach of an existing contract with the other from being an improper interference if the contract is not terminable at will.

RESTATEMENT (SECOND) OF TORTS § 768, the court found that the defendant's conduct was privileged because he was competing for patients, his purpose in asking patients to visit his new office was to advance his position in the market, and he did not use wrongful means where the defendant did not invade restricted records or solicit patients whom he had not previously treated even though he solicited patients and used the plaintiff's patient lists); see also Quality Resource,

2010 U.S. Dist. LEXIS 16036 at \*36-37 (after applying the requirements of § 768, the court held that the defendant's purpose of inducing plaintiff's at-will employees to transfer to a competitor was not improper).

Applying the factors set forth in § 768, it is clear that any interference by Qwest was privileged. First, the requirement that "the [prospective contractual] relation concerns a matter involved in the competition between the actor and the other" is met where the "business diverted from the competitor relates to the competition between [the competitor] and the actor." *See Quality Resource*, 2010 U.S. Dist. LEXIS 16036 at \*35 (quoting RESTATEMENT (SECOND) OF TORTS § 768 cmt. d). Here, the business allegedly diverted from Syringa was the IEN contract, which is the precise business that, in competition with Syringa, Qwest submitted a bid for in response to the RFP.

Second, Qwest did not employ any wrongful means. Comment e to § 768 states that the predatory means discussed in § 767 cmt. c, including physical violence, fraud, civil suits and criminal prosecutions, are wrongful means of competition. As discussed above, none of these is present here with respect to Qwest. Comment e makes clear, however, that the actor may use persuasion and he may exert limited economic pressure. Third, there is no evidence to support a finding of unlawful restraint of trade. Finally, as discussed above, Qwest's actions in competing for the IEN contract were clearly aimed at advancing its own economic interests, rather than at harming Syringa. Because each of the factors under § 768(1) are met here, any interference by Qwest with Syringa's prospective contractual relation was clearly privileged under the § 768 competition privilege.<sup>6</sup>

<sup>&</sup>lt;sup>6</sup> Section 768(2) does not apply here. That section applies in situations where A is competing with C for the business of B, and C has an existing contract with B. Section 768 cmt. h states: "When B is legally free to deal either with C or with A, freedom to engage in competition implies a privilege on the part of A to induce B to deal with him rather than with C. But when B is legally obligated to deal with C,

### **CONCLUSION**

For the foregoing reasons, Qwest respectfully requests that this Court enter an Order granting summary judgment in favor of Qwest on Syringa's Count Four for tortious interference with contract and Count Five for tortious interference with prospective economic advantage.

RESPECTFULLY SUBMITTED this 1st Day of November, 2010.

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A is not justified by the mere fact of competition in inducing B to commit a breach of his legal duty." Because Syringa alleges that Qwest interfered with the Teaming Agreement that Syringa had with ENA, for § 768(2) to apply, Qwest would have had to have been competing with Syringa for business with ENA. That is not the case here.

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of November, 2010, a true and correct copy of the foregoing DEFENDANT QWEST COMMUNICATIONS COMPANY, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS FOUR AND FIVE was served as follows:

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# IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,

Plaintiff,

Case No. OC 0923757

VS.

IDAHO DEPARTMENT OF ADMINISTRATION; et al.

Defendants.

DEFENDANT QWEST
COMMUNICATIONS COMPANY,
LLC'S STATEMENT OF
UNDISPUTED FACTS IN
SUPPORT OF MOTION FOR
PARTIAL SUMMARY
JUDGMENT

DEFENDANT QWEST COMMUNICATIONS COMPANY, LLC'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT - 1

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#### STATEMENT OF UNDISPUTED FACTS

The following facts demonstrate that there is no genuine issue as to any material fact and that Qwest is entitled to judgment in its favor as a matter of law on Syringa's claims for tortious interference with contract and tortious interference with prospective business advantage.

### A. The IEN Request for Proposals, Syringa's Teaming Agreement, and the DOA's Contract Award

On December 15, 2008, the Idaho Division of Purchasing issued a Request for Proposal RFP02160 ("RFP"). (Ex. 1 to Aff. of Meredith A. Johnston). Through the RFP, the "State of Idaho desire[d] to contract with a qualified industry partner or partners to establish a long-term relationship to design and implement the Idaho Education Network." (*Id.*, § 3.2 at 13). Among other things, the purpose of the IEN is to provide broadband access and related services, such as Internet and video services, to Idaho public schools and state libraries, as well as institutions of higher education and state agencies. (*See id.*).

On December 29, 2008, representatives of Qwest attended a bidders conference hosted by the DOA, Office of the Chief Information Officer. (Ex. 2, RFP Amendment 03, dated Dec. 30, 2008, at DOA014903). Representatives of Syringa Networks, ENA, Verizon, Integra, and others, also attended the bidders conference. (*See id.* at DOA014901). Four vendors then submitted proposals in response to the RFP: Qwest, ENA, Verizon, and Integra. (Ex. 3, Email from G. Zickau to T. Luna & M. Gwartney (Jan. 12, 2009)).

ENA submitted its bid as part of the "IEN Alliance." (See Ex. 4, IEN Alliance Cost Proposal). The IEN Alliance bid offered to provide services to 136 schools, in the first phase, for a set amount per month in recurring charges to be paid by the state. (Id.) There is no indication

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<sup>&</sup>lt;sup>1</sup> Hereinafter, all citations to "Exhibits" refer to Exhibits to the Affidavit of Meredith A. Johnston.

in the bid as to how the recurring charges would be divided among the participants in the IEN Alliance. (See id.)

The IEN Alliance is not an entity, (see Ex. 5, Rule 30(6) Deposition of Syringa,

Testimony of Greg Lowe (Aug. 5-6, 2010) ("Lowe Dep.") at 173:9-23); it relates to a "Teaming

Agreement" between ENA and Syringa dated January 7, 2009. The purpose of the Teaming

Agreement is as follows:

ENA is seeking to become either (i) the prime contractor for the Project or (ii) the prime contractor for the portion of the Project which provides all services to schools and libraries. If ENA or Syringa are awarded the Prime Contract, ENA and Syringa shall enter into an agreement pursuant to which Syringa shall provide connectivity services statewide to ENA.

(Ex. 6, Teaming Agreement § 2(a)). The Teaming Agreement further provides that:

If ENA wins the Prime Contract as provided in Section 2(a) above, the parties shall execute a partnership agreement as specified in this agreement that will also include any required flow-down provisions or other appropriate terms similar to those set forth in the Prime Contract.

(Id. § 3(a)).

In its Rule 30(6) Deposition, Syringa's representative testified as follows regarding terms that the Teaming Agreement left for future negotiation:

Q. Okay. And you'll note in section 2(a) it says "If ENA or Syringa are awarded the Prime Contract, ENA and Syringa shall enter into an agreement pursuant to which Syringa shall provide connectivity services statewide to ENA."

Do you see that?

- A. I do.
- Q. Subsequent to ENA being awarded a contract, did ENA and Syringa enter into an agreement pursuant to which Syringa shall provide connectivity services statewide to ENA?
- A. Well, this agreement specifically states how the workflow would happen. What this agreement does not state is how the money flow would happen.

DEFENDANT QWEST COMMUNICATIONS COMPANY, LLC'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT - 3

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- Q. Explain.
- A. The logistics of how orders would be placed, the logistics of how billing would occur, when billing would occur, how you would get paid. The subsequent agreement was for the logistics of what this Teaming Agreement defined as a work -- you know, as a work body should the IEN Alliance win.
- Q. So if you turn to paragraph 3... it talks about ENA and Syringa responsibilities. Is that the workflow you were discussing?
- A. Yes, division of labor.
- Q. Division of labor. And if I understand your testimony correctly, there is not within this Teaming Agreement a division of money?
- A. There is not the logistics of how all of that would work.
- Q. And at the time you entered into this Teaming Agreement, how did you expect that to be worked out?
- A. In subsequent negotiations upon winning. We knew what things cost. We didn't know the way the money would flow.
- Q. Did you at any time enter into a second contract with ENA delineating how the money would flow?
- A. We did not.
- Q. Okay. Did you at any time enter into a subsequent contract with ENA regarding the logistics of order entry, billing, and whatnot?
- A. We did not.
- O. Okay. Those terms remained unresolved?
- A. Correct.
- (Ex. 5, Lowe Dep. at 176:6-178:7). Thus, the Teaming Agreement did not address how Syringa and ENA would be compensated, the price for their respective work, or the logistics of how the IEN project would be implemented.

DEFENDANT QWEST COMMUNICATIONS COMPANY, LLC'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT - 4

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On January 20, 2009, the Idaho Division of Purchasing issued a Letter of Intent ("LOI") advising bidders of the State of Idaho's intent "to award to <u>Qwest Communications Company LLC and Education Networks of America, Inc./ENA Services, LLC</u> for being awarded the most points." (Ex. 7, Letter from M. Little to ENA (Jan. 20, 2009) (emphasis in original)). Between December 15, 2008 (the day the RFP was issued) and January 20, 2009 (when the LOI was issued), no representative of Qwest initiated any communications or attempted to influence anyone associated with the Idaho state government regarding the RFP.<sup>2</sup> (Ex. 8, Aff. of Jim Schmit ("Schmit Aff.") ¶ 6; Ex. 9, Aff. of Clint Berry ("Berry Aff.") ¶ 6; Ex. 10, Dep. of Greg Zickau (Sept. 20, 2010) ("Zickau Dep.") at 175:2-176:6).

#### B. Meetings Among the Parties During the Five-Day Appeal Period

Idaho provides a five-day period for dissatisfied bidders to appeal the decision to award a contract after the issuance of a Letter of Intent. (Ex. 11, Email from L. Hill to G. Zickau (Jan. 23, 2009)). The day after the LOI was issued, on January 21, 2001, DOA employee Laura Hill met with ENA to initiate certain actions concerning the IEN project. (Ex. 12, Email from L. Hill to G. Zickau & T. Luna (Jan. 21, 2009); Ex. 13, Email from B. Collie to G. Lowe & S. Maloney (Jan. 21, 2009)). Specifically, ENA employee Bob Collie, "met with Laura Hill [that] morning and . . . had several follow-up phone calls and contacts" with her that day. (*Id.*).

After those discussions, Laura Hill reported that the following actions were taking place:

Pro bono E-Rate paperwork filing assistance from ENA has already started in earnest. Again, I did not request, ENA offered their probono support. . . .

DEFENDANT QWEST COMMUNICATIONS COMPANY, LLC'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT - 5

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<sup>&</sup>lt;sup>2</sup> Qwest did communicate with the DOA at the bidders conference in December 2008, but that event was initiated by the DOA, and Qwest did not attempt to influence anyone from the DOA regarding the RFP at the bidders conference. In January 2009, after Qwest submitted its proposal, the DOA contacted Qwest to request that Qwest provide a signature page that matched the one provided in the RFP package, which Qwest promptly provided. Again, the DOA initiated the communication with Qwest, and Qwest did not attempt to influence anyone at the DOA regarding the RFP. (Ex. 8, Aff. of Jim Schmit ¶ 6; Ex. 9, Aff. of Clint Berry ¶ 6).

ENA is working up a draft teaming agreement, with ENA as the Lead, supported by two subcontractors, Qwest and Syringa, which they will socialize with Mark Little, after vetting internally with both Qwest and Syringa. Note this includes a proposed governance model, where ENA would serve as the overall lead and responsible entity for this network."

(Ex. 12, Email from L. Hill to G. Zickau & T. Luna (Jan. 21, 2009)).

Qwest did not meet with anyone from DOA during the five-day appeal period following the LOI other than as requested by the DOA. Qwest's sole contact with the DOA during the appeal period was a request by Qwest employee, Clint Berry, sent to the State's Chief Information Officer, Greg Zickau, to discuss the IEN over coffee. Mr. Berry does not recall that the meeting ever took place. (Ex. 9, Berry Aff. ¶ 7).

### C. The DOA's Allocation of Responsibilities for the IEN Project

After the five-day appeal period expired, on January 28, 2009, the DOA issued two identical Statewide Blanket Purchase Orders – one each to Qwest and ENA – awarding each a contract related to the IEN project. (Ex. 14, Statewide Blanket Purchase Orders dated Jan. 28, 2009). During this same time-frame, the DOA also met with ENA and Qwest to discuss how the DOA would implement the IEN project, since two vendors received contracts. (Ex. 15, Dep. of Laura Lou Hill (Sept. 21, 2010) ("Hill Dep.") at 105:7-106:3, 110:9-17, 113:1-115:10). Specifically, the DOA "asked both the primes [ENA and Qwest] to come back with suggestions to the draft strategic visions that we [DOA] had" with respect to IEN implementation. (*Id.* at 180:14-181:6).

In response to this request, Clint Berry and Jim Schmit of Qwest met with Teresa Luna, Laura Hill, and Greg Zickau of the DOA on February 9, 2009. (*See* Ex. 16, Email from C. Berry to T. Luna, et al. (Feb. 10, 2009) (marked as Dep. Ex. 42)). At this meeting, the DOA asked the

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Qwest representatives to put "their concerns and their recommendations" in writing. (Ex. 15, Hill Dep. at 163:22-164:14).

Qwest then provided its written recommendation to the DOA on February 10, 2009. (Ex. 16, Email from C. Berry to T. Luna, et al. (Feb. 10, 2009)). Qwest recommended that it be the designated IEN network provider with overall responsibility for the project, with ENA providing certain training and filing assistance and application support. (*Id.* at DAO007215-20). Qwest also provided a proposed amendment to the RFP award to implement this division of responsibilities. (*Id.* at DOA007213). According to Laura Hill of the DOA, she "didn't do anything with" Qwest's submission and probably did not read it. (Ex. 15, Hill Dep. at 164:17-165:8).

Instead, Ms. Hill took her latest draft strategic implementation plan for the IEN and used it to draft RFP amendments dividing responsibility for the IEN project between Qwest and ENA. (Ex. 15, Hill Dep. at 176:9-178:3; Ex. 17, Email from L. Hill to M. Little, et al. (Feb. 12, 2009)). Ms. Hill specifically testified that she *did not* use the proposed amendment provided by Qwest after the February 9 meeting:

- Q. In doing that, did you use the draft amendment sent by Mr. Berry to you on February 10, which is Exhibit 42, as a template?
- A. No, I did not, because I had to go back to the original document that [Deputy Attorney General] Melissa [Vandenberg] looked at, which was the draft . . . -- it's that last strategic plan dated on the 5th, and I had to go back to that chart that had the two providers in it. . . .

MR. SCHOSSBERGER: Exhibit 37?

THE WITNESS: Yeah, 37. I had to take that chart and stick it in there, and that's what I did.

Q. (BY MR. LOMBARDI): Okay. Well, let me just ask you to take a look at Exhibit 42, because at a glance, at least, it appears that Exhibit 42 may have also been used by you as a template for your preparation of Exhibit -- . . . .

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A. It was not.

Q. It was not. Okay.

A. It was not, no.

(Ex. 15, Hill Dep. at 176:9-179:11 (emphasis added)).

With minor changes, the DOA used the amendments drafted by Ms. Hill to amend the RFP award and allocate responsibilities for the IEN project between ENA and Qwest through a second set of Statewide Blanket Purchase Orders. (*Compare* Ex. 17, Email from L. Hill to M. Little, et al. (Feb. 12, 2009) with Ex. 18, Qwest SBPO Change Order 01 (Feb. 28, 2009) and Ex. 19, ENA SBPO Change Order 01 (Feb. 28, 2009)). Among other things, these "Amendment No. 1s" designated ENA, not Qwest, as the service provider for the IEN project and allocated to ENA responsibility to "coordinate overall delivery of all IEN network services and support." (Ex. 19 ¶¶ 1-2, at DOA006197). The amendments also designated Qwest as the "general contractor for all IEN technical network services." (Ex. 18 ¶ 1, at DOA006201).

Notwithstanding the amendment to the RFP award by which the DOA designated Qwest as the contractor for all IEN technical network services, Syringa continued trying to obtain some or all of the contract that had been awarded to Qwest. For example, in early July 2009, Syringa provided an unsolicited bid for twelve IEN sites to the IEN Technical Director, Brady Kraft.<sup>3</sup> (Ex. 21, Email from G. Lowe to B. Collie (July 8, 2009)).

Also in July 2009, Syringa's CEO, Greg Lowe, and its lobbyist, Ken McClure, met with Mike Gwartney, the Director of the DOA, and three other state employees about the IEN project.<sup>4</sup> (Ex. 5, Lowe Dep. at 137:7-24). Representatives of ENA attended the meeting by

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<sup>&</sup>lt;sup>3</sup> (See Ex. 20, Office of the CIO – Job Descriptions at 3).

<sup>&</sup>lt;sup>4</sup> The deposition questions contained in the transcript excerpts include an error as to the date of the meeting. It was July 16, 2009, not 2010 as the questions indicate.

telephone, but no Qwest representatives attended. (*Id.* at 137:7-24, 138:20-23, 140:6-10). At this meeting, the Syringa representatives requested that the state either award ENA the technical network services portion of the IEN contract so Syringa could perform those services instead of Qwest, or that the state hold a separate bid competition for each school. (*Id.* at 140:11-142:17). Mr. Gwartney denied the request, stating that it would not be fair. (*Id.*).

After the meeting, Mr. Gwartney followed up with a letter further outlining the state's reasoning in determining how to divide the IEN project between Qwest and ENA:

After the initial award, Administration then unilaterally determined how best to divide the work between the two awardees/contractors.

Administration's determination was based upon the individual strengths of each awardees/contractors' proposals. For example, ENA had expertise in providing E-rate services and providing video teleconferencing operations. Qwest had expertise in providing the technical operations (ie., the backbone). Before Amendment 1 to SBPO 01308 and SBPO 01309 were issued, Administration contemplated various ways to divide the responsibilities between Qwest and ENA, including but not limited to dividing the services to be provided by Qwest and ENA regionally. However, the division of responsibilities reflected in the Amendment 1s is a reflection of what Administration believed would best serve the State of Idaho and the schools.

(Ex. 22, Letter from M. Gwartney to G. Lowe (July 24, 2009) at 2 (emphasis added)). When asked about this paragraph at the Rule 30(6) deposition of Syringa, its designated representative testified as follows:

Q. (BY MR. PERFREMENT): And do you know whether Qwest in any way influenced the Administration to conclude that the division of responsibilities reflected in the Amendment 1s best serve the State of Idaho and the schools?...

THE WITNESS: I do not.

(Ex. 5, Lowe Dep. at 269:1-7). Qwest also had no involvement in the drafting of the DOA letter advising Syringa of the basis for its decision. (Ex. 8, Schmit Aff. ¶ 12; see also Ex. 5, Lowe Dep. at 265:3-266:18).

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## D. Qwest's Response to Syringa's General Allegations of Improper Influence with Respect to the IEN Project

Syringa's Complaint identifies no conduct by Qwest that could be deemed to be tortious or improper. Instead it alleges in conclusory fashion that unnamed Qwest officials somehow unduly influenced DOA employees to award Qwest the technical network services portion of the IEN project. To ensure that the summary judgment record is complete, Qwest offers the following additional undisputed facts:

Qwest did not do anything to unduly influence the DOA to award Qwest the IEN contract. Qwest did not bribe anyone, offer anything of value to anyone, threaten anyone, intimidate anyone, disparage Syringa or anyone else, violate any known standards of trade in the industry, or exert any political, moral, or other influence to cause the DOA to award Qwest the IEN contract or any part of it. (Ex. 8, Schmit Aff. ¶ 13; Ex. 9, Berry Aff. ¶ 12). Syringa has no evidence to the contrary. (Ex. 5, Lowe Dep. at 120:25-121:24, 123:11-18).

Moreover, Qwest has not attempted to exclude Syringa from participation in the IEN project. To the contrary, Qwest's RFP response contemplated that Syringa would have a role in the project as a subcontractor to Qwest, and Qwest has repeatedly attempted to engage Syringa as a potential subcontractor on the project. (Ex. 8, Schmit Aff. ¶ 14).

RESPECTFULLY SUBMITTED this 1st day of November, 20/0.

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#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 1st day of November, 2010, a true and correct copy of the foregoing DEFENDANT QWEST COMMUNICATIONS COMPANY, LLC'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT was served as follows:

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DEFENDANT QWEST COMMUNICATIONS COMPANY, LLC'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT - 12

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ATTORNEYS FOR DEFENDANT QWEST COMMUNICATIONS COMPANY, LLC

# IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho lin liability company,	nited
Plaintiff,	Case No. OC 0923757
vs.	AFFIDAVIT OF MEREDITH A. JOHNSTON
IDAHO DEPARTMENT OF	3 3 4 2 3 2 3 2 3 2 3 2 3 2 3 2 3 2 3 2
ADMINISTRATION; et al.	
Defendants.	
STATE OF COLORADO	) ) ss.
CITY AND COUNTY OF DENVER	)
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Meredith A. Johnston, affiant herein, states as follows under oath and subject to penalty of perjury:

1

- 1. I am an associate with the law firm of Holme Roberts & Owen, LLP, counsel of record for Defendant Qwest Communications Company, LLC ("Qwest") in this case. I am admitted to this Court *pro hac vice*. I make the following statements based upon my personal knowledge and review of the record evidence in this case.
- 2. Exhibit 1 hereto is a true and correct copy of Attachment A to the Complaint, Request for Proposal RFP02160.
  - 3. Exhibit 2 is a true and correct copy of RFP Amendment 03, dated Dec. 30, 2008.
- 4. Exhibit 3 is a true and correct copy of an Email from Greg Zickau to Teresa Luna & Mike Gwartney (Jan. 12, 2009).
  - 5. Exhibit 4 is a true and correct copy of the IEN Alliance Cost Proposal.
- 6. Exhibit 5 is a true and correct copy of excerpts from the transcript of the Rule 30(6) Deposition of Syringa Networks, LLC, Testimony of Greg Lowe, on August 5-6, 2010.
- 7. Exhibit 6 is a true and correct copy of the "Teaming Agreement" between ENA and Syringa dated January 7, 2009.
- 8. Exhibit 7 is a true and correct copy of the Letter from Mark Little to ENA (Jan. 20, 2009).
  - 9. Exhibit 8 is a true and correct copy of the Affidavit of Jim Schmit.
  - 10. Exhibit 9 is a true and correct copy of the Affidavit of Clint Berry.
- 11. Exhibit 10 is a true and correct copy of excerpts from the transcript of the Deposition of Greg Zickau on September 20, 2010.
- 12. Exhibit 11 is a true and correct copy of an Email from Laura Hill to Greg Zickau (Jan. 23, 2009).

- 13. Exhibit 12 is a true and correct copy of an Email from Laura Hill to Greg Zickau and Teresa Luna (Jan. 21, 2009).
- 14. Exhibit 13 is a true and correct copy of an Email from Bob Collie to Greg Lowe & Steve Maloney (Jan. 21, 2009).
- 15. Exhibit 14 is a true and correct copy of Statewide Blanket Purchase Orders dated January 28, 2009.
- 16. Exhibit 15 is a true and correct copy of excerpts from the transcript of the Deposition of Laura Lou Hill on September 21, 2010.
- 17. Exhibit 16 is a true and correct copy of an Email from Clint Berry to Teresa Luna and others (Feb. 10, 2009).
- 18. Exhibit 17 is a true and correct copy of an Email from Laura Hill to Mark Little, et al. (Feb. 12, 2009).
- 19. Exhibit 18 is a true and correct copy of SBPO Change Order 01 for Vendor Qwest Communications Corporation (Feb. 28, 2009).
- 20. Exhibit 19 is a true and correct copy of SBPO Change Order 01 for Vendor Education Networks of America (Feb. 28, 2009).
  - 21. Exhibit 20 is a true and correct copy of the Office of the CIO Job Descriptions.
- 22. Exhibit 21 is a true and correct copy of an Email from Greg Lowe to Bob Collie (July 8, 2009).
- 23. Exhibit 22 is a true and correct copy of a Letter from Mike Gwartney to Greg Lowe (July 24, 2009).

Affiant states nothing further in this affidavit.

Subscribed and sworn to before me by Meredith A. Johnston this 29th day of October, 2010.

Witness my hand and official seal.

My commission expires: 12/5/2012 Susai M Dentre

Notary Public

# EXHIBIT 1



# STATE OF IDAHO

- REQUEST FOR PROPOSALS (RFP) -

IDAHO EDUCATION NETWORK (IEN)

**RFP02160** 

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#### 1.0 SCHEDULE OF EVENTS

The following dates are tentative and subject to amendment

BIDDERS Conference: 29 December 2008

Deadline to Receive Emailed Questions on RFP02160: 5 January 2008

RFP02160 Closing Date and Time: 12 January 2009, 5PM MST

#### 2.0 DEFINITIONS

24 x 7 x 52: Stands for "twenty-four hours a day, seven days a week, and fifty-two weeks per year." When used, this term describes access, services or support that is expected to be available at all times during a year.

Access Point: A physical connection between a User's private network and the commercial Internet that facilitates exchanging e-mail, transferring files, viewing public web pages, delivering streaming audio and video, using voice over IP ("VoIP") and enabling other value-added hosted services.

**Appropriation:** Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

Award: All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the Request for Proposal. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State.

Bell Schedules: Public School terminology for the scheduling of daily classes. Bell Schedules need to be taken into account when it comes to scheduling of Synchronous Distance Learning experiences and other distance learning programs\activities that are real-time dependent.

Bid Bond: Ensures that bidder will enter into the contract and is retained by the State from the date of the bid opening to the date of contract signing.

Business: Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

Calendar Day: Every day shown on the calendar, Saturday, Sundays and holidays included.

Children's Internet Protection Act (CIPA): The Children's Internet Protection Act (CIPA) is a federal law enacted by Congress to address concerns about access to offensive content over the Internet on school and library computers. CIPA imposes certain types of requirements on any school or library that receives funding for Internet access or internal connections from the E-rate program —a program that makes certain communications technology more affordable for eligible schools and libraries.

**CMFONI:** A high speed, fiber-optic-based network serving the Capitol Mall. CMFONI facilitates state agencies' connectivity to a variety of networked-based services including the commercial Internet.

Cost Effective: Defined as meeting both the economic needs of the State, and is a solution that is leading edge in terms of networking equipment, associated system protocols and industry best practices.

Contract: The agreement between the Contractor and the State. Contract shall be comprised of the Proposer's proposal in its entirety, the Request for proposal document and all attachments either written or electronic, and the terms and conditions set forth for the Request for proposal within sicommnet (stated and referenced).

Contractor: The Vendor to whom the State awards a Contract for this purchase.

Customer Owned and Maintained Equipment ("COAM"): Telecommunications, networking or server equipment owned, operated and maintained by a Mandatory or Voluntary User and which connects a User's private network to a Proposer's commercial Internet Service. COAM may be located in a building occupied by Users or in co-location facilities operated by a Proposer. In any case, the User retains title to such equipment and is responsible for insuring it against damage or loss.

Education Entity: As defined by 67-5745D, Idaho Education Network, an education entity is any public school district; including public Charter schools, educational service units, libraries; community college; state college; or nonprofit private postsecondary educational institutions.

**E-Rate:** E-Rate is a Federal Funding program administered by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) on behalf of the Federal Communications Commission (FCC) that provides financial discounts to help schools obtain affordable telecommunications and Internet access.

Evaluated: A requirement or specification that will receive evaluation points that will be used in determining the award(s).

Flexible: Vendors proposals for proposed IEN network designs need to be flexible in terms of leveraging existing legacy technologies (e.g. Microwave systems, IdaNet, etc.) and also in terms of interfacing with State Core Network Core Legacy equipment (e.g. Cisco routers\switches\ASRs, Checkpoint firewalls, Polycom and TANDBURG VTC equipment etc).

IAW: In Accordance With (IAW)

IEN: Idaho Education Network (IEN)

IEN RFP HIGHLIGHTED AREAS: Highlighted areas within the base document (minus attached appendixes) of this RFP are provided to guide respondents in their efforts to prepare their respective RFP responses, as mandatory regularing the lave been identified in these select areas for Vendors to provide the State in submission of their proposals. Note that vendors are highly encouraged to provide additional information in other areas not specifically tagged as mandatory information items.

ITRMC: Information Technology Resource Management Council. ITRMC reviews and evaluates the information technology and telecommunications systems presently in use by State agencies, recommends and establishes statewide policies, and prepares statewide short and long-range information technology and telecommunications plans.

Idaho Optical Network (IRON): A commercial broadband provider that will facilitate advanced networking among institutions in Idaho and the Northern Tier States. Participants include institutions of research, education, health care, state government, and partner organizations that support research, education, and economic development in Idaho and the States of the Northern Tier. Specific network information concerning IRON can be found at the following URL: <a href="http://ironforidaho.net/">http://ironforidaho.net/</a>.

(M): Where a specification or requirement has an assigned code of (M), indicating that compliance is mandatory, non-compliance will result in immediate disqualification and no further evaluation of the proposal will occur. The State reserves the right to determine whether the proposal meets the specification stated within this solicitation.

(ME): Where a specification or requirement has an assigned code of (ME), indicating that compliance is mandatory, and will also be evaluated and scored; non-compliance will result in immediate disqualification and no further evaluation of the proposal will occur. The State reserves the right to determine whether the proposal meets the specification stated within this solicitation.

Mandatory User(s): Mandatory User(s) are all departments and institutions of state government referenced in Idaho Code § 67-5747(a)(i), including but not limited to departments, agencies, commissions, councils and boards, which must be provided Internet services under this RFP and any awarded contract.

OCIO: Office of the CIO, State of Idaho.

**Proposer:** A vendor who has submitted a proposal in response to this request for proposals for property to be acquired by the state.

**Property:** Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights

and interests in such property. This term also includes concession services and rights to access or use state property or facilities for business purposes.

**Proposal:** A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which proposal is considered an offer to perform a contract in full response to the request for proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award.

**Proprietary Information:** Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose.

Public Agency: Has the meaning set forth in Idaho Code §67-2327. The term generally refers to any political subdivision of the state of Idaho, including, but not limited to, counties; cities; school districts; highway districts; and port authorities; instrumentalities of counties, cities or any political subdivision created under the laws of the state of Idaho.

QoS: Quality of Service. QoS refers to the capability of a network to provide better service to selected network traffic over various technologies, including Frame Relay, Asynchronous Transfer Mode (ATM), Ethernet and 802.1 networks, SONET, and IP-routed networks that may use any or all of these underlying technologies.

Representative: Includes an agent, an officer of a corporation or association, a trustee, executor or administrator of an estate, or any other person legally empowered to act for another.

Request for Proposal (RFP): All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals.

Responsible Proposer: A proposer who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

Responsive Proposer: A proposer that has submitted a timely proposal or offer that conforms in all material respects with the submission and format requirements of the RFP, and has not qualified or conditioned their proposal or offer.

Sicommnet or Sicomm: State's e-Procurement applications service provider.

Scalable: Proposed Vendor solutions need to be scalable in terms of future growth, without major build outs or "fork lift" equipment upgrades required in later Phases of this IEN project. It must also be scalable in terms of providing quality services support (e.g. QoS, Bandwidth, reliability, etc.) to all areas of the State of Idaho, where education, library and State entities are located.

**Shall:** Denotes the imperative, required, compulsory or obligatory.

Solicitation: The process of notifying prospective bidders or offerors that the State of Idaho wishes to receive proposals for furnishing services. The process may consist of public advertising, posting notices, or mailing Request for Proposals and/or Request for Proposal announcement letters to prospective bidders, or all of these.

State: State of Idaho government.

Users: Mandatory or Voluntary User(s), as defined herein, or both, as the case may be.

Vendor Owned and Managed Equipment ("VOME"): Telecommunications, networking or server equipment owned, operated and maintained by the Proposer, or its partners, which is integral to a Proposer's provisioning of basic or value-added commercial Internet services. VOME may be located in a building occupied by a User, in co-location facilities operated by the Proposer, or in the Proposer's backbone. In any case, the Proposer retains title to such equipment and is responsible for insuring it against damage or loss.

Voluntary User(s): Voluntary User(s) are institutions of higher education and elected officers in the executive department, as referenced in Idaho Code § 67-5747(a)(ii) and the legislative and judicial departments as referenced in Idaho Code § 67-5747(a)(iii) along with a Public Agency, as defined herein, which may be provided commercial Internet services under this RFP and any awarded contract.

VTC: Video Teleconferencing

**WAN:** Wide Area Network. A communications network that connects computing devices over geographically dispersed locations.

#### 3.0 GENERAL INFORMATION

#### 3.1 EXECUTIVE SUMMARY

High-speed broadband access and connectivity are vital for economic growth, global competitiveness, education, innovation and creativity. Ensuring high-speed broadband access for all students has become a critical national issue especially when considering preparing our students for work and life in the 21st Century. The Governor and our legislature, as well as members of our greater Idaho educational community, recognize the need for providing robust high-speed broadband access to all of our state public schools, as it will accelerate our teachers' ability to teach and our students' ability to learn. Through recent legislative efforts, several key issues facing our educational institutions have been identified as well as specific requirements for our state and public school districts to meet in implementing high-speed broadband access in their schools.

#### **Key Issues:**

- Our Idaho public schools need high-speed broadband access to effectively create rigorous, technology-infused learning environments.
- Our teachers need guaranteed, long-term access to high-speed broadband to enrich the curriculum to include technology applications such as videoconferencing and distance learning.
- Our teachers also need high-speed broadband access for professional development—
  "currently the supply of certified teachers in the State of Idaho does not meet the demand;
  additionally, our rural schools struggle to fill their classified staff positions due to low salary
  wages established by current funding formulas"!
- Our Administrators need high-speed broadband access to conduct on-line assessments and to access data for effective decision making.
- Our students need high-speed broadband access in their schools to take advantage of a wide range of new and rich educational tools and resources available for anytime, anywhere learning.
- Our students also need high-speed broadband access to overcome the digital divide in rural and low socio-economic areas.
- Our ability to provide adequate funding to support our public schools remains a
  critical issue in our abilities to execute this IEN initiative, as the State of Idaho is
  currently mandating even more severe budget cuts to all state entities given the weak
  state of our economy; however that said, the Governor and Legislators, supporting of
  this IEN project are pressing forward with a conservative 2010 IEN budget request,
  given the fact that our children our Idaho's economic future and we must continue to
  invest in their future success.

1 Idaho Rural Education Task Force, 2008 Legislative Report

#### Vision:

The State of Idaho will actively pursue and contract for a total solution, education-focused managed internet network service provider that can leverage existing state infrastructure and contracts with multiple telecommunications, cable and utility providers to provide the essential foundation and associated services support for our IEN network. Recent studies of other successful statewide implementation efforts have shown that this model is the most cost effective and expeditious means to provide a cohesive, statewide, education-centric network that best meets the current and future requirements of high-speed connectivity, service offerings and enterprise management services.

#### Approach:

A phased implementation approach has been established per Idaho House Bill No. 543 – Idaho Education Network. Specifically, the **First Phase** will connect each public high school with a scalable, high-bandwidth connection, including connections to institutions of higher education as necessary; **Subsequent Phase Considerations** include:

- Connectivity to each elementary and middle school.
- The addition of libraries to the IEN.
- The migration of state agency locations from current technology and services.

#### Funding Methodology:

Given the current state budgetary constraints, coupled with the urgency to qualify for Federal Government E-Rate funding, for this IEN effort, the State is releasing this RFP with limited funding. The work outlined in this RFP, and therefore any award, is contingent upon approval of legislative appropriations. It is also contingent upon the Federal Government approving the State's E-Rate application (due Feb 1, 2009). The State is requesting legislative appropriations in 2009 for FY 2010. Any contract arising from this RFP shall be contingent upon approval of the appropriation, the State's qualification for Federal E-rate funding, and the selected service providers meeting the Federal E-Rate funding qualifications. Anticipated approval and release of State funding would be 1 Jul 09, along with any associated E-Rate dollars.

Because of these contingencies, the service provider shall not begin work until after 7-1-09, and then only if the above contingencies are met (unless a supplemental appropriation is approved by the legislature before 7-1-09). The state does not expect or require the successful service provider to do any work specified by this RFP prior to 7-1-09, and the successful service provider shall not make any reliance or have any claim for work performed prior to 7-1-09, or prior to the named contingencies being met.

#### Summary:

Preparing our students for the increasingly competitive global marketplace of the 21st century is critical to improving our state's economy. Education stakeholders, especially teachers and students, must have reliable and high speed access to networked tools to improve their ability to communicate and learn in a more collaborative environment. Development of a high-speed broadband, scalable communications infrastructure that leverages existing State resources to aggregate disparate networks into a multipurpose IEN backbone infrastructure extending from the Southern part of Idaho, to the

Central, Eastern and Northern Panhandle regions of the State will significantly enhance broadband communications to every public school and library entity in the State.

Follow-on phases of this IEN initiative include migration of our state agencies onto this IEN backbone and enhancement of rural bandwidth to public entities through aggregation of this bandwidth. Benefits of the proposed Idaho Education Network model include lower network costs, greater efficiency, interoperability of systems providing video courses and opportunities, more affordable Internet access, and better use of Federal E-Rate and other government funding resources.

#### 3.2 (ME) SCOPE OF PURCHASE

The State of Idaho desires to contract with a qualified industry partner or partners to establish a long-term relationship to design and implement the Idaho Education Network (IEN).

The objective of this RFP, as stated in the Executive Summary above, is to create a network environment that will meet the needs of K-12 distance learning environment, as defined in 67-5745D, and passed by the Idaho Legislature. This will include video services (Interactive and Streaming), Internet services, and wide area data transport. In addition to serving the K-12 institutions and our State Libraries (See Appendix A), it will also be used to serve entities that are not E-Rate eligible, such as higher education (community colleges, state colleges and universities) and State Agencies. Only E-Rate eligible entities will apply for E-Rate discounts.

The intent of this RFP process is to seek proposals from industry experts for achieving the purpose and goals of the IEN as established by the legislature. Rather than defining a specific technology, architecture or network design, the Department of Administration is providing broad guidelines only and relying on industry expertise to design and propose a network capable of meeting these requirements.

Within the context of this RFP, the State is asking potential industry partners to describe a business model that they will initiate to service the State of Idaho IEN network. As stated above the State is looking for an industry partner or partners who will take the initiative in areas of network design, network management to include operations, maintenance and accounting processes. It should be noted that highest consideration will be given to the Partner or Partners presenting the best and most cost effective "total end- to-end service support solution" and supporting network architecture, which is also compliant with the specifications of this RFP.

Bidders must also have a service provider identification number from the Universal Service Administrative Company and be eligible to participate in the Universal Service Fund discount program for telecommunications services provided to the E-Rate eligible entities. Bidders agree to provide any discounts, including any accrued credits, for which the entity is eligible under the Universal Service Fund for school telecommunications services. Bidders will, at their own expense, prepare and file all carrier documents and reports required for the eligible entities to receive the benefit of such discounts and credits. Proposer's Service Provider Identification Number (SPIN), issued to Bidders by the Universal Service Administrative Company, must be included in the responding bid.

Bidders are required to identify strategies to the State on how Bidders intend to transition the current contractual environment of the entities to their proposed solutions (See Appendix 4); Currently, there

is a myriad of different broadband service provider contracts associated with each K12 school, library listed in Appendix A. Each of these has their own contract expiration dates, which Bidders will have to identify and develop an appropriate transition plan accordingly. Bidders are encouraged to partner, whenever possible with these local service providers, in the development of their transition plans. Copies of these proposed migration plans need to be included in Bidders RFP responses.

#### 3.2.1 Project Overview

The objective of this section of the RFP is to identify a Contractor or Contractors that will design, develop, and implement high-speed data connectivity that will meet the current and future telecommunications needs of eligible participants over the term of the contract. The successful Contractor or Contractors will provide a cost-effective, scalable, and flexible high-speed data transport service that can interconnect all entities listed in Appendix A. This RFP is for the first phase of a multi-phase project for connectivity to the Idaho Education Network (IEN). Connectivity in subsequent phases of this project will include public elementary, middle schools, state libraries with connections to higher educational institutions as required. The final phase of this project will include migration of state government entities to this IEN network backbone, with the exception of IdaNet, which may need to be migrated earlier, given the current end of life status concerning its major network equipment components (e.g. MGX's).

The State will analyze proposals for all planned IEN Phase sites with an emphasis on cost savings and technical approach. As providers of this service, the State believes that potential providers are in the best position to make this determination and present a proposal to the State. Current K-12, library broadband costs are provided to assist contractors in making a logical and cost effective proposal to the State not only for Phase I sites but for subsequent project Phase entities (e.g. elementary, middle, and library locations). These can be found in Appendix D. Note that State agency migrations will be determined at a later date, with the RFP modified in subsequent revisions to address those specific requirements. Vendors just need to remain cognizant that these State agency migrations are part of our long range IEN strategy and need to reflect that accordingly in their proposal submissions.

The State requires the Contractor to bid a multi-purpose transport connection methodology to interconnect the listed institutions along with the corresponding services that considers present, as well as future, state-of-the-art technologies. The extent to which these segments are included in the network cloud that covers the geography of Idaho is important both to the economic development goals, as defined by the Idaho Legislature (67-5745D), and in meeting the rural education initiatives proposed by the Idaho Rural Education Task Force, to the Idaho Legislature in January 2008.

#### 3.3 (ME) REQUIRED QUALIFICATIONS

- a) Experience. Bidders must demonstrate and provide examples of their experience engineering, installing/implementing and maintaining large-scale, statewide education networks, including skills and experience in working with all aspects of the Federal E-Rate Process.
- b) Partnerships. Strong consideration will be given to proposals that incorporate partnerships between multiple providers. Vendors must explain their partnering plan within their RFP response.
- c) Idaho presence. Bidders must demonstrate and provide examples to show a substantial idaho presence.
- d) Long-term commitment. IEN will serve as the foundation for the broadband needs of the State for education and other purposes as envisioned by the legislature. Therefore, Bidders

must demonstrate a long-term commitment to Idaho. Bidding must see crammles of

- providing services to the State of Idaho and other government and education entitles in Idaho.

  e) Economic Impact. Bidden must denionstrate and provide examines of now their proposal will positively impact the state is accidenty; imposses though outside incompetating costs associated with both the build one administrative and oath, manufactures of their proposed IEN subjiction(s) are decreased for the state, and how these proposed network "build outs," will be called a local configuration street, and how these proposed districts.
- benefit our local communities especially in our more remote runs districts.

  f) Competitive Advantage Ventor must demonstrate or communicate the value their solution brings to the State of Idaho; vice their competitors capabilities.

  g) Low High Transition: Ventors must plan to tell the State how they are going to mitigate the risk of infigrating current breakdoned users (aducational) libraries, and State Agency custoffers) to this pew IEN network. This information should include how the vendor will minimize service disruptions in their RFP migration plan submission to ensure continuity of operations for our submission to ensure continuity of operations for our submission to ensure continuity of operations for our supported customer base.

#### 3.4 LEGISLATIVE DIRECTION

The legislature (Idaho Code 67-5745D) determined that:

- a) Idaho does not have a statewide coordinated and funded high-bandwidth education network;
- b) Such a network will enable required and advanced courses, concurrent enrollment and teacher training to be deliverable to all public high schools through an efficiently-managed statewide infrastructure; and
- c) Aggregating and leveraging demand at the statewide level will provide overall benefits and efficiencies in the procurement of telecommunications services, including high-bandwidth connectivity, internet access, purchases of equipment, federal subsidy program expertise and other related services.

#### 3.5 GOALS

In developing proposals, please consider the following goals as established by the legislature:

- a) Idaho will utilize technology to facilitate comparable access to educational opportunities for all students:
- b) Idaho will be a leader in the use of technology to deliver advanced high school curricula, concurrent college credit, and ongoing teacher training on an equitable basis throughout the
- c) Idaho will leverage its statewide purchasing power for the IEN to promote private sector investment in telecommunications infrastructure that will benefit other technology applications such as telemedicine, telecommuting, telegovernment and economic development.

#### 3.5.1 (ME) General Requirements

In developing proposals the vendors must submit in writing how they will address each of the following general requirements as established by the legislature:

Coordinate the development, outsourcing and implementation of a statewide network for education, which shall include high-bandwidth connectivity, two-way interactive video and internet access, using primarily fiber optic and other high-bandwidth transmission media;

- b) Consider statewide economic development impacts in the design and implementation of the educational telecommunications infrastructure [to include providing in your RFF response a detailed case study involving how a remote idaho school district and community could benefit from installation of IEN capabilities];
- c) Coordinate and support the telecommunications needs, other than basic voice communications of public education;
- d) Procure high-quality, cost-effective internet access and appropriate interface equipment to public education facilities;
- e) Procure telecommunications services and equipment on behalf of public education;
- f) Procure and implement technology and equipment for the delivery of distance learning;
- g) In conjunction with the state department of education, apply for state and federal funding for technology on behalf of IEN services;
- h) Work with the private sector to deliver high-quality, cost-effective services statewide; and
- Cooperate with state and local governmental and educational entities and provide leadership and consulting for telecommunications for education.

#### 3.5.2 (ME) Phase 1 Requirements.

Provide a detailed proposal for accomplishing the requirements of Phase I (including, but not limited to: Last-mile connections, backbone network, Internet Access, Related Equipment needs, Video Conferencing equipment, Network operations and monitoring, Video operations and monitoring).

#### Specifically:

The department of administration shall follow an implementation plan that:

- a) In the <u>first phase</u>, will connect each public high school with a scalable, high-bandwidth connection, including connections to each institution of higher education as necessary, thereby allowing any location on IEN to share educational resources with any other location;
- b) Upon completion of the first phase, shall provide that each public high school will be served with high-bandwidth connectivity, internet access and equipment in at least one (1) two-way interactive (synchronous) video teleconferencing capability.
- Provide a scalable (e.g. a minimum 10 Mbps up to 100 Mbps) high-bandwidth connection, preferably fiber optics, to each public high school listed in appendix A; if additional bandwidth is desired by the supported customer, school districts will have the option to add additional bandwidth at their own expense, they will also have, in coordination with the OCIO office, the option to decrease bandwidth requirements in cases of extremely small student populations or during the summer months; Schools Districts will also have the option to designate their own centralized distribution locations in coordination with the OCIO office and the Vendor; also, if a scale of economies can be realized to install connectivity to the most centrally located building within a given school district utilizing a hub and spoke methodology, Vendors need to factor this into their proposed build out plans and coordinate with both the affected School District and OCIO for implementation; Vendors will also be required to request in writing detailed justifications and alternative solutions to the OCIO if they are unable to meet specified State minimum bandwidth requirements (10Mbs) for a particular high school location; Vendors are also highly encouraged to present in their proposals, best practices and models for allocations of Bandwidth assignments based in student populations and projected community growth over a 5-7 year period to include estimated technology upgrades and associated costs.
- d) A connection to each institution of higher education, listed in Appendix A, to enable twoway interactive video;

- e) The ability of any location on 1EN to share educational resources with any other location; i.e. any site on the network can both originate and receive two-way interactive video instruction;
- f) Internet access to each public high school listed in Appendix A;
- Network connectivity and bandwidth to enable IEN Phase 1 high schools to conduct at least one (1) two-way interactive video classroom session.
- h) A backbone network capable of providing access to the public Internet, delivering real-time instructor-led education courses and streaming media to classrooms, and other data needs of the network:
- i) Scalable service pricing options;
- j) One-time special construction costs, if any, for the backbone and last mile connections;
- k) Network monitoring;
- Video operations and monitoring;
- m) Other design considerations and costs;
- n) E-Rate eligibility estimates for services proposed and impacts on pricing (E-Rate eligibility is a requirement); and
- Provide a proposed transition/implementation plan and limeline (detailed and final transition and implementation plans will be developed by the winding bidder in conjunction with the Department of Administration).

#### 3.5.3 (ME) Subsequent Phase Considerations

In subsequent phases, [the department of administration] will evaluate and make recommendations to the legislature for:

- (a) Connectivity to each elementary and middle school;
- (b) The addition of libraries to the IEN; and
- (c) The migration of state agency locations from current technology and services.

Provide a discussion as to how your proposed solution for Phase I can support each of the potential subsequent phases to include initial cost estimates and a proposed implementation plan.

## 3.6 ISSUING OFFICE & SUBMISSION OF QUESTIONS

This solicitation is issued by the Division of Purchasing via Sicommnet. The Division of Purchasing is the only contact for this solicitation. Questions and request for clarifications shall be submitted via email only to:

Mark Little, CPPO State Purchasing Manager State of Idaho, Division of Purchasing E-mail: Mark.Little@adm.idaho.gov

Written questions are due at the close of business (5PM,MST) on the date indicated in the schedule of events in Section 1.0.

Verbal responses from the STATE are not binding upon the STATE. BIDDER assumes full responsibility for any action taken upon a verbal response from the STATE.

The Deadline for receipt of Questions is listed in 1.0 Schedule of Events. To be considered, Questions must be received via Email by 5 P.M. Mountain Time on the Scheduled Due Date.

## 3.7 Validity of Proposal

Bid proposals are to remain valid for One Hundred and Eighty (180) calendar days after the scheduled closing date. Proposals submitted with a less than 180 day validity will be found non-responsive and will not be considered.

#### 3.8 Bidder Notifications

Prior to the closing and opening of the solicitation, all BIDDER notifications will be released in Sicommnet as amendments. All questions submitted will be answered via amendment for all BIDDER's review.

#### 3.9 SUBMISSION OF PROPOSALS

Reference Section 5. TECHNICAL AND COST PROPOSAL SUBMISSION, REQUIREMENTS, & FORMAT.

#### 3.10 Evaluation, Intent to Award Letters, and Award

There might be variations to the following, but as a general rule, the following procedure is followed.

Once the RFP closing date and time have passed and PROPOSALS have been opened, the copies of the Technical PROPOSALS are forwarded to the agency for evaluation. Once the agency has completed its technical evaluation and scored the PROPOSALS, the evaluation summary and scoring are forwarded to the Division of Purchasing for review. The Division of Purchasing verifies the fairness and integrity of the technical evaluation process. The Cost PROPOSALS and copies are then opened, and the copies forwarded to the agency for evaluation. Both the agency and the Division of Purchasing participate in this evaluation and its scoring. The scoring of the cost evaluation is then added to the scoring of the technical evaluation to arrive at a total PROPOSAL scoring, thus identifying the best qualified BIDDER based on the specifications and criteria set forth in the RFP. The Division of Purchasing then issues a Letter of Intent to Award to all BIDDERS, notifying them of the STATE's intent to award the best qualified BIDDER as identified through the evaluation process. After the passage of the time set by Idaho Statute 67-5733 for appeals, and the resolution of any appeals received, the Division of Purchasing contracts for the purchase.

The STATE has the time set forth in Section 3.7 Validity of PROPOSAL to complete the evaluation and award the purchase. The STATE will greatly appreciate the BIDDERS' understanding that the evaluation requires time, and not solicit the STATE for unnecessary updates regarding the evaluation. The STATE will take the time to ensure a fair and complete evaluation. Additionally and to ensure the integrity and fairness of the evaluation process, during the evaluation and up and until the time the Division of Purchasing issues the Intent to Award letter, no information regarding the content of the PROPOSALS is released.

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#### 4.0 EVALUATION AND AWARD

#### 4.1 THE PROCESS

Upon opening, but not limited to, the Division of Purchasing will inspect the PROPOSAL for the following:

• That the PROPOSAL was timely per the published closing date and time;

- That the PROPOSAL includes a signed State of Idaho Signature page (attached in Sicommnet as XXX Signature Page RFP.pdf);
- That the PROPOSAL has not been qualified by the BIDDER, meaning that the BIDDER has not conditioned their PROPOSAL based upon the STATE accepting terms or conditions established by the BIDDER;
- That the COST PROPOSAL is present and sealed separately from the TECHNICAL PROPOSAL:
- That the PROPOSAL contains all required information;
- Other unforeseen conditions that might deem the PROPOSAL non-responsive upon opening.

Purchasing will forward all responsive TECHNICAL PROPOSALS to the purchasing agency for evaluation. The agency will establish an evaluation team comprised of STATE employees. This team will evaluate and score the TECHNICAL PROPOSALS based on the evaluation criteria listed in this RFP. The team will then forward their scoring and ranking of the TECHNICAL PROPOSALS to the Division of Purchasing for review and validation of the process. Upon completion of the validation of the Technical Evaluation by the Division of Purchasing, the Division of Purchasing then opens the COST PROPOSALS for evaluation and scoring. COST PROPOSAL scores are then added to the TECHNICAL PROPOSAL scores identifying the Apparent Successful Bidder (ASB). The Division of Purchasing will then issue a Letter of Intent to Award to all responsive, responsible BIDDERS notifying them of the State's intent to contract with the ASB. It is at this point that the STATE will consider requests for Public Information. After the passage of the time set by Idaho Statute 67-5733 for appeals, and the resolution of any appeals received, the Division of Purchasing contracts with the ASB for the purchase.

The STATE has the time set forth in 3.7 VALIDITY OF PROPOSALS to complete the evaluation and award the purchase. The STATE will greatly appreciate the BIDDERS understanding that the evaluation requires time, and not solicit the STATE for unnecessary updates regarding the evaluation. The STATE will take the time to ensure a fair and complete evaluation. Additionally and to ensure the integrity and fairness of the evaluation process, during the evaluation and up and until the time the Division of Purchasing issues the Intent to Award letter, no information regarding the content of the PROPOSALS is released.

#### 4.2 EVALUATION CODES

Each evaluated specification or requirement has an assigned code. The codes and their meanings are as follows:

(M) - Mandatory Requirement. The BIDDER shall meet this requirement. The determination as to whether the BIDDER meets the mandatory specification rests solely with the STATE. If the STATE determines that a BIDDER does not meet a mandatory requirement as specified, the PROPOSAL shall be deemed non-responsive, and no further evaluation will occur. A letter of determination of non-responsiveness will be issued by the Division of Purchasing to the BIDDER, and the BIDDER shall be removed from further consideration. A BIDDER who has been deemed non-responsive does have certain appeal rights per STATE Statute 67-5733.

(E) - Evaluated. BIDDERS are expected to provide a comprehensive written response to the specification. Points will be awarded based on the degree to which the BIDDER meets the requirement. A BIDDER not responding to the specification will receive zero points for that specification.

(ME)- Mandatory and Evaluated Requirement. The BIDDER shall meet this requirement.

#### 4.3 SCORING

Specifications/requirements with an assigned code of (M) will be evaluated on a PASS/FAIL basis. Any specification/requirement with the word "shall", "must", or "will" is a mandatory specification or requirement. Any PROPOSAL that fails to meet any single mandatory specification or requirement will be deemed non-responsive. BIDDERS who meet mandatory specifications/requirements may then have their response to the mandatory specification/requirement evaluated and scored as to how the BIDDER's solution meets the IT environment of the STATE.

Solicitation specifications/requirements with an assigned code of (E) will be evaluated and awarded points. Pricing will be evaluated using a cost model that offers the STATE the best possible value over either the initial term of the contract, or the life of the contract. The cost evaluation model may also include any costs incurred by the STATE in conjunction with the proposed service offering.

Solicitation specifications/requirements with an assigned code of (ME) will be evaluated not only on a PASS/FAIL basis, but also be awarded points. Any specification/requirement with the word "shall", "must", or "will" is a mandatory specification or requirement. Any PROPOSAL that fails to meet any single mandatory specification/requirement or evaluated area will be deemed non-responsive. Bidders who meet mandatory specifications/requirements and evaluated areas may then have their response to the mandatory specification/requirement evaluated and scored as to how the BIDDER's solution meets the State of Idaho's IEN Requirements to include how it meets the overall IT environment of the STATE.

The following table identifies those solicitation sections evaluated on a PASS/FAIL basis and/or those which are awarded points:

Ranking	<b>Evaluated Sections</b>	Maximum Possible Points
1.	Cost of E-Rate Eligible Goods & Services	400
2.	Prior Experience (Ed Networks, E-Rate, Personal Qualifications)	200
3.	Management Capability	100
4.	Other Cost Factors (including price of ineligible goods and services, price of changing providers, price for breaking contract, etc)	100
5.	Legislative Initiatives (Partnerships,	100

Idaho Presence, Economic Impact)

6. Financial Reports and Risk Mitigation

100 **1000** 

TOTAL POINTS 10

#### 4.4 EVALUATION CRITERIA

- (a) Ability to meet the goals and requirements established by the legislature for Phase I;
- (b) Statewide economic development impacts of the proposed network;
- (c) Potential to meet the requirements of subsequent phases;
- (d) One-time costs for equipment;
- (e) One-time costs for network connections;
- (f) Recurring network costs;
- (g) Recurring Internet access costs;
- (h) Prior experience specific to building and supporting Education Networks including E-Rate expertise;
- (i) Strategic Partnerships to include Local Vendors;
- (j) Management Capability;
- (k) Personnel Qualifications;
- (I) Network and video operations; and
- (m) Other costs

While cost will be a primary factor during the evaluation of these proposals in order for us to qualify for E-Rate discounts, other relevant factors will also be considered to include: long-term impacts on education, benefits to economic development, and other potential applications of the network, as envisioned by the legislature, will be given significant weight as depicted above.

#### 5.0 SPECIAL TERMS AND CONDITIONS

These Special Terms and Conditions are in addition to those found in the Sicommnet solicitation document, <u>State of Idaho Standard Contract Terms and Conditions</u>, <u>State of Idaho Solicitation Instructions To Vendors</u>, and particular to this purchase. Where conflict occurs, these Special Terms and Conditions shall take precedence.

#### 5.1 (ME) E-RATE ELIGIBILITY

Qualifying schools and libraries as Voluntary Users may acquire Internet Services through any contracts arising from this RFP. The Proposer must participate in the Universal Service

Administrative Company's telecommunications support programs for eligible schools and libraries, and E-Rate discounts must apply.

## 5.2 (M) IDAHO STATE GOVERNMENT STANDARDS

All delivered services must comply with applicable standards and policies of the Information Technology Resource Management Council ("ITRMC"). A description of ITRMC and its standards and policies may be viewed on-line at www.idaho.gov/itrmc.

#### 5.3 PRICING, LENGTH OF THE AGREEMENT AND RENEWALS

Contract is for a 5 year time period, with three extensions of five years each for a total of 20 Years.

Any resulting contract from this solicitation will be awarded to up to four providers. Under no circumstances however will work begin prior to July 2009, because such work as specified by this RFP is contingent upon Legislative appropriation approval (unless a supplemental appropriation is approved by the Legislature prior to July 1, 2009). The services provided pursuant to a contract awarded based on this RFP would be available to any "Public agency" as defined by Idaho Code 67-2327.

#### 5.4 BIDDER'S CONFLICTING AND SUPPLEMENTAL TERMS

Where terms and conditions, including BIDDER agreements and assumptions, specified in the BIDDER's Proposal differ from the State of Idaho Standard Contract Terms and Conditions or the Special Terms and Conditions of this RFP, the State's Terms and Conditions and the bid's Special Terms and Conditions shall apply. Where terms and conditions specified in the BIDDER's Proposal, including BIDDER agreements and assumptions, supplement the terms and conditions in this RFP, the supplemental terms and conditions shall apply only if specifically accepted by the State's Division of Purchasing in writing. BIDDER's are recommended to review the STATE's Solicitation Instructions to Vendors, Clause 19 at the following website.

http://adm.idaho.gov/purchasing/stwideentres.html

#### 5.5 PUBLIC AGENCY CLAUSE

Contract prices shall be extended to other "Public Agencies" as defined in Section 67-2327 of the Idaho Code, which reads: "Public Agency" means any city or political subdivision of this state, including, but not limited to counties; school districts; highway districts; port authorities; instrumentalities of counties; cities or any political subdivision created under the laws of the State of Idaho. It will be the responsibility of the Public Agency to independently contract with the CONTRACTOR and/or comply with any other applicable provisions of Idaho Code governing public contracts.

#### 5.6 ADMINISTRATIVE FEE

The prices to be paid by the State shall be the prices bid by the CONTRACTOR plus one and one-quarter percent (1.25%). The additional percentage shall represent the State's Contract Usage Administrative Fee. No more than quarterly, the CONTRACTOR shall remit to the State through its Division of Purchasing, an amount equal to the one and one-quarter percent (1.25%) of the CONTRACTOR's quarterly contract or agreement sales.

#### 5.7 REPORTS

The CONTRACTOR will be required to submit, to the Office of the CIO, Attention IEN Project Manager, quarterly reports that provide the following minimum information.

- a. Usage reports by Agency and by Agency receiving location, indicating the product received and total cost of the order.
- b. When possible, reports should be in the same format as the product bidding schedule(s). Electronic reports in Excel or Text Format are encouraged.
- c. Custom reports that may be requested from time to time by the Division of Purchasing.

Reports will be due to the Division of Purchasing at the end of the first quarter (90 days) of the contract and each quarterly anniversary thereafter.

#### 6.0 MECHANICS OF SUBMISSION

Proposals are to be hand-delivered, US mailed, or carrier shipped. Proposals must be received at the offices of the Division of Purchasing and time stamped using the Division's time stamp, no later than the date and time set forth for the closing of the RFP in Secommet.

Proposals must be scaled and labeled per the instructions in the State of Idaho Division of Purchasing Signature Page (file attached to RFP in Sicommet).

#### 6.1 TECHNICAL AND PRICE PROPOSALS

Proposals shall consist of a Technical Proposal and a Price Proposal. Both the Technical Proposal and the Price Proposal shall be scaled in a single shipping container. The Technical Proposal and the Price Proposal collectively are the proposal.

#### 6.1.1 Technical Proposal

The Technical Proposal shall consist of:

 A signific State of Idaho Division of Furthering Signature Page. Any alterations or additions to this page shall deem the proposal non-responsive;

- An Executive Summary. Proposals must contain an executive summary that provides an overview of the proposal, highlighting the deliverables and benefits. If partnerships are being utilized, the Executive Summary is to include executive summaries of all partners.
- Technical responses to the following sections within this RFP:
  - o 8.0 Service Requirements
  - o 9.0 Vendor Requirements

Bidders must restate each RFP Section, listing the mandatory or evaluated specification number, and providing a detail response of how the proposer meets the specification. Responses are not to direct evaluators to a brochure or data sheet in substitution to providing a detailed response. To do so on a (M) Mandatory Requirement will deem the proposal non-responsive. To do so on a (E) Evaluated Requirement will result in fewer or zero points being awarded. Brochures and data sheets shall be used in support of a detailed response only.

#### 6.1.2 Price Proposal

The proposer shall submit its pricing in a separate sealed envelope. Pricing schedules are located in RFP Section 10.8. Pricing shall be opened only after the technical evaluation has been completed on the Technical Proposal. Pricing will be evaluated by comparing the total cost of offered solutions. A solution's total cost is the sum of the pricing shown in the pricing schedules PLUS applicable taxes, surcharges and fees PLUS any direct implementation costs incurred by the state.

#### 6.2 ACCURACY AND CONCISENESS

Proposals must be accurate and concise. They must be submitted in a three-ring or similar binder with each section separated by tabs that are clearly marked. Avoid extraneous attachments and superfluous information that may detract from substantive information in the Proposal.

#### 6.3 QUANTITY

#### Bidders will submit the following:

- Oue (1) original of the proposer's technical proposal marked "Original". Must contain a same and complete Cities a legacy Signature pass. Signature passe is to be the Original of the original complete Cities and the original legacy of the original standard Microsoft preductivity softward Cities. Jacob etc.)
- Five (5) copies of the pel at proposal:
- One (1) original of the method proposal alone with one (1) copy. The price proposal and copy at (1) the method proposal and copy at (1) the method proposal and copy at (1) the method proposal and copy at (1) observable sign. If the residuent med price proposal, and project schedule (if requested per the specifications) on a CD or USB device.

One (1) complete Redacted Copy of their entire proposal. Specifically on CD or USB device.

All materials may be shipped in a single shipping container.

#### 7.0 CURRENT EXISTING STATE NETWORK INFRASTRUCTURES

The State of Idaho currently has three (3) significant, existing networks with connections in numerous locations throughout the state, and one (1) Metro network located in the Capitol Mall. Details of these specific State network infrastructures are listed below:

#### 7.1 IdaNet

The IdaNet network is comprised of a combination of Master Service Agreements and physical ATM circuits connecting Cisco MGX switches in Boise (2), Meridian (1), Lewiston (1), and Coeur D'Alene (1). The ATM circuits allow for IdaNet to form a self-healing ring connecting the switches in each city. The state anticipates life cycle replacement of the Cisco MGX switches by 2011.

IdaNet serves 57 state organizations utilizing 247 virtual circuits provisioned at layer 2. Classes of service are CBR, VBR nrt, and UBR. Rates vary according to class of service, and beginning in FY10, by geographic area. Annual operating costs are approximately \$600,000, including circuit costs and switch maintenance. The network is monitored and managed by the Department of Labor. Billing is managed by the Office of the CIO.

See accompanying document, located at Appendix B, Schedule 1, IdaNet for further information on state agency locations connected through IdaNet.

#### 7.2 IDAHO TRANSPORTATION DEPARTMENT

The Idaho Transportation Department (ITD) maintains a significant state owned, IP based routed network that supports ITD Highways, Division of Motor Vehicles (DMV) and partner agency operations. The original network was put in place to interface with the citizens of Idaho across 44 county locations in order to conduct business with the State DMV. Today the ITD network supports Idaho State Police, Secretary of State, Eastern Idaho Technical College, County Courts, 911 Emergency Services, redundant communications for state and county/tribal Emergency Operations Centers (EOCs) and more.

The ITD network is constantly changing and expanding to meet the business needs of ITD and its partners, and carries a wide array of network traffic including voice, video and traditional information based data used in file sharing and database access.

Security is also a major area of focus on the ITD network based on the sensitivity of the information used by the DMV, which contains personal information of citizens. Furthermore, partner agencies carry sensitive and confidential information relating to public voting, police operations and homeland security operations.

The ITD network is managed by four full-time State employees consisting of two Network Analysts and two Senior Network Analysts, reporting under the Infrastructure and operation section of ITD's Enterprise Technology Services group.

See accompanying document, located at Appendix B, Schedule 2, Idaho Transportation Department for further information on state agency locations connected through ITD.

#### 7.3 IDAHO BUREAU OF HOMELAND SECURITY

The Idaho Bureau of Homeland Security (BHS) has responsibility for State emergency communications and operations. In support of those communication needs, BHS maintains a statewide digital microwave system supporting radio, voice, video and data infrastructure to state, local, and tribal government entities. There is a current BHS project to install secure broadband communication links from the State Emergency Operations Center (EOC) to each respective County/Tribal EOC facility, providing 10MBS of capacity to these sites. This project is currently underway and anticipated completion to be December 2009. Support is provided by Public Safety Communications with a staff of administrative and technical personnel (23 total). There is IP transport capacity available throughout the microwave infrastructure to supplement an IEN concept, particularly in rural Idaho locations.

See accompanying document located at Appendix B, Schedule 3, Idaho Bureau of Homeland Security for information related to organizations and connections through a public safety related network operated by the Idaho Bureau of Homeland Security

#### 7.4 CAPITOL MALL FIBER NETWORK (CMFONI)

CMFONI is the fiber optic network that provides connectivity to state agencies within the Capitol Mall. The majority of the network consists of state owned and vendor leased multi-mode fiber with some state-owned limited installations of single-mode fiber.

See accompanying document located at Appendix B, Schedule 4, Capitol Mall Fiber Network (CMFONI) for information related to the CMFONI network maintained by the Department of Administration.

#### 8.0 SERVICE REQUIREMENTS

Public High Schools designated in Phase I to migrate to this new IEN service must be converted NLT 1 February 2010, with all IP addresses routing through the Internet. The conversion from the current Internet Service Provider should be as transparent as possible. The State of Idaho is cognizant of a growing demand for bandwidth. The State is interested in identifying a Contractor who will meet the current and future telecommunications needs of eligible participants over the term of the contract. The successful Contractor will provide a cost-effective, scalable, and flexible transport service that will be able to meet the demands of the network participants and it is expected the services would meet any future needs of other eligible participants as deemed appropriate. **Bidders will identify services that are a** 

normal part of their offering without askilitional fees and optional services that are being offered for an additional fee (i.e., automatic trouble ticket generation, trouble notification, etc.) The State requires a complete description of those services and fees to be included in the RFP response.

## 8.1 (ME) TECHNICAL REQUIREMENTS

- The Vendor will maintain an ingress internet bandwidth capacity at the main hub site of an amount no less than 50% of the sum of transport bandwidth provided to all local sites. As IEN sites are added and/or deleted or local site bandwidth is increased or decreased, the egress bandwidth capacity at the main hub site(s) will be modified to maintain the 50% requirement. Increases or reductions in costs for the main hub site(s) ingress Internet bandwidth will be included in the costs provided to the State when adding or deleting a site and making local site bandwidth modifications. Internet2 bandwidth will not be included in the 50% requirement.
- The Vendor will provide the option for IEN users to reduce the available regional Internet ingress bandwidth; from the period of June 15 to August 15, each of the five years during the term of the softract. The amount of the reduction will be 50% of the total amount available as the time of the reduction. The Respondent is directed to indicate of the Proposal Response Form the dollar amount that IEN users would, save by initiating the temporary reduction in available internet bandwidth. After August 15 the regional Internet ingress bandwidth will return to its previous level. IEN users will not be required to exercise this option.
- The Vendor shall provide the ability to make small incremental bandwidth increases within two business days (for example, going from 512K to 1.5 Mbps). All other proposed bandwidth increases will need to be approved by the State OCIO in coordination with the affected customer.
- The Vendor shall provide assistance to the State of Idaho OCIO office and our public school districts\libraries, upon approval of funding by the State Legislature, to inventory and catalog all existing distance learning, networking, and video conferencing equipment, currently deployed throughout their schools in order to determine actual customer IEN requirements. This "network communications" inventory will also be used to determine the supportability of standards-based H.323, and\or Session Initiation Protocol (SIP) video conferencing capabilities (See Appendix E). It will also be used to determine actual requirements for other high bandwidth and QoS distance learning and tracking applications (e.g. Unitedstreaming, netTrekker, Blackboard, Moodle, interactive weblogs\podcasts, and support for a new State of Idaho "Longitudinal Data Network" tracking system) across the IEN network, to see if new equipment or additional bandwidth may need to be procured and installed.
- The Vendor will also provide installation and technical virtual help desk and possible onsite assistance to school districts in the support of their respective video teleconferencing programs. Specifically, high quality, reliable video teleconferencing (VTC) is essential for conducting effective Distance Education classes. Circuit-switched connections using Integrated Services Digital Network (ISDN) have provided, and continue to provide, network transport necessary for VTC applications, within the State of Idaho, but several limitations exist in using circuit-switched services, such as their cost and sometimes poor service reliability. Fortunately, recent advances in VTC technology have significantly improved VTC capabilities through reduction in size, operational complexity, and cost of VTC equipment. Additionally, the ability to conduct quality VTC over Internet Protocol (IP) networks is now

available. As a consequence of these developments, Vendors are fulfills micromaged to explain in their RFE responses, specifically, how they will suppose thin leave, (1819) mased VTE networks, while simultaneously offering enhanced VFE IR based support carabilities to new users (1819) endors will integrate in writing how they will migrate existing 1819 as based VTE customers to these new IP based technologies, wherever teasible.

- Vendors in support of VTC operations will provide a network infrastructure capable of providing full screen, high quality video at a minimum of 30 frames per second, with 60 interlaced fields per second (i.e. resolution and frame rates equivalent to that of the National Television System Committee [NTSC] television) for viewing people in the teleconference or up to 1024 x 768 [19] for viewing graphic images on computer monitors. See Appendix E, Video Teleconferencing Goals and Proposed Classroom Equipment Specifications, for additional information concerning the minimum base standards that the State will be considering in their efforts to develop viable VTC support packages in support of our public Phase I High Schools, and subsequent Phase II Elementary and Middle Schools.
- The Vendor shall work with the State of Idaho OCIO Office during Phase I, to identify specific initial pilot school candidates within the respective counties that the IEN Task Force has identified per Appendix C, to demonstrate some IEN "Proof of Concept" network installations, which are geographically dispersed throughout key areas in the State, during the initial phase of this project.
- All connections must be "full duplex" in nature, and to the limit allowed by the technology of
  the proposed circuit, the entire capacity of the physical circuit must be available unless
  otherwise indicated.
- Anticipated acceptable physical circuits are OC-3, OC-12, Fast Ethernet, Gigabit Ethernet, but
  other options will be considered. Ethernet options will have a preference.
- The vendor will also need to leverage in their network design and planned IEN build-outs, wherever applicable, all available State of Idaho IP transport capabilities to include available Idaho Bureau of Homeland Security microwave infrastructure capabilities, which are in the process of undergoing significant network upgrades, with the infusion of high speed IP transport technologies into this core network infrastructure (See Appendix A, Schedule 3), to supplement our IEN concept, particularly in remote rural Idaho locations. Additionally, vendors will need to provide support for emerging educational applications that have large bandwidth and QoS requirements (e.g. Blackboard, Idaho Longitudinal Data Student Tracking System, etc.) as additional required bandwidth to run these applications becomes available.
- For the duration of the contract, the Vendor must maintain adequate internet capacity within their network(s) to meet the capacity obligations of this RFP.
- If the circuit provided by the vendor has any redundant characteristics that will help reduce the
  exposure to equipment or circuit failure, please provide an overview of the redundant
  capabilities.
- The Vendor will provide sufficient bandwidth at Internet gateway sites to ensure that over any
  two successive five minute polling intervals, the utilization of the links is less than 80%
  capacity and provide written documentation and verification to identify anytime the 80%
  capacity is breached, to include bursting and/or multiple users.
- It is required that the Vendor assumes all responsibility for the maintenance and overall operation of the Vendor supplied equipment and services. Vendor access to required Idaho Education Network locations will be coordinated directly between the Vendor and IEN customer location(s).
- The Vendor will monitor and maintain relevant circuits and equipment related to this service
  on a 7x24x52 basis. Vendors will also develop a procedure that will make available real-time
  views into all service components among all sites covered by this contract, leveraging
  currently available network monitoring tools, and extending those monitoring capabilities to

the Idaho OCIO and other educational entities as directed. Real-time "viewing" access will allow the Idaho Office of the CIO and others, to ensure high standards of service support are being met IAW established SLAs, and to meet customer requirements for support. It is desired that Vendors will also provide training (remote, or onsite), at no cost to the state, on these monitoring capabilities, upon request. Current State Network monitoring capabilities include the use of a product called "Spectrum", but Vendors are encouraged to propose alternate solutions.

- The Vendor will respond (e.g. contact and begin troubleshooting efforts with the affected customer(s)) to any outages or interruptions in service within one (1) hour of a detected or reported problem. For prolonged network outages (beyond 1 hour), the Vendor will notify the Idaho OCIO office of the issue and keep the Idaho OCIO office appraised of ongoing efforts to fix the problem. A complete record of this extended network outage, troubleshooting "after action" report, will be forwarded to the Office of the OCIO office, via Email or other agreed upon electronic means, within 24 hours of problem resolution by the Vendor.
- Spare Vendor supplied equipment must be available in a reasonable time period depending on
  the location of the outage (e.g. large metropolitan areas, a 4 hour response time is required; in
  more rural areas, a 8 hour response time would be acceptable in cases of an equipment failure;
  however, onsite spares, would be a preferred course of action to expeditiously resolve network
  problems for these remote locations).
- When planned network maintenance activities are conducted by the Vendor which runs the risk of interrupting or diminishing service, the Idaho Office of the CIO must be notified of the event at least three (3) business days in advance. Additionally, the Vendor agrees to work with the entities to find an alternate date or time for the maintenance if the proposed time(s) would be particularly harmful.
- The Vendor will provide security on offered services against hackers, viruses and other threats
  to this IEN network. Vendors will articulate in writing how they intend to secure our IEN
  network to include associated equipment technologies, policies and software.
- The vendor shall provide one of more network maps showing how the traffic will flow across
  the Vendor's backbone (e.g., examples include network diagrams depicting internet access,
  video connectivity, from the schools back into IEN core, etc.)
- Given the inherent complexities of our current State of Idaho legacy networks, Vendors need to ensure that supporting network engineering staff have the experience and caliber needed to design, maintain and upgrade our IEN network. Designated support engineers must also demonstrate a proficiency in maintaining our current legacy equipment, as depicted in Appendix B. Additionally, it is desired that skilled engineers demonstrate proficiencies in the areas of core routing and switching, security, voice, video, and Multi Protocol Label Switching (MPLS), with an expectation that these engineers will be the ones doing the design, operation, maintenance and accreditation of this IEN network. Vendors will include resumes of potential IEN engineering support staff as part of their RFP response, to include a comprehensive list of all network certifications and years of experience.
- Vendor proposed Ethernet Solutions must also support connectivity over the National LambdaRail Infrastructure (NLR) and INTERNET2 (12) networks, helping to expand the State's theoretical and experimental research capabilities as they relate to both K-12 and higher education. Given the current Economic situation in Idaho and in keeping with Legislative directives to reduce costs and leverage existing State resources; wherever possible, it is highly desired that Vendors submit a detailed technical plan in their RFF response that specifically addresses how that would leverage legacy State of Idaho networks to include the Idaho Regional Optical Network (IRON), in providing this service, particularly to our higher education institutions who desire these services (e.g. BSU, University of Idaho, etc).

- The Idaho OCIO Office will maintain a complete set of Internet routing tables for information and security purposes. The Vendor agrees to provide that information to our routers through BGP routing protocols.
- Vendors must also demonstrate an ability to support multiple applications, from content
  delivery and Internet access to IP Telephony, video, audio, web conferencing, storage and
  unified collaboration. This includes understanding "Bell Schedules" and working with the
  Department of Education to work out scheduling of associated technology assets (e.g. Video
  Teleconferencing capabilities) to support customer requirements for services, at differing
  times.
- Vendors must also be capable of providing burstable connections (25% or higher) with the
  ability to effectively manage short periods of high usage (2-4 hours). Specifically, the Vendor
  will provide bursting capability to allow sites to exceed allocated bandwidth when 80%
  capacity is reached, in order to track and identify additional bandwidth needs at individual
  sites.
- The Vendor will outline its ability to provide robust communication services that protect IEN
  customers from interruption of services during the business day and ensure resiliency of the
  services being offered.
- Vendors will provide capacity increases and outline costs associated with these changes that must be completed within 45 days of the Idaho OCIOs request.
- Our K-12 schools, libraries, and state agencies have various IP address class sizes. By
  responding to this proposal, Vendors must understand and agree that they are willing to route
  these addresses at the request of these school districts. Vendors will also ensure that all
  assigned engineering personnel working on our IEN network are compliant with CIPA
  policies concerning the protection of Children to include vendor certified background checks.
- Vendor proposed solutions must also address connectivity methodologies to both public Internet protocol (IP) networks and private backbones, as both students and instructors will need access to internal web portals for student and administrative services, as well as partner institution web portals for educational research.
- The Vendor will provide basic content filtering for all sites in accordance with CIPA guidelines to ensure compliance with E-Rate policies for Internet Access.
- Vendors must work with respective School Districts and libraries concerning policies and actions regarding the filtering of sites or content, such restrictions and filters also need to be documented in your monthly reports back to the State OCIO office. Note, however, that this section is not intended to prevent any Internet Service Provider (ISP) from limiting traffic from a site causing harm to the Internet or any of its customers. Note that any filtering or DNS changes done by Vendors must be documented and approved by the Idaho State OCIO office.
- The Vendor will also provide a network design in which:
  - a. Layer 2 QoS tags pass unimpeded through the network
  - b. Layer 2 performance will be adequate to support jitter and low-latency sensitive applications (i.e. Video over IP)
  - c. IEEE 802.1q VLANs can be established at the request of the Idaho OCIO office.
  - d. Vendor, Idaho OCIO Office and/or eligible participants will manage the IP addressing and IP routing in a cooperative fashion, by actively participating in monthly OCIO sponsored IEN change management meetings.
- The Vendor will also:
  - a. Indicate what layer 2 QoS capabilities the network will honor and support, (i.e.802.1p queuing)
  - b. Indicate availability of real time performance metrics (i.e. SNMP) access to a State-provided list of authorized monitoring stations.

- c. Articulate the way in which overall cloud utilization will be monitored and under what conditions and within what timeframes upgrades will be implemented to ensure that the purchased bandwidth is available on demand to participants.
- d. Indicate the timeframe in which requests for virtual networks or layer 2 QoS changes will be honored.
- To account for schools, libraries who wish to deploy more services and utilize more bandwidth as compared to schools and libraries that do not, vendors shall respond with two different deployment standards. One standard with a "high bandwidth edge router" and one with a "low bandwidth edge router". This is an area that will be included in our evaluation criteria concerning the technical merits of submitted proposals, in enabling our supported IEN customers to pursue additional network upgrades.
- The Vendor will provide for all bundled Internet services to be upgraded as needed within the
  timeframe identified in section 8.2. Shared services will be allocated or reallocated based on
  use or need and at no cost to the State, with future configurations being kept in line with ERate eligibility standards for all services through a coordinated process with the OCIO office
  and must adhere to the 80% capacity rule per site.
- The Vendor will provide monthly written reports by the 15<sup>th</sup> of the following month on utilization, network traffic capacity and performance tuning, service usage (broken down by institution and protocol) and other network utilization as needed by the Department of Administration, OCIO office for reporting to the Legislature.
- The Vendor will provide written monthly reports, including agreed upon metrics that verify or indicate service levels are being met, NLT 15 of each Month to the OCIO.
- The Vendor will provide real-time Web access to monthly reports of all trouble ticket activity involving customer support to the OCIO and other educational entities that request this information
- The Vendor will meet all E-Rate guidelines and stay in good standing with the program by filing forms and meeting established Federal E-Rate deadlines.
- The Vendor will develop a procedure for providing our supported educational entities and state customer, IEN network "knowledge transfer" classes, in collaboration with the Idaho State CIO office. The resulting procedure will be disseminated to IEN customers through workshops for technical support held twice a year (IEN Day) at designated locations throughout the state and at no cost to the State.
- The Vendor will provide customer interaction through a customer service representative. IVR
  and other machine interactions are not acceptable, with the exception of voice mail when the
  staff is currently helping other customers.
- The Vendor will interact with customers to provide advanced engineering services (i.e. support
  to individual district network managers for troubleshooting district area network exchanges
  with the performance of the bundle Internet access).
- Vendors are encouraged to supply any additional information (charts, graphs, testimonials, reviews and comparisons of your company to others in the industry, traffic statistics, etc.) which would be of use in determining both the quality of the company, and the quality of the Vendor's configurations and services; to include articulation of any competitive advantages to other potential IEN proposals to include areas of innovation in terms of existing network integration strategies, economical aggregation of bandwidth, etc).
- If the Vendor cannot comply with any one or more of the requirements set forth in any of the above paragraphs, the Vendor will include with their Proposal a clear, concise, and complete narrative stating the reason(s) why exception must be taken. The reason(s) may be economic, technical, etc. The IEN proposal evaluation team will make the final determination as to the acceptability of Proposals which take exception to the requirements set forth herein.

It is understood and expected that existing conditions may occasionally be the cause
of a mutually agreed to compromise of some of the requirements set forth herein. The
Vendors are encouraged to advance all opportunities which will provide an
acceptable system at the lowest possible cost.

#### 8.2 (ME) TECHNOLOGY REFRESHMENT CLAUSE

The State and the Contractor will work in partnership to ensure the services provided under this contract will be continuously refreshed as technologies evolve and user needs grow. The State of Idaho Chief Information Office, in conjunction with or on behalf of all other participants, will assume the primary role in seeking and proposing new technologies and enhancements. This technology refreshment clause will be a required condition of the contract. As a participated to this RFP, bidder shall dentify and define any pertinent new services cirrently being considered for deployment. Anticipated deployment dates shall also be identified. The State and the Contractor will conduct periodic reviews of the contract at specific milestones during the term of the contract to review service offerings and pricing. These reviews may result in expanding the services offered by the Contractor to include new pricing elements or pricing modifications associated with improved economies of scale and/or technological innovations. Changes in the industry related to regulation and/or pricing mechanisms may also result in modification of rates identified in the services offered by the Contractor. These review periods will commence no later than the 24th month (~February 1, 2011) from the effective date of the contract; the 36th month (~February 1, 2012) from the effective date of the contract.

#### 8.3 (ME) SERVICE LEVEL GUARANTEES

This network must support production applications that require a high degree of reliability and must operate with little or no service disruptions for twenty-four (24) hours a day, seven (7) days a week. Contractors will provide solutions with the necessary redundancy, backup systems; and/or other disaster avoidance and recovery capabilities to support these needs. Contractors must have the necessary staff for the installation and maintenance of their network responsibilities and necessary staff to assist the State in its installation and maintenance of critical network services. The Contractor will provide an explanation of any redundancy that is available as part of the proposed system that will assure the required availability of the services. The Contractor will conform to these service level agreements, which are to include details concerning restoration procedures and goals, escalation procedures, and non-conformance penalties.

#### 8.4 (ME) SPECIFICATIONS

At a minimum, Internet and circuit availability will be 99.95% or greater as measured over twelve consecutive months.

Mean time to repair (MTTR) a failed transport backbone network element, measured over twelve consecutive months, will be 4 hours for Large Metropolitan Areas; 8 hours for Remote Support Areas.

End-to-End Network MTTR: 4 hours for Large Metropolitan Areas; 8 hours for Remote Support Areas.

Following the final system acceptance by the State, the Contractor shall guarantee overall network performance in accordance with RFP mandated requirements. Any outages and/or diminished QoS that are not resolved prior to the expiration of the four hour MTTR (Mean Time To Repair) for Large Metropolitan Areas; or 8 hours for Remote Support Areas, shall result in a credit to the State equal to four (4) days credit of service and one (1) day credit of service for each additional hour of outage and/or diminished QoS on the same circuit or network component. Repeated outages and/or diminished QoS on the same circuit or network segment greater than four (4) occurrences per month shall receive a full month credit for that circuit or network segment.

#### 8.5 (ME) PROJECT PLANNING AND MANAGEMENT

The State of Idaho acknowledges that project management and implementation procedures will require alignment and adjustment of work processes for the Contractor's organizations, the educational entities, and the State. The alignment will be part of the contract finalization, however the Contractor will respond to this RFP assuming the following responsibilities listed below. Specifically, the State of Idaho and educational entity management staff will:

- Provide overall project direction and program management.
- Review and approve all project plans and deliverables.
- Ensure that technical assistance and support are provided during the Contractor's implementation phases and ongoing upgrade design of this project.
- Establish project management guidelines by meeting with the Contractor's project management team as needed.
- Review and approve all project specific documentation standards and requirements for the
  various types of reports, technical/procedural documentation, and management materials that
  will be produced during the project.
- Coordinate other resources as needed to support the implementation process.
- Provide on-site assistance, as needed during the implementation phases of the project.
- The State of Idaho IEN management staff will also assist the Contractor in identifying eligible
  participants in the network as well as establishing guidelines with the Contractor for ordering,
  moving, adding or changing services.

#### Vendor Responsibilities:

- The Contractor will coordinate and administer the requirements of the network service(s) that are proposed with any subcontractors and the participants.
- The Contractor will maintain a project management office in the State (preferably at a location that is within one (1) hour access of Boise Idaho), during the design and cutover phases of this project. The office will be responsible for administrative functions, project design/development and the required installation.
- The Contractor will maintain toll free lines for voice and facsimile from the State to operational facilities for order entry and after hours help desk support. Installation and maintenance may be subcontracted to one or more third parties to adequately cover the locations of the core transport backbone sites and to provide for rapid response in the event of

a service disruption. The Contractor will provide information regarding intent to maintain its facilities after project implementation has been completed.

- The Contractor will maintain toll free voice lines for after hours helpdesk support for the duration of the contract. This point of contact will serve as the single point of contact for all services and equipment provided by the contract, including services and equipment subcontracted to another vendor.
- The Contractor will furnish with its proposal technical information, graphs, charts, it appears photographs, block diagrams, operating manuals, and other information that will clearly speak that the services offered are in full compliance with the minimum requirements of this HTP. In the event that the documentation furnished is at variance with the requirements of this services meet the REP requirements and should for be considered an exception.
- Stipe the Contractor will explain in detail; with full engineering support data; the reasons why some proposed services meet the RFP requirements and should not be contained an exception;

  The reading proposal will include detailed network diagrams and drawings that clearly illistrate the network configuration and the functional relationships, as they are associated will the proposed services. These network diagrams will be available to the State associated with the proposed services. These network diagrams will be available to the State associated will be available to the State.
- The Contractor will provide basic technical specifications for each item of
  equipment included in the proposal. The information to be provided will be in the form of
  published specification sheets or other illustrative literature.

### 9.0 VENDOR REQUIREMENTS

#### 9.1 (ME) PROPOSER'S BACKBONE

Describe in detail the Proposer's backbone in both narrative and graphic form. Include the overall architecture, number and location of points of presence ("POPs"), link capacities connecting POPs, descriptions of carrier-class routing/switching equipment, redundancy, fault tolerance, routing policies including BOP, current and planned support for IPv6, the number of direct network administrative and engineering staff supporting the Proposer's backbone, in-place physical and electronic security measures, and any other materially relevant information. Proposers in their proposed should also include historical data documenting at a minimum availability, latency and packet loss statistics for their backbone over the last 12 months.

#### 9.2 (ME) PEERING AND TRANSIT RELATIONSHIPS

Describe in detail the Proposer's peering and transit relationships in both narrative and graphic form. Include the locations and link capacities of peering/transit points, describe typical peering and transit service level agreements, and describe peering and transit policies. Specifically describe how the Proposet will avoid disruption to Users' Internet services as a result of disputes between providers, such as the recent dispute between Level 3 and Cogent Communications. Proposers in their proposal should also include historical data documenting at a minimum availability, latency and packet loss statistics for their peering and transit points over the last 12 months.

### 9.3 (ME) SERVICE LEVEL AGREEMENTS FOR CUSTOMERS ("SLAS")

Include in your proposal a copy of the Proposer's standard service level agreement for customers, taking into account the metrics established in 8.4 Specifications for internet and VTC Quality of Service. Ensure that the percentage availability goal of the Proposer's backbone is included. Also describe the Proposer's capacity planning process that is used to ensure the Proposer meets or exceeds established SLAs.

#### 9.4 (ME) TRACE ROUTE AND PING TESTS

Include in your proposal the results of select trace route and ping tests. It is recommended that providers use "pathping" to produce these results for their respective RFP responses. The destinations to be tested follow:

Coeur d'Alene School District http://www.cdaschools.org/

Lewiston School District http://www.lewiston.k12.id.us/

University of Idaho http://www.uidaho.edu/

Meridian School District http://www.meridianschools.org/

Boise State University http://www.idbsu.edu/

Twin Falls School District http://www.tfsd.k12.id.us

College of Southern Idaho http://www.csi.edu/

Idaho State University http://www.isu.edu/

Idaho Falls School District http://www.d91.k12.id.us/

Salmon School District http://www.salmon.k12.id.us/

### 9.5 (E) PROFESSIONAL AFFILIATIONS

Describe professional associations related to Internet services (e.g., NANOG) in which the Proposer actively contributes and participates.

#### 9.6 (E) ORGANIZATION

Describe your organizational structure and explain how your organization qualifies to be responsive to the managements administrative, engineering and technical requirements of this RFP. Elaborate in detail on your technical staff's training and familiarity with the design, administration and repair of a Cisco-based networking architecture.

#### 9.7 (E) QUALIFICATIONS AND EXPERIENCE

Describe the Proposer's experience in managing, engineering, staffing and providing commercial internet services to others of similar size and scope. Describe your qualifications and experience providing similar services, as required in this RFP, to other customers. Include a list of all customers.

#### 9.8 (E) REFERENCES

Include in your proposal a minimum of three (1) trade references including names of persons who may be contacted, their positions, addresses, and phone numbers where services similar in scope to the requirements of this RFP have been provided. The Proposer is responsible to ensure the accuracy and relevancy of provided references.

For partnerships used by the proposer in the supplying of the service, for each partner used, the proposer must provide a minimum of three (3) trade references, including names of persons who may be contacted, their positions, addresses, and phone numbers where services similar in scope to the requirements of this RFP have been provided. The Proposer is responsible to ensure the accuracy and relevancy of provided references for the partners.

#### 9.9 (ME) FINANCIALS

Include in your proposal copies of the latest two years' audited annual financial statements, and all partners proposed for the supply of this service. This information is for evaluation purposes only, should demonstrate the Proposer's financial stability and must include balance sheets, income statements, credit ratings, lines of credit, or other financial arrangements sufficient to enable the Proposer to be capable of meeting the requirements of this RFP. This information will be held in confidence to the extent that law allows.

If audited financial data are unavailable, fully explain the reason and provide the latest non-audited financial information including balance sheets, income statements, lines of credit, statements of cash flow, and changes in financial position. Include information to attest to the accuracy of the information provided:

#### 9.10 (E) BIOGRAPHICAL INFORMATION

Provide biographical information for each suff member responsible for design; implementation, project management, or other positions identified in the requirements of the RFP. Include relevant education, experience and licensing or certification.

#### 9.11 (ME) IMPLEMENTATION PLAN

The Contractor will submit to the State of Idaho ClO Office an implementation plan for the deployment of the services, along with proposed pricing schemes that reject the services in be included in the associated contract resulting from the awards of this.

REFF of deployment of services. Specifically, this envisioned that Vandors that provide written details of an IEN Phiased Deployment plan that will include? Network Dissovery (e.g. assisting the State in the inventory of already existing legacy public school; libraries and state agency networks to include network equipments conflectivity, facilities, use of E-Rate Funding, etc.); Analysis of Survey findings (to identify actual network build out requirements); School Participation IEN Marketing Plans, Pilot program. Proof of Concept" installations to validate requirements; "Go live" Phase I for installation of services support to all Idaho Public High Schools, An Operations and Maintenance plans, followed by future IEN Phased Deployments (Elementary, Middle schools, Libraries, State agencies) and Technology refreshment plans.

#### 9.12 (E) DEPLOYMENT STATUS REPORTS

The Contractor's designated project manager will provide weekly reports of the status of any deployment schedules to the State's designated IEN project manager. Deployment status reports will provide weekly information related to the adherence to the deployment schedule identified in Appendix A, identification of issues affecting the deployment schedule, and recommended resolution(s) to any identified barriers to network deployment.

#### 9.13 (E) BILLING

The State will provide detailed billing instructions for each order as placed. In some cases the billed entity will be a consolidated billing to the State in an electronic format.

For E-Rate eligible entities, the contractor will be instructed to bill the E-Rate processing organization directly (USAC, Service Provider Invoice, Form 474) in accordance with established E-Rate policies to ensure that appropriate E-Rate processing can be accomplished. The contractor must comply with all applicable E-Rate requirements. The State may request a copy or summary of billings to other entities.

#### 9.14 (E) CERTIFICATION

The State requires that the bidder be certificated by the Idaho Division of Purchasing Commission to provide the services outlined in this Section of this RFP. The Bidders must elaborate on whether they would be willing to file Tariffs with Division of Purchasing specific to the network proposed in their bid. The Bidder must elaborate on whether they are willing to accept direct payment for USF and NUSF contributions to their proposed network and whether they are

willing to deduct these contributions from the State's monetary obligations toward a contract resulting from this RFP.

#### 9.15 (ME) PROOF OF PERFORMANCE

Vendors will provide in writing detailed plans for testing of the IEN core network, following the installation and activation of all equipment, to include testing of each link to insure and verify proper transmission speeds and low latency. Vendors will also provide a plan on how they will document these tests and present their findings to the State IEN OCIO office. Note the results of all these tests will be documented by the contractor, given to the State and become a part of the Vendors Maintenance records, along with required monthly status reports specified in sections 8.1 and 9.12.

#### 10.0 PRICING SCHEDULES

The Bidder will clearly identify each offered service (by service type) and be specific on all elements, processes; feels sets, included in the cost Bid proposals will address the impact of normal growth, as well as planned and unplanned network expansion of service enhancement. All prices shall be proposed on a "per unit" as a recurring or nonrecurring basis. All bidder costs must be reflected in either the monthly recurring or nonrecurring charges. No additional charges will be accepted. The State shall not be required to purchase any specific service or minimum quantities of network services. The quantities provided in this RFP as examples are for the sole purpose of assisting the Bidders in preparation of their proposals and for the State to evaluate the feasibility of the proposed network solutions. The State shall not be responsible for any cost that is not identified in the Bidders proposal.

#### 10.1 (E) NETWORK EQUIPMENT AND HARDWARE COSTS (NON-CPE)

Network equipment and hardware (non-CPE) will be part of and included in the itemized transport circuit costs. Circuit costs will be bundled costs, including all hardware.

#### 10.2 (E) INSTALLATION COSTS

If one-time installation/set-up charges are applicable, these rates shall be delineated in the cost portion of the proposal. This cost for the circuit installation shall include all one-time costs associated with termination to the demarcation point from the network side and/or fees associated with interconnection to local exchange carriers.

#### 10.3 (E) SOFTWARE, WARRANTY, AND MAINTENANCE COSTS

The Bidder will include costs for suffware, warranty, and maintenance of the provided circuits in the service rates. Suffware includes any mittal or upgraded suffware required by each item of equipment proposed for the network to perform as a fully functional, integrated part of the Contractor's network and associated service rates. The suffware costs shall include all of the following applicable costs:

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#### 10.4 (M) OPTIONAL SERVICES

It is anticipated the Contractor may wish to offer obtained services at an additional fee; he perword monitoring, project management, etc. These services will be identified and described in detail with the appropriate cost per unit (hour, month, circuit, service, etc.) delineated.

#### 10.5 (E) TOTAL COSTS

The Bidder will provide a detail description and list of services being proposed in the attached Schedules. Monthly costs, installation, and any other charges are to be explicitly stated in order for the State to evaluate the proposed services incorporated in the proposal and the associated charges. Additionally, vendors are encouraged to:

- Minimize any "transport" or "backhaul" charges in support of a stable per megabit pricing algorithm.
- Specify all fees for activation, termination and/or processing if allowable changes in capacity
  are requested during the life of the contract.
  - Provide a means to clearly determine the monthly recurring costs associated to the amount of Internet capacity purchased or consumed.
  - Indicate the availability and any associated pricing details for the State to obtain additional TCP/IP address ranges during the term of the contract.

#### 10.6 (E) COST AND SERVICE OFFERING REVIEWS DURING THE CONTRACT

The State and the Contractor will conduct periodic reviews of the contract at specific milestones during the term of the contract to review service offerings and pricing as specified under item 8.2 Technology Refreshment.

#### 10.7 (E) PROPOSAL COST EVALUATION

The proposal cost will be evaluated based on the monthly recurring costs multiplied by the applicable length of contract in months, not to include extensions, plus the one-time non-recurring costs.

#### 10.8 (E) PRICING SCHEDULES

All pricing schedules must be complete and accurate, containing all costs related to provisioning Internet services. Pricing in these schedules must reflect the Proposer's pricing <u>before</u> the application of any taxes, fees, surcharges or volume discounts.

All schedules contained in the electronic version of this RFP are embedded Excel worksheets. Please contact the Division of Purchasing if you desire to use or require assistance in using these worksheets.

Schedule An Proposed V	endor IEN Si	lution (RPP Sec Monthly	ion 3,532 )
	One-time	Recurring	
Item no. Description	charge (\$)	Charge (\$)	<u>Notes</u>
1 TOTAL PRICE			
2 Breakdown of Total Price:			

Schedule B   Incren	nental Bandw	dth (RFP Section  Monthly	<b>FEOT</b>
	One-time	Recurring	
Item no. Description	charge (\$)	Charge (\$)	<u>Notes</u>
1 Fixed incremental bandwidth			
(indicate incremental units)			
2 Burstable incremental bandwidth			
(indicate incremental units)			

Schedule D. Value added Services for IEN Users (RVP Section 10.4)

Monthly

One-time Recurring

Item no. Description charge (\$) Charge (\$) Notes

1 DNS Caching
2 Network Security
3 Application Level Monitoring
4 Content Filtering
5 IP Maintenance
6 E-Mail & Archiving Services
7 Managed Firewall Services
8 Traffic Prioritization Services
9 Other value-added services

Schedule B. Charge For Perfo	riuance and I	Jsage Reports (RF Monthly	P Section 8.1)
Item no. Description	One-time charge (\$)	Recurring Charge (\$)	<u>Notes</u>

Taxes, Fees, and Surcharges  While the State is generally except from payment of taxes, identify and explain the various existing taxes, fees and surcharges that apply to offered Internet services.  Provide an average overall percentage markup that may be applied to the Proposer's pricing in the preceding schedules that reflects the taxes, fees and surcharges that Users will pay.
Volume Discounts  Identify and explain any volume discounts the Proposer is willing to offer and the
basis for qualifying for them (e.g., revenue, usage, number of access points).
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### APPENDIX A

### SCHEDULE 1: LIST OF IEN PHASE ONE PUBLIC HIGH SCHOOLS

Idaho State Public High Schools	Idaho State Public High Schools Cont.
American Falls Joint District #381	Cascade District #422
American Falls High School	Cascade High School
D . 100	G : D: : : : !!!!!!!
Basin District #72	Cassia District #151
Idaho City High/Middle School	Burley High School
	Declo High School
Bear Lake Disrtict #33	Raft River High School
Bear Lake High School	Cassia Regional Technical Center
Blackfoot District #55	Castleford District #417
Blackfoot High School	Castleford High
Independence Alternative High School	
	Cour d'Alene District #271
Blaine County District #61	Cour d'Alene High School
Carey School (K-12)	Lake City High School
Wood River High School	Project CDA Alternative High School
	Riverbend Technical Academy
Boise District #1	
Boise High School	Cottonwood Joint District #242
Borah High School	Prairie High School
Capital High School	
Dehryl A. Dennis Prof. Tech Ed Ctr.	Council District #13
Fort Boise High School	Coucil High School
Marian Prichett High School	
Mountain Cove High School	Dietrich District #314
Timberline High School	Division District (IOX)
	Emmett District #221
Bonneville Joint District #93	Emmett High School
Bonneville High School	
Hillcrest High School	Fremont County Joint District #215
Lincoln High School	South Fremont High School
Boundary County District #101	Genesee Joint District #282
Bonners Ferry High School	Control Diameter (1202
COLUMN TO THE TRANSPORT	Glenns Ferry Joint District #192
Bruneau-Grand View Joint District #365	Glenns Ferry High School
Rimrock Jr./Sr. High School	Giolais I Gily Lagit Gollooi
Cimiout 113 Divingit Dolloot	Gooding Joint District #231
Buhl Joint District #412	Gooding High School
Buhl High School	Idaho School for the Deaf and Blind
Juni Light Johoot	Idado School for the Dear and Dilliu

Caldwell District #132	Grace Joint District #148
Caldwell High School	Grace High School
Canyon Springs Alt High School	
	Idaho Digital Learning Academy

### SCHEDULE 1 cont.: LIST OF IEN PHASE ONE PUBLIC HIGH SCHOOLS

Idaho Public High Schools	Idaho Public High Schools Cont.	
Homedale Joint District #370	Madison High School	
Homedale High School		
	Marsing District #363	
Idaho Falls District #91	Marsing High School	
Idaho Falls High School		
Skyline High School	McCall-Donnelly District #421	
Westview High School	McCall Donnelly High School	
Jefferson County School District #251	Meadow Valley District #11	
Jefferson High School		
Rigby High School	Melba Joint District #136	
	Melba High School	
Jerome Joint District #261		
Jerome High School	Meridian Joint District #2	
	Centennial High School	
Kamiah Joint District #304	Central Academy High School	
Kamiah High School	Eagle Academy High School	
	Eagle High School	
Kellogg Joint District #391	Meridian Academy High School	
Kellogg High School	Meridian Charter High School	
	Meridian High School	
Kimberly District #414	Meridian Medical Arts Charter HS	
Kimberly High School	Mountain View High School	
Kootenai District #274	Middleton District #134	
Kootenai High School	Middleton High School	
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Kuna Joint District #3	Midvale District #433	
Kuna High School	Midvale High School	
Lakeland District #272	Minidoka County Joint District #331	
Lakeland High School	Minco High School	
Mountain View Alternative High School	Mt. Harrison Jr./Sr. High School	
Timberlake Junior/Senior High School		
	Moscow District #281	
Lake Pend Oreille District #84	Moscow High School	
Clark Fork Junior/Senior High School	Paradise Creek Regional High School	
Sandpoint High School		
	Mountain Home District #193	
Lewiston District #340	Mountain Home High School	

Lewiston High School	
	Mountain View District #244
Madison District #321	Clearwater Valley Senior High School
Central High School	Grangeville High School

## SCHEDULE 1 cont.: LIST OF IEN PHASE ONE PUBLIC HIGH SCHOOLS

Idaho Public High Schools	Idaho Public High Schools Cont.	
Mullan District #392	Rirle Joint District #252	
Mullan Junior/Senior High School	Ririe High School	
Nampa District #131	Rockland District #382	
Columbia High School	Rockland High School	
Nampa High School		
Skyview High School	St. Maries Joint District #41	
	Community Education Center	
Onelda County District #351	St. Maries High School	
Malad High School	UpRiver School	
Orofino Joint District #171	Salmon District #291	
Orofino High School	Salmon High School	
Timberline Junior/Senior High School		
	Salmon River Joint District #243	
Parma District #137	Salmon River High School	
Parma High School		
	Shelley Joint District #60	
Payette Joint District #371	Shelley High School	
Payette Alternative Night School		
Payette High School	Shoshone Joint District #312	
	Shoshone High School	
Plummer/Worley Joint District #44		
Lakeside High School	Shoshone-Bannock Joint District #537	
	Shoshone-Bannock Jr. and Sr. High School	
Pocatello/Chubbuck District #25		
Century High School	Snake River District #52	
Highland High School	Snake River High School	
Pocatello High School		
	Soda Springs Joint District #150	
Post Falls District #273	Caribou High School	
New Version High School	Soda Springs High School	
Post Falls High School		
Riverbend Professional Tech Academy	Swan Valley District #92	
Potlatch District #285	Teton County District #401	
	Teton High School	
Preston Joint District #201		
Preston High School	Troy District #287	
	Troy Junior-Senior High School	

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# SCHEDULE 1 cont: LIST OF IEN PHASE ONE PUBLIC HIGH SCHOOLS\HIGHER EDUCATION ENTITIES

Idaho Public High Schools	Idaho Colleges and Universities
Twin Falls District #411	State Colleges
Magic Valley High School	College of Southern Idaho
Robert Stuart High School	Eastern Idaho Technical College
Twin Falls High School	Lewis-Clark State College
	North Idaho College
Valley District #262	College of Western Idaho
Vallivue District #139	State Universities
Vallivue High School	Boise State University
	Idaho State University
Wallace District #393	University of Idaho
Wallace Junior/Senior High School	
TV 1 701 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
Weiser District #431	
Weiser High School	
Wendell District #232	
Wendell High School	
West Bonner County District #83	
Priest River Lamanna High School	
West Jefferson District #253	
West Jefferson High School	
W. Oll V. Ol Interes	
West Side Joint School District #202	
West Side High School	
Whitepine Joint District #288	
Deary High School	
Idaho Distance Education Academy	
Wilder District #133	
Wilder High School	

# SCHEDULE 2: LIST OF IEN PHASE TWO PUBLIC ELEMENTARY AND MIDDLE SCHOOLS

Idaho Public Elementary\Middle Schools	Idaho Public Elementary\Middle Schools
American Falls Joint District #381	Boise District #1 Continued
American Falls Intermediate School	Horizon Elementary School
Hillcrest Elementary School	Jackson Elementary School
William Thomas Middle School	Jefferson Elementary School
	Les Bois School (Junior High)
Basin District #72	Liberty Elementary School
Basin Elementary School	Longfellow Elementary School
Idaho City High/Middle School	Lowell Elementary School
	Madison Early Childhood Center
Bear Lake County District #33	Maple Grove Elementary School
A STATE OF THE STA	McKinley Elementary School
Blackfoot District #55	Monroe Elementary School
Blackfoot Sixth Grade	Mountain View Elementary School
Fort Hall Elementary School	North Junior High School
Groveland Elementary School	Owyhee-Harbor Elementary School
Irving Kindergarten Center	Pierce Park Elementary School
Mountain View Middle School	Riverglen Junior High School
Ridge Crest Elementary School	Riverside Elementary School
Stalker Elementary School	Roosevelt Elementary School
Stoddard Elementary School	Shadow Hills Elementary School
Wapello Elementary School	Trail Wind Elementary School
	Valley View Elementary School
Blaine County District #61	Washington Elementary School
Bellevue Elementary School (K-2)	West Junior High School
Carey School (K-2)	Whitney Elementary School
Community School	Whittier Elementary School
Ernest Hemmingway Elementary (K-5)	William Howard Taft Elementary School
Hailey Elementary School	
Wood River Middle School	Bonneville Joint District #93
Woodside Elementary	Ammon Elementary School
	Cloverdale Elementary School
Boise District #1	Fairview Elementary School
Adams Elementary School	Falls Valley Elementary School
Amity Elementary School	Hillview Elementary School
Cole Elementary School	Iona Elementary School
Collister Elementary School	Rimrock Elementary School
Cynthia Mann Elementary School	Rocky Mountain Middle School
Fairmont Junior High School	Sandcreek Middle School
Franklin Elementary School	Taylor's Crossing Public Charter School
Garfield Elementary School	Tiebreaker Elementary School
Hawthorne Elementary School	Ucon Elementary School
Highlands Elementary School	White Pine Charter School
Hillcrest Elementary School	Woodland Hills Elementary School

Hillside Junior High School

SCHEDULE 2 cont.: LIST OF IEN PHASE TWO PUBLIC ELEMENTARY AND MIDDLE SCHOOLS

Idaho Public Elementary\Middle Schools	Idaho Public Elementary\Middle Schools
Bonneville Joint District #93 Continued	Cassia District #151 Continued
White Pine Charter School	Mountain View Elementary School
Woodland Hills Elementary School	Newcomer Center
	Oakley Elementary School
Boundary County District #101	Raft River Elementary School
Boundary County Junior High School	White Pine Elementary School
Evergreen Elementary School	
Mt. Hall Elementary School	Castleford District #417
Naples Elementary School	Castleford Elementary
Valley View Elementary School	Castleford Middle
Bruneau-Grand View Joint Dist. #365	Clark County District #161
Bruneau Elementary School	
Grandview Elementary School	Coeur d'Alene District #271
Rimrock Jr./Sr. High School	Borah Elementary School
	Bryan Elementary School
Buhl Joint District \$412	Canfield School (Middle)
Buhl Middle School	Dalton Elementary School
Popplewell Elementary School	Fernan Elementary School
	Hayden Meadows Elementary School
Caldwell District #132	Lakes Middle School
Jefferson Middle School	Project Middle School
Lewis Clark Elementary School	Ramsey Elementary School
Lincoln Elementary School	Skyway Elementary School
Sacajawea Elementary School	Sorenson Elementary School
Syringa Middle School	The Bridge
Van Buren Elementary School	Winton Elementary School
Washington Elementary School	Woodland Middle School
Wilson Elementary School	
	Cottonwood Joint District #242
Cascade District #422	
Cascade Elementary School	Council District #13
	Council Elementary School
Cassia District #151	
Albion Elementary School	Dietrich District #314
Almo Elementary School	
Burley Junior High School	Emmett District #221
Cassia Regional Technical Center	Butte View Elementary School
Cassia Education Center	Carberry Intermediate School
Declo Elementary School	Emmett Junior High School
Declo Junior High School	Shadow Butte Elementary School
Dworshak Elementary School	

## SCHEDULE 2 cont.: LIST OF IEN PHASE TWO PUBLIC ELEMENTARY AND MIDDLE SCHOOLS

Idaho Public Elementary\Middle Schools	Idaho Public Elementary\Middle Schools
Fremont County Joint District #215	Theresa Bunker Elementary School
Ashton Elementary School	Westside Elementary School
Central Elementary School	
Teton Elementary School	Jefferson County Joint District #251
	Hardwood Elementary School
Genesse Joint District #282	Jefferson Elementary School
	Midway Middle School
Glenns Ferry Joint District #192	Midway Elementary School
Glenns Ferry Elementary School	Rigby Junior High
Glenns Ferry Middle School	Roberts Elementary School
Gooding Joint District #231	Jerome Joint District #261
Gooding Elementary School	Central Elementary School
Gooding Middle School	Horizon Elementary School
Gooding Accelerated Learning Center	Jefferson Elementary School
Idaho School for the Deaf & Blind	Jerome Middle School
Grace Joint District #148	Kamiah Joint District #304
Grace Elementary School	Kamiah Elementary School
Grace Junior High School	Kamiah Middle School
Homedale Joint District #370	Kellogg Joint District #391
Homedale Elementary School	Canyon Elementary School
Homedale Middle School	Kellogg Middle School
	Pinehurst Elementary School
Idaho Falls District #91	Sunnyside Elementary School
A.H. Bush Elementary School	Yes I. I. Was a series of
Clair E. Gale Junior High School	Kimberly District #414
Dora Erickson Elementary School	Kimberly Elementary School
Eagle Rock Junior High School	Kimberly Middle School
Edgemont Elementary High School	
Ethel Boyes Elementary School	Kootenai District #274
Fox Hollow Elementary School	
Hawthorne Elementary School	Kuna Joint District #3
Linden Park Elementary School	Crimson Point Elementary School
Longfellow Elementary School	Fremont H. Teed Elementary School
Sunnyside Elementary School	Hubbard Elementary School
Taylorview Junior High School	Indian Creek Elementary School
	Kuna Middle School
Idaho Falls District #91 Continued	Reed Elementary School
Temple View	Ross Elementary School

# SCHEDULE 2 cont.: LIST OF IEN PHASE TWO PUBLIC ELEMENTARY AND MIDDLE SCHOOLS

Idaho Public Elementary\Middle Schools	Idaho Public Elementary\Middle Schools		
Lakeland District #272	McCall-Donnelly District #421		
Athol Elementary School	Barbara Morgan Elementary School		
Betty Kiefer Elementary School	Donnelly Elementary School		
Garwood Elementary School	McCall Elementary School		
John Brown Elementary School	Payette Lakes Middle School		
Lakeland Junior High School			
Spirit Lake Elementary School	Meadow Valley District #11		
Timberlake Junior/Senior High School	Meadow Valley Elementary		
	Meadow Valley Secondary		
Lake Pend Oreille District #84			
Clark Fork Junior/Senior High School	Melba Joint District #136		
Farmin-Stidwell Elementary School	Melba Elementary School		
Kootenai Elementary School	Melba Middle School		
Northside Elementary School			
Sandpoint Charter School	Meridian Joint District #2		
Sandpoint Middle School	ArtsWest School		
Southside Elementary School	Crossroads Middle School		
Washington Elementary School	Eagle Middle School		
	Joplin Elementary School		
Lewiston District #340	Lake Hazel Middle School		
Camelot Elementary School	Lewis and Clark Middle School		
Centennial Elementary School	Lowell Scott Middle School		
Jenifer Junior High School	Meridian Middle School		
McGhee Elementary School	Sawtooth Middle School		
McSorley Elementary School			
Orchards Elementary School	Middleton District #134		
Sacajawea Junior High School	Middleton Heights Elementary School		
Tammany Alternative Learning Center	Middleton Middle School		
Webster Elementary School	Mill Creek Elementary School		
	Purple Sage Elementary School		
Madison District #321			
Adams Elementary School	Midvale District #433		
Archer & Lyman Elementary Schools	Midvale Elementary School		
Hibbard Elementary School	Midvale Junior High School		
Kennedy Elementary School			
Lincoln Elementary School	Minidoka Country Joint District #331		
Madison Junior High School	Acequia Elementary School		
Madison Middle School	East Minico Middle School		
	Heyburn Elementary School		
Marsing District #363	Paul Elementary School		
Marsing Elementary School	Rupert Elementary School		
Marsing Middle School	West Minco Middle School		
	Mt. Harrison Jr./Sr. High School		

## SCHEDULE 2 cont.: LIST OF IEN PHASE TWO PUBLIC ELEMENTARY AND MIDDLE SCHOOLS

Idaho Public Elementary\Middle Schools	Idaho Public Elementary\Middle Schools
Moscow District #281	Orofino Joint District #171
A.B. McDonald Elementary School	Orofino Elementary School
Lena Whitmore Elementary School	Orofino Junior High School
Moscow Junior High School	Peck Elementary School
Russell Elementary School	Pierce Elementary School
West Park Elementary School	Weippe Elementary School
Mountain Home District #193	Parma District #137
Atlanta Elementary School	Maxine Johnson Elementary School
East Elementary School	Parma Middle School
Hacker Middle School	
Liberty Elementary School	Payette Joint District #371
Mountain Home AFB Primary School	McCain Middle School
Mountain Home Jr. High School	Payette Primary School
North Elementary School	Westside Elementary School
Pine Elementary School	
Stephensen Middle School	Plummer/Worley Joint District #44
West Elementary School	Lakeside Elementary School
	Lakeside Middle School
Mullan District #392	
John Mullan Elementary School	Pocatello/Chubbuck District #25
	Chubbuck Elementary School
Nampa District #131	Edahow Elementary School
Centennial Elementary School	Ellis Elementary School
Central Elementary School	Franklin Middle School
East Valley Middle School	Gate City Elementary School
Franklin D.: Roosevelt Elementary School	Greenacres Elementary School
Greenhurst Elementary School	Hawthome Middle School
Iowa Elementary School	Indian Hills Elementary
Lincoln Elementary School	Irving Middle School
Owyhee Elementary School	Lewis and Clark Elementary School
Parkview Early Childhood Center	Syringa Elementary School
Park Ridge Elementary School	Tendoy Elementary School
Ronald Reagan Elementary School	Washington Elementary School
Sherman Elementary School	Wilcox Elementary School
Snake River Elementary School	
Sunny Ridge Elementary School	Post Falls District #273
South Middle School	Post Falls Middle School
West Middle School	Mullan Trail Elementary School
Willow Creek Elementary School	Ponderosa Elementary School
	Prairie View Elementary School
Oneida Country District #351	

# SCHEDULE 2 cont.: LIST OF IEN PHASE TWO ELEMENTARY AND MIDDLE SCHOOLS

Idaho Public Elementary\Middle Schools	Idaho Public Elementary\Middle Schools
Post Falls District #273 Continued	Snake River District #52
River City Middle School	Moreland Elementary School
Seltice Elementary School	Riverside Elementary School
	Rockford Elementary School
Potlatch District #285	Snake River Middle School
	Snake River Junior High School
Preston Joint District #201	
Oakwood Elementary School	Soda Springs Joint District #150
Pioneer Elementary School	Grays Lake Elementary School
Preston Junior High School	Hooper Elementary School (4-6)
	Thrikill Elementary School (K-3)
Ririe Joint District #252	Tigert Middle School
Ririe Elementary School	
Ririe Middle School	Swan Valley District #92
	Swan Valley Elementary School
Rockland District #382	
Rockland Elementary School	Teton County District #401
	Driggs Elementary School
St. Maries Joint District #41	Teton Middle School
Community Education Center	Tetonia Elementary School
Heyburn Elementary School	Victor Elementary School
St. Maries Middle School	
UpRiver School	Troy District #287
	Troy Elementary School
Salmon District #291	Troy Junior/Senior High School
Brooklyn School	
Pioneer Elementary School	Twin Falls District #411
Salmon School (Middle)	Bickel Elementary School
	Harrison Elementary School
Salmon River Joint District #243	Morningside Elementary School
Riggins Elementary School	Oregon Trail Elementary School
	Perrine Elementary School
Shelley Joint District #60	Sawtooth Elementary School
Goodsell Primary School	O'Leary Junior High School
Hobbs Middle School	
Stuart Elementary School	Valley District #262
Shoshone Joint District #312	Vallivue District #139
Shoshone Elementary School	Birch Elementary School
Shoshone Middle School	Central Canyon Elementary School
	East Canyon Elementary School
Shoshone-Bannock Joint District #537	Sage Valley Intermediate School

## SCHEDULE 2 cont.: LIST OF IEN PHASE TWO ELEMENTARY AND MIDDLE SCHOOLS

Idaho Public Elementary\Middle Schools	Idaho Public Elementary\Middle Schools
Vallivue District #139 Continued	Whitepine Jint District #288
Vallivue Middle School	Bovill Elementary School
West Canyon Elementary School	Deary Elementary School
	Idaho Distance Education Academy
Wallace District #393	
Silver Hills Elementary School	
Weiser District #431	
Park Intermediate School	
Pioneer Elementary School	
Weiser Middle School	
Wendell District #232	
Wendell Elementary School	
Wendell Middle School	
West Bonner County District #83	
Idaho Hill Elementary School	
Priest River Elementary School	
Priest River Junior High School	
TAY T AA TO TO THE TOTAL THE TAY TO THE TAY	
West Jefferson District #253	
Hamer Elementary School	:
Terreton Elementary & Junior HS	:
W 46' 1 Y 4 D' 4 '-4 1000	
West Side Joint District #202 Harold B. Lee Elementary School	
Harold B. Lee Middle School	
Harold B. Lee Wilddle School	
West Side Joint District #202	
Bovill Elementary School (K-3)	
Deary Elementary School	
Domy Dienientary Denoor	
Wilder District #133	
Wilder Schools: Elementary	
Wilder Schools: Middle	
Wilder Sollools, Wildely	
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SCHEDULE 3: LIST OF IEN PHASE THREE PUBLIC LIBRARIES

Idaho Public Libraries	Idaho Public Libraries Continued		
Aberdeen District Library	Fremont County District Library-Island Park		
Ada Community Library-Hidden Springs	Fremont Co District Library-St Anthony		
Ada Community Library-Star Branch	Garden City Public Library		
American Falls District Library	Garden Valley District Library		
Bear Lake Co. Dist. Library-Paris Branch	Glenns Ferry Public Library		
Bear Lake Co. Dist. Library-Whitman-Thiel	Gooding Public Library		
Bellevue Public Library	Grace District Library		
Benewah County Dist. Library-Tensed Branch	Grangeville Centennial Library		
Benewah County Dist. Library-Tri-Community	Hagerman Public Library		
Blackfoot Public Library	Hailey Public Library		
Blackfoot Rural Library District	Hansen District Library		
Boise Basin Library District	Homedale Public Library		
Boise Public Library	Horseshoe Bend District Library		
Boise Public Library-Collister Branch	Idaho Commission for Libraries-North		
Boise Public Library-Hillcrest Branch	Idaho Commission for Libraries-East		
Bonneville Country Library Distrtict	Idaho Falls Public Library		
Boundary County District Library	Jefferson Co. Dist. Library-Hamer Branch		
Bruneau District Library	Jefferson Co. Dist. Library-Heart of Valley		
Buhl Public Library	Jefferson Co. Dist. Library-Menan-Annis		
Burley Public Library	Jerome Public Library		
Caldwell Public Library	Kellogg Public Library		
Camas County District Library	Kimberly Public Library		
Cambridge Community Library	Kootenai Shoshone Area Library-Athol		
Cascade Public Library	Kootenai Shoshone Area Library-Bookmobile		
Challis Public Library	Kootenai Shoshone Area Library-Harrison		
Clark County District Library	Kootenai Shoshone Area Library-Hayden		
Clarkia District Library	Kootenai Shoshone Area Library-Pinehurst		
Clearwater County District Library	Kootenai Shoshone Area Library-Rathdrum		
Clearwater Memorial Library	Kootenai Shoshone Area Library-Spirit Lake		
Coeur d'Alene Public Library	Kuna Library District		
DeMary Memorial Public Library	Latah County District Library-Bovill		
Eagle Public Library	Latah County District Library-Deary		
East Bonner County Free Library District	Latah County District Library-Genesee		
E. Bonner County Free Library Dist. Bookmbl	Latah County District Library-Juliaetta		
E. Bonner County Free Library Dist. Clark F	Latah County District Library-Moscow		
Eastern Owyhee Country District Library	Latah County District Library-Potlatch		
Elk River Free Library District	Lemhi County District Library-Leadore		
Emmett Public Library	Lemhi County District Library- Salmon		
Filer Public Library	Lewiston City Library		
Franklin Co Dist. (Larsen-Sant) Library	Lewisville Public Library		
Fremont Co. Dist. Library-Ashton Branch	Little Wood River District Library		

### SCHEDULE 3 cont.: LIST OF IEN PHASE THREE PUBLIC LIBRARIES

Idaho Public Libraries	Idaho Public Libraries Continued
Lizard Butte District Library	Salmon River Public Library
Lost Rivers District Library	Shoshone Public Library
Lost Rivers District Library-Howe Branch	Snake River School/Community Library
Mackay District Library	Soda Springs Public Library
Madison Library District	South Bannock District Library-Downey
Marshall Public Library	S. Bannock Dist. Library-Lava Hot Springs
McCall Public Library	St. Maries Public Library
Meadows Valley Public Library District	Stanley Community Public Library Dist.
Meridian District Library	Sugar Salem School/Community Library
Middleton Public Library	Twin Falls Public Library
Midvale District Library	Valley of the Tetons District Library
Mountain Home Public Library	Wallace Public Library
Mullan Public Library	Weiser Public Library
Nampa Public Library	Wendell Public Library
North Bingham Co. District Library	West Bonner Library District
Notus Public Library	West Bonner Library District-Blanchard
Oakley District Library	Wilder District Library
Ola District Library	
Oneida County District Library	
Osburn Public Library	
Patricia Romanko Public Library	
Payette Public Library	
Pierce District Library	
Plummer Public Library	
Portneuf District Library	
Post Falls Public Library	•
Prairie District Library	
Prairie River Library Dist-Craigmont	
Prairie River Library Dist-Culdesac	
Prairie River Library Dist-Kamiah	
Prairie River Library Dist-Kooskia	
Prairie River Library Dist-Nezperce	
Prairie River Library Dist-Peck	
Prairie River Library Dist-Winchester	
Prairie River Library Dist-Lapwai	
Priest Lake District Library	
Richfield District Library	
Rigby Public Library	
Ririe Public Library	
Roberts Public Library	
Rockland School Community Library	

#### NOTE: APPENDIX B MUST BE DOWNLOADED AT:

Host Name/Address - ftpl.idaho.gov

External User Account

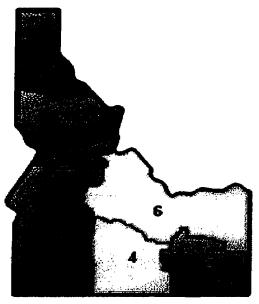
Account Name - dopftp (all lowercase d, as in dog; o, as in over; p, as in paper; f, as in fern; t, as in tree; p, as in paper)

Password - Lo39G175 (Capital L, as in Leon; lowercase o, as in over; the number three; the number nine; capital G, as in George; the number one; the number seven; the number five)

### APPENDICIES C-E

001404

## APPENDIX C, IEN PHASE I, PILOT PROGRAMS



In Phase I of our IEN effort, we have identified by geographical location, district and current connectivity data, potential public high schools that may be willing to participate in the pilot phase of this program. Those counties are highlighted in **RED** below their respective region.

	State of the	12.	Region 4	Keyen S	Region 6
Benewah	Clearwater	Ada	Blaine	Bannock	Bonneville
Bonner	Idaho	Adams	Camas	Bear Lake	Butte
Eloundary	Latah	Boise	Cassia	Bingham	Clark
Kootenal	Lewis	Canyon	Gooding	Caribou	Custer
Shoshone	Nez Perce	Elmore	Jerome	Franklin	Fremont
		Gem	Lincoln	Oneida	Jefferson
		Owyhee	Minidoka	Power	Lemhi
		Payette	Twin Falls		Teton
		Washington Valley		The state of the s	Madison

The following information is provided concerning known broadband connectivity to our Idaho Public Schools. It is included in this document to give Vendors information about what <u>is</u> and <u>is</u> <u>not</u> currently available to our public schools and to highlight the need for Vendors to assist us in coming up with a viable plan to close the gap on these disparities wherever possible to ensure equal access to all Idaho students to higher education resources. Please note this is not a comprehensive list, but provided to assist Vendors in preparing their proposal responses.

District	Name	Internet	Connection	Rate	Cost
Id#		Provider	Type		
1	BOISE INDEPENDENT DISTRICT	Time Warner	Fiber	70 Mbps	\$53,000
2	MERIDIAN JOINT DISTRICT	Time Warner	Fiber	56 Mbps	\$1,300,000
11	MEADOWS VALLEY DISTRICT	Frontier	DSL	512Mb Up, 2Gb Down	\$4,791
13	COUNCIL DISTRICT	Cambridge Telephone Company	DSL	512Kb Up, 2M Down	\$1,827
21	MARSH VALLEY JOINT DISTRICT	MicroServ	Wireless	3Mb	\$11,000
25	POCATELLO DISTRICT	CableONE	Cable, Fiber	3Mb,12Mb	\$67,200
33	BEAR LAKE COUNTY DISTRICT	DirectComm	Cable	1.5Mbps	\$12,314
44	PLUMMER-WORLEY JOINT DISTRICT	RedSpectrum	Wireless	4Mb	\$7,000
52	SNAKE RIVER DISTRICT	Qwest	FP_T1		\$9,960
55	BLACKFOOT DISTRICT	MicroServ	FPMult_T1,DSL	1.544, 4M Up, 16M Down	\$71,417
58	ABERDEEN DISTRICT	DirectComm	Cable	3-5Mb	\$12,000
59	FIRTH DISTRICT	MicroServ	Wireless	Unknown	\$6,000
60	SHELLEY JOINT DISTRICT	CableONE	Cable	10МЬ	\$4,116
61	BLAINE COUNTY DISTRICT	Qwest	FPMult_T1	9Mb	\$108,996
71	GARDEN VALLEY DISTRICT	Qwest	FPMult_T1	Unknown	\$10,500
72	BASIN SCHOOL DISTRICT	McLeod USA (Paytech)	FPMult_T1	ЗМЬ	\$11,060
73	HORSESHOE BEND SCHOOL DISTRICT	AT&T	FPMult_T1	Unknown	\$12,480
83	WEST BONNER COUNTY DISTRICT	Concept Cable and Moosebytes	Cable, Wireless	3Mb, 1Mb	\$18,000
91	IDAHO FALLS DISTRICT	Microserv	Fiber	20mbps	\$92,000
92	SWAN VALLEY ELEMENTARY DIST	Snake River ISP	FP_T1	Unknown	\$800
93	BONNEVILLE JOINT DISTRICT	Cable One	Fiber	1000 Mb	\$14,400

District	Name	Internet	Connection	Rate	Cost
Id#		Provider	Туре		
101	BOUNDARY COUNTY		Frame Relay,		
	DISTRICT	One Eighty Networks	FPMult_T1	1.2	\$62,880
111	BUTTE COUNTY JOINT				
	DISTRICT	Microserv, Albion	FP_T1	Unknown	\$9,600
121	CAMAS COUNTY DISTRICT	RTCI	Wireless	4Mbps	\$7,400
131	NAMPA SCHOOL DISTRICT	Time Warner	P2P, Fiber	20Mb	\$36,000
133	WILDER DISTRICT	Qwest, COSSA	Wireless	512Kb	\$10,440
134	MIDDLETON DISTRICT	Fiberpipe	FPMult_T1	6.0 ATM	\$2,050
136	MELBA JOINT DISTRICT	Qwest	FPMult_T1	3.1MB	\$15,626
137	PARMA DISTRICT	AT&T	FPMult_T1	4.5Mb	\$24,384
139	VALLIVUE SCHOOL				
	DISTRICT	Time Warner	Fiber	70Mb	\$38,268
148		Mud Lake Telephone		572 Kbps Up,	
	GRACE JOINT DISTRICT	Соор	FP_T1, DSL	867Kbps Down	\$23,196
149	NORTH GEM DISTRICT	ICS Of Idaho	Cable	8Mb	\$3,600
150	SODA SPRINGS JOINT	Independent Cable		<u>_</u> .	4
	DISTRICT	Systems of Idaho	DSL, Cable	T1	\$1,000
151	CASSIA COUNTY JOINT	Project Mutual			*****
	DISTRICT	Telephone	Fiber	6Mb	\$228,000
161		Mud Lake Telephone		F30 (// )  -	
	OLADIZ GOLINITY DISTRICT	Cooperative	ED TA DOI	572 Kbps Up,	\$00.40¢
171	CLARK COUNTY DISTRICT OROFINO JOINT DISTRICT	Association, Inc.	FP_T1, DSL FP_T1	867Kbps Down Unknown	\$23,196 \$10,442
182	OROFINO JOINT DISTRICT	ATC	<u>rr_ii</u>	256k Up, 1.5M	\$10,442
102	MACKAY JOINT DISTRICT	Communications	FP T1, DSL	Down	\$540
191	PRAIRIE ELEMENTARY	Broadsky Network	FF_FI, DOL	LOWII	\$340
191	DISTRICT	Satellite	Satellite	1MBX256KB	\$2,747
192	GLENNS FERRY JOINT	Rural Telephone	Satering	IMIOAZJONO	\$2,141
172	DISTRICT	Company Inc.	Fiber	4Mb	\$16,380
201	Olottici	Company Inc.	Frame Relay,	71410	\$10,500
201	PRESTON JOINT DISTRICT	Qwest	FPMult T1	Unknown	\$16,000
202	WEST SIDE JOINT DISTRICT	Qwest, Dataway	FP T1	Unknown	\$533
215	FREMONT COUNTY JOINT	arrost, settavar	<u>''' '''</u>		
	DISTRICT	Microserv	Cable, Wireless	5Mb, 3Mb	\$6,600
221	EMMETT INDEPENDENT	(11101000)1		0.00, 0.00	70,000
·	DIST	Qwest	FPDS3	Unknown	\$63,273
231	GOODING JOINT DISTRICT	CableOne	Cable	8Mb	\$2,100
232	WENDELL DISTRICT	Safelink Internet	Wireless	3Mb	\$10,500
242	COTTONWOOD JOINT	ACC Business			1.0,000
·	DISTRICT	branch of AT & T	FP T1, Wireless	T1, 10Mb	\$15,600
243	SALMON RIVER JOINT			<u> </u>	7 - 7 - 7 - 7
	SCHOOL DISTRICT	CompuNet	FP T1	Unknown	\$13,776
244	MOUNTAIN VIEW SCHOOL				
	DISTRICT	CompuNet	FPMult_T1	3.088Mb	\$18,360

District	Name	Internet	Connection	Rate	Cost
Id#		Provider	Type		
252		MicroServ			
	DIDIE IONIT DISTRICT	Computer	102 .		***
252	RIRIE JOINT DISTRICT WEST JEFFERSON	Technologies, Inc.	Wireless	T1	\$6,000
253	DISTRICT	Mudlake Internet	FP_T1	100 & 10	\$6,600
262	VALLEY DISTRICT	Qwest	FPMult_T1	10Mb	\$6,380
271	COEUR D ALENE				
	DISTRICT	180 Networks	Fiber	56Mb,10Mb	\$15,129
272	LAKELAND DISTRICT	J and R Electronics	Wireless	Unknown	\$90,000
273		One Eighty	111101000	- CHANGE	730,000
	POST FALLS DISTRICT	Networks	Wireless, Fiber	20Mb	\$12,000
274		400 11 4		2Mb Up, 512k	*****
201	KOOTENAI DISTRICT	180 Networks	FP_T1	Down 5Mb,	\$10,056
281				symmetrical	1
				dedicated	
	MOSCOW DISTRICT	First Step Internet	Fiber	internet	\$13,670
282	GENESEE JOINT				00.400
202	DISTRICT KENDRICK JOINT	First Step Telephone and	Wireless FPMultT1_Rate,	3Mb Up,	\$6,420
283	DISTRICT	Data Systems Inc.	Other	Unknown	\$10,800
285	POTLATCH DISTRICT	First Step Internet	Wireless	Unknown	\$4,800
287		Schools: TDS for			
20,	TROY SCHOOL	T1. District Office:		768k Up, 1.5M	
	DISTRICT	Troy Cable	FP_T1	Down	\$15,084
288	WHITEPINE JT SCHOOL DISTRICT	Verizon	P2P, FP_T1	1.54Mb	\$26,280
292	SOUTH LEMHI DISTRICT	Centurytel	DSL		\$4,968
304	KAMIAH JOINT DISTRICT	COMPUNET	FPMult_T1	1.54Mb	\$23,880
305	HIGHLAND JOINT				
210	DISTRICT SHOSHONE JOINT	AT&T	FP_T1	Unknown	\$8,117
312	DISTRICT	Cableone	Cable	8Mb	\$9,000
314	DIETRICH DISTRICT	Tek-Hut	FP_T1	Unknown	\$4,500
321		Fairpoint			
	MADISON DISTRICT	Communications	Fiber	10 mbps	\$12,000
322	SUGAR-SALEM JOINT DISTRICT	Microserv	Wireless	10Mb	\$13,000
331	MINIDOKA COUNTY	Safelink, PMT,	A411.61022	TOINIO	\$13,000
100	JOINT DISTRICT	CableOne	Cable	3Мb	\$15,357
340	LEWISTON	XO		10 Mbps	
	INDEPENDENT DISTRICT	Communications	Other	Ethernet	\$15,000
341	LAPWAI DISTRICT	AT&T	Frame Relay, FPMult T1	Unknown	\$28,000
351	ONEIDA COUNTY	AIGH	11 MOIC 11	OLUMIN	Ψ20,000
100	DISTRICT	ISU	FP_T1	Unknown	\$12,600
363	MARSING JOINT	COSSA WAN,			
	DISTRICT	SafeLink	Wireless	1.5Mb	\$9,504

District	Name	Internet	Connection	Rate	Cost
Id #		Provider	Туре		
365	BRUNEAU-GRAND VIEW JOINT DIST	Qwest	FP_T1	Unknown	\$18,000
370	HOMEDALE JOINT DISTRICT	Ispeed- Payette Idaho	FP_T1	Unknown	\$15,600
371	PAYETTE JOINT DISTRICT	ISpeed Wireless	FP_T1	Unknown	\$16,321
372	NEW PLYMOUTH DISTRICT	SolutionPro	FPMult_T1	1.544	\$14,064
381	AMERICAN FALLS JOINT DISTRICT	CableOne and Host Idaho	FP_T1,Cable, Wireless	T1, 3Mb, 7Mb	\$15,480
382	ROCKLAND DISTRICT	DirectComm	DSL	3.3Mb	\$300
383	ARBON ELEMENTARY DISTRICT	DirectComm	DSL	512k Down	\$2,088
391	KELLOGG JOINT DISTRICT	J&R Electronics	Wireless	20Mb	\$90,000
392	MULLAN DISTRICT	Mullan Cable	Cable	T1	\$4,800
394	AVERY SCHOOL DISTRICT	Imbris	Satellite	777kbps	\$5,004
401	TETON COUNTY DISTRICT	Columbine Telephone (dba SilverStar)	FPMult_T1	5Mb	\$21,342
411	TWIN FALLS DISTRICT	Qwest	FPD\$3		\$51,000
412	BUHL JOINT DISTRICT	Syringa	Fiber	10Mb	\$18,160
413	FILER DISTRICT	Filer Mutual	Fiber	3Mb	\$4,200
414	KIMBERLY DISTRICT	Tek-Hut	P2P	Unknown	\$11,000
417	CASTLEFORD DISTRICT	SiteStar	FPMult T1	Unknown	\$10,904
418	MURTAUGH JOINT DISTRICT	Safelink	Wireless	1.5M	\$9,600
421	MC CALL-DONNELLY DISTRICT	Frontier Communication	P2P, FPMult_T1	Unknown	\$39,600
422	CASCADE DISTRICT	Frontier	P2P	Unknown	\$10,435
431	WEISER DISTRICT	Rural Network	FPDS3, DSL	1M Up, 4M Down	\$1,140
432	CAMBRIDGE JOINT DISTRICT	Cambridge Telephone Company	DSL	512k Up, 3072k Down	\$1,143
433	MIDVALE DISTRICT	Rural Network	DSL	256k Up, <b>768</b> k Down	\$1,050

District	Name	Internet	Connection	Rate	Cost
Id#		Provider	Туре		
451	Victory Charter School	Qwest	FP-T1	10Mb	\$5,700
452				384k Up, 1.7M	
	Idaho Virtual Academy	SolutionPro	Fiber	Down	\$504,900
453	Richard Mckenna Charter			384k Up, 3M	
	High School	Qwest	DSL	Down	\$17,434
455	Compass Public Charter				
	LEA	Qwest	DSL	Unknown	\$980
456				768k Up, 4M	
	Falcon Ridge Charter LEA	cableone.net	Cable	Down	\$0
457	INSPIRE VIRTUAL				***************************************
	CHARTER LEA	Qwest	DSL		\$3,000
458	LIBERTY CHARTER				
	SCHOOL	Qwest	FP T1	54Mb	\$5,700
459	GARDEN CITY				
	COMMUNITY CHARTER	Qwest	Wireless	6Mb	\$1,117
460	THE ACADEMY (ARC)	Cableone	Cable	Unknown	\$0
462		Project Mutual			
		Telephone		8M Up, 1M	
	Xavier Charter School	Company	Fiber	Down	\$1,200
463	Vision Charter School	CableOne	Cable	1.5Mb	\$1,000
464				512k Up, 512k	
	White Pine Charter School	MicroServ	Fiber	Down	\$1,442
492	ANSER Charter School	Qwest	DSL	15Mb	\$1,020
768	MERIDIAN CHARTER		<u> </u>	637k Up, 3M	
	HIGH SCH INC	Time Warner	FPMult T1	Down	\$16,754
772	Hidden Springs Charter			768k Up, 3M	
	School	ctcweb	DSL	Down	\$3,937
774	Coeur d'Alene Charter	OneEighty			- '
	Academy	Networks, Inc.	DSL	512k	\$1,230
777	Pocatello Com Charter			384k Up, 1.5M	
	School	Fairpoint Wireless	Wireless	Down	\$0
779	Sandpoint Charter School	180 networks	DSL	356k	\$840
783	North Star Charter School	Cable One	Cable		\$1,276
785	Meridian Medical Arts	Joint School	Frame Relay,		
	Charter HS	District #2	FP T1	2Mb	\$1
786	Idaho Distance Education	··· ··· · · · · · · · · · · · · · · ·	1	Vallivue	
	Academy (IDEA)	Verizon, Integra	FPMult_T1	Wireless Bridge	\$50,032
787	Thomas Jefferson Charter				
	School	Vallivue Dist #139	Other	]	\$3,240
TOTAL		Y			
					\$3,84,735

# APPENDIX D cont., CURRENT STATE OF BROADBAND CONNECTIVITY TO OUR IDAHO PUBLIC SCHOOLS (OTHER CONNECTION TYPES-LIMITED INFO)

District	Name	Internet	Connection	Rate	Comments
Id#		Provider	Type		}
001	BOISE INDEPENDENT	1101100		- <del></del>	Remote
001	DISTRICT	Unknown	Wireless	256Mb	Classroom
025					District wide
	1		Fiber\Broadband		Internet
	POCATELLO DISTRICT	Unknown	Cable	Unknown	Connectivity
033				1	Broadband
	BEAR LAKE COUNTY		Broadband		Cable and
	DISTRICT	Unknown	Cable\DSL	1.5Mb\1.5Mb	DSL
052					Cable One
					courtesy
	SNAKE RIVER DISTRICT	Cable One	Broadband	Unknown	account
055	BLACKFOOT DISTRICT	Unknown	DSL\T1\Fiber	Unknown	
060	SHELLEY JOINT				
	DISTRICT	Unknown	Fiber\Wireless	1GB\54MB	
071	GARDEN VALLEY				
	DISTRICT	Unknown	DSL	1.5MB	
083	WEST BONNER COUNTY		1		
	DISTRICT	Unknown	DSL	1.5MB	
101			1		2 T1's provide Internet Access
	BOUNDARY COUNTY				for all District
	DISTRICT	Unknown	2 T1 Lines	1.2 MB	Schools
133	WILDER DISTRICT	Unknown	Frame Relay	256KB	
150	SODA SPRINGS JOINT		3-T1 Lines		
	DISTRICT	Unknown	2-512KB Lines	1.5Mb, 512KB	
161	CLARK COUNTY				Lindy Ross Elementary gets Internet connectivity
	DISTRICT	Unknown	T-1 Line	1.5MB	from HS via T1
171	OROFINO JOINT DISTRICT	Unknown	Satellite connection\Frame Relay	1.5MB\256KB	SATCOM to Cavendish Elementary, Frame really to collection point for other schools to access
191	PRAIRIE ELEMENTARY		Rural Telephone		
	DISTRICT	Unknown	Dial –up	256KB	
193	MOUNTAIN HOME				DSL to Pine
	DISTRICT	Unknown	DSL	1.54MBs	School
215					Cable One
	FREMONT COUNTY	Microserv\Cable	Wireless\Broadband	l	Free but Slow
	JOINT DISTRICT	One	Cable	Unknown	Connection
221	EMMETT INDEPENDENT DIST	Unknown	DSL	1.54Mbs	
231	GOODING JOINT			1.5MB	
	DISTRICT	Unknown	DSL	down\756K up	
241	COTTONWOOD JOINT	Uknown	Wireless Internet	Unknown	Wireless Internet Access between buildings
			1		

# APPENDIX D cont., CURRENT STATE OF BROADBAND CONNECTIVITY TO OUR IDAHO PUBLIC SCHOOLS (OTHER CONNECTION TYPES-LIMITED INFO)

District	Name	Internet	Connection	Rate	Comments
Id#		Provider	Type		
244	MOUNTAIN				
1	VIEW				
	SCHOOL				
	DISTRICT	Unknown	Frame Relay	56KB	
281	MOSCOW				
	DISTRICT	Unknown	DSL	3MB\768KB	
283	KENDRICK				
İ	JOINT	ĺ			1
	DISTRICT	Unknown	1-Dial Up Acct	56KB	ļ <u> </u>
287					Schools:
	TROY				T1\District
	SCHOOL		74	1.5445)5464	Office: Cable
200	DISTRICT	Unknown	T1\cable modem	1.54KB\512kb	Modem
288	WHITEPINE				
	JT SCHOOL	I I I I I I I I I I I I I I I I I I I	TANIO Minima	4 SAMPLA SMP	
312	DISTRICT	Unknown	T1\HS Wireless	1.54MB\1.5MB	<u> </u>
312	JOINT				
	DISTRICT	Unknown	T1 Point to Point	1.54KB	
331	MINIDOKA	OHAROWH	TI FOIL (O FOIL)	1,0470	
331	COUNTY			J	
	JOINT				1
	DISTRICT	Unknown	T1	1.54KB	
351	ONEIDA				
	COUNTY		DSL, T1, Wireless		
	DISTRICT	Unknown	Internet	1.54MB\1.54MB\2MB	
363	MARSING				Wireless via
f	JOINT	•			COSSA
	DISTRICT	Unknown	Wireless	10MB	WAN
381					Wireless
Ĭ					from Host
		J			Idaho;
			]		outgoing
				1	Round
	****				Robin on all
ľ	AMERICAN	0-1-0-11-1	0:	1	3 links,
	FALLS JOINT	Cable One\Host	Single	4.5440	Incoming T1,
391	DISTRICT KELLOGG	Idaho Motorola	T1\Cable\Wireless Wireless,	1.54MB	Wireless
391	JOINT	Wireless\Unknown			
ļ	DISTRICT	Cable	Motorola\Broadband Cable	20MB\512KB	
394	AVERY	Cable	Canic	ZUMBWIZND	<u> </u>
354	SCHOOL	}			
1	DISTRICT	Verizon	Frame Relay	Unknown	
401	TETON	VOIZUII	r raine relay	OHAROWH	
701	COUNTY			1.2GDown\Up	
- 1	DISTRICT	Unknown	DSL\Dial up	512MB\50KB	
	וטוווטו	UTBLIOTHI	בטבוטומו טף	O I E MIDIOUND	

# APPENDIX D cont., CURRENT STATE OF BROADBAND CONNECTIVITY TO OUR IDAHO PUBLIC SCHOOLS (OTHER CONNECTION TYPES-LIMITED INFO)

District	Name	Internet	Connection	Rate	Comments
Id#		Provider	Туре		
411	TWIN FALLS DISTRICT	Unknown	Broadband Cable	5MBs	
413	FILER DISTRICT	Unknown	DSL	3МВ	DSL at Hollister
414	KIMBERLY DISTRICT	Unknown	Cable	Unknown	Cable for Emergencies
421	MC CALL- DONNELLY DISTRICT	Metro Net	T1	1.544MB	
422	CASCADE DISTRICT	Unknown	DSL	2MBUp\512KB Down	
464	White Pine Charter School	Unknown	DSL (not hooked up)	1.5MB	Available for Back up
768	MERIDIAN CHARTER HIGH SCH INC	Time Warner\Cable One	Broadband Cable	15MB for TM\6MB Cable One	-
786	Idaho Distance Education Academy (IDEA)	Unknown	DSL	2.4MBUp\512KB Down	
787	Thomas Jefferson Charter School	Unknown	LAN/WAN	Unknown	

### APPENDIX D cont., CURRENT STATE OF BROADBAND CONNECTIVITY TO OUR IDAHO PUBLIC LIBRARIES (OTHER CONNECTION TYPES-LIMITED INFO)

Count of Libraries by Internet Connectivity Type	Total
Cable	11
Dedicated Connection	3
DSL	12
Fiber Optic	2
Municipal Network-regardless of Type	2
Satellite	4
Wireless	9
Frame Relay	5
Grand Total	48
Count of Libraries by Connection	Total
Rate	
129kbps-256kbps	2
769kbps-1.4Mbps (megabits/second)	4
1.5 Mbps (T1)	13
1.6 Mbps-5.0 Mbps	7
257 kbps-768 Kbps	2
6.0 Mbps-10Mbps	10
Greater than 10 Mbps	1
Uknown	9
Grand Total	48

### APPENDIX E, VIDEO TELECONFERENCING GOALS AND <u>PROPOSED</u> CLASSROOM EQUIPMENT SPECIFICATIONS

(Note these are minimum configuration standard criteria that the State will use in its efforts to develop viable VTC packages in support of public High Schools, Elementary, and Middle Schools that currently do not have these capabilities or are in need of tech refreshments).

### **GOALS**:

The objective of our IEN Video Teleconferencing initiative is to achieve, by leveraging the capabilities of our proposed IEN backbone, a statewide synchronous video network capable of enhancing educational opportunities and citizen services through the exchange of interactive video between and among various educational and educational support entities.

In order to accomplish this, a number of tasks have been identified to be completed:

- Identification of a single audio and video standard for low-bandwidth distance learning and videoconferencing;
- Acquisition of new or replacement equipment and/or software that ensures compliance with proposed State of Idaho IEN audio and video standards stated below;
- Development or purchase of a scheduling system or enterprise resource management program that allows potential users to A) know the location and availability of resources, and B) set up or reserve ad hoc or regularly scheduled events with other entities;
- Leveraging the capabilities of a Managed Internet Service Provider to provide network bandwidth management tools and network monitoring capabilities that assures pre-determined qualities of service, depending upon the type of video traffic;
- Development of an event clearinghouse that allows promotion, marketing, and registration for interactive video events;
- · Development of training modules for new users;
- Development of a cost and funding algorithm to allow shared use of the statewide backbone for interstate distance education and videoconferencing.

### General (Proposed VTC Configurations)

 Each tele-conferencing classroom's hardware purchased by the State of Idaho will be configured to have teleconferencing, projection, amplification audio, microphone and data camera.

### APPENDIX E cont., VIDEO TELECONFERENCING GOALS, AND <u>PROPOSED</u> CLASSROOM EQUIPMENT SPECIFICATIONS CONTINUED

(Note these are minimum configuration standard criteria that the State will use in its efforts to develop viable VTC packages in support of public High Schools, Elementary, and Middle Schools that currently do not have these capabilities or are in need of tech refreshments).

- Equipment to support both receive and origination education capabilities in a one camera environment.
- 3) Each tele-conferencing classroom' software will be configured to support video & content, remote configuration and remote support.
- 4) Each tele-conferencing classroom system will be configured to receive and display high definition video. NOTE: Initial bandwidth and projection equipment may not support high definition at all locations but the equipment should be configured to receive and display high definition when the bandwidth and projection equipment is available.
- 5) Each tele-conferencing classroom system will be configured with a minimum of integrated four (4) port video multiplexing capabilities. NOTE: Initial bandwidth and projection equipment may not support video multiplexing but the equipment should be configured to originate a multi-port session when the bandwidth is available.
- 6) Phase I tele-conferencing classrooms should be configured to be fixed systems.
- 7) Installation, programming and training on all equipment and software.
- 8) Maintenance agreement on all equipment as per this RFP.

### A typical roll-about VTC system envisioned for a public School System may include:

Roll-about cart
Plasma Screen 42 inch
CODEC
CCD Pan-Tilt-Zoom Camera
Keypad Remote Controller
Tabletop Microphones (two Microphone arrays)
Flatbed Document Camera
Single CCD Remote Pan-Tilt-Zoom Camera
Scan Converter
VCR\DVD
Encryption Equipment
Network Interface equipment
Inverse Multiplexer (IMUX) (for rates above 128kbps)
Terminal Adapter
Miscellaneous cables, adapters, and connectors

### A typical Desktop VTC envisioned for a public School system may include:

Personal computer
CODEC (built into PC interface card)
Single CCD Carnera (usually monitor mounted)
Installed sound card, with microphone and speakers
Terminal Adapter
Network Interface Equipment

### **Proposed Technical Specifications:**

- a. Bandwidth: H.320 up to 512 kbps, H.323 up to 2 Mbps, SIP up to 2 Mbps Firewall Traversal: Auto NAT, H.460.18, H.460.19 support for the MPEG4 AAC-LD standard
- b. Video Standards: H.261, H.263, H.263+, H.263++ (Natural Video), H.264
- c. ITU 50/60 fps full screen Pro-Motion
- d. Video Features:
  - 1) Native 16:9 Widescreen
  - 2) Advanced Screen Layouts
  - 3) Picture in Picture (PIP)
  - 4) Picture outside Picture & Large POP
  - 5) Side by Side
  - 6) PC Zoom
  - 7) Intelligent Video Management
  - 8) Simultaneous videoconference & local PC mode Local Auto Layout
- e. Video Inputs: Five
  - 1) 1x 9 Pin DSUB:HD Main camera or S-video & control main camera
  - 2) 1 x MiniDin, S-video: auxiliary/document camera
  - 3) 1 x RCA/Phono, composite: document camera/aux 1 x RCA/Phono, composite: VCR
- 4) 1 x DVI-I: PC
- 5) Input: 800 x 600 (@ 60, 72,75,85 hz), 1024 x 768
- 6) (@ 60, 70, 75 hz), 1280 x 720 (HD720P) (@ 50, 60 Hz), 1280 x 1024 @ 60hz
- 7) Extended Display Identification Data (EDID)
- f. Video Outputs
  - 1) 1 x MiniDin, S-video: main monitor
  - 2) 1 x RCA/Phono, composite: main monitor or VCR
  - 3) 1 x RCA/Phono, composite: dual monitor or VCR
  - 4) 1 x DVI-I/XGA: main or second monitor
  - 5) XGA OUTPUT
  - 6) 800 x 600 @ 75hz, 1024 x 768 @ 60 hz, 1280 x 768 (WXGA) @ 60 hz, 1280 x 720 (HD720p) @ 60 Hz VESA Monitor Power Management
- g. Video Formats: NTSC, PAL, VGA, SVGA, XGA, W-XGA, SXGA and HD720p h. Live Video Resolutions
  - 1) NATIVE NTSC:
    - a) 400p (528 x 400 pixels)
    - b) 4SIF (704 x 480 pixels), Digital Clarity
    - c) Interlaced SIF (iSIF 352 x 480 pixels), Natural Video SIF (352 x 240 pixels)

- 2) NATIVE PAL:
  - a) 448p (576 x 448 pixels)
  - b) 4CIF (704 x 576 pixels), Digital Clarity
  - c) Interlaced CIF (iCIF 352 x 576 pixels), Natural Video CIF (352 x 288 pixels)
  - d) QCIF (176 x 144 pixels)
  - e) SQCIF (128 x 96 pixels) decode only
- 3) NATIVE PC RESOLUTIONS:
  - a) XGA (1024 x 768)
  - b) SVGA (800 x 600 pixels) VGA (640 x 480 pixels)
  - c) WIDE RESOLUTIONS:
  - d) w288p (512 x 288 pixels) w448p (768 x 448 pixels) w576p
  - (1024 x 576 pixels) w720p (1280 x 720 pixels)
- i. STILL IMAGE TRANSFER: CIF, SIF, 4CIF (H.261 Annex D), 4SIF, VGA, SVGA, XGA
- j. AUDIO STANDARDS: G.711, G.722, G.722.1, G.728, 64 bit & 128 bit MPEG4 AAC-LD
- k. AUDIO FEATURES
  - 1) CD-Quality 20KHz Mono and Stereo
  - 2) Telephone add-on via MultiSite
  - 3) Two separate acoustic echo cancellers
  - 4) Audio mixer
  - 5) Automatic Gain Control (AGC) Automatic Noise Reduction Audio level meters
  - 6) VCR ducking
  - 7) Packet loss management Active lip synchronization
  - 8) Digital Natural Audio Module (DNAM)
  - 9) 2\*30 W output power
  - 10) 2 integrated speakers
  - 11) GSM interference audio feature
- 1. AUDIO INPUTS (4 INPUTS):
  - 1) 2 x microphone, 24V phantom powered, XLR connector
  - 2) 1 x RCA/Phono, Line Level: auxiliary (or VCR Stereo L)
  - 3) 1 x RCA/Phono, Line Level: VCR/DVD (Stereo R)
- m. AUDIO OUTPUTS (2 OUTPUTS):
  - 1) 1x RCA/Phono, S/PDIF (mono/stereo) or Analogue Line Level: main audio or Analogue Stereo L
  - 2) 1 x RCA/Phono, Line Level: VCR or Analogue Stereo R
- n. FRAME RATES
  - 1) 30 frames per second @ 168 kbps and above
  - 2) 60 fields per second @ 336 kbps and above (Point-to-point)

- o. DUAL STREAM
  - 1) DuoVideo
  - 2) H.239 dual stream
  - 3) Dynamic bandwidth adjustment (H.323) Available on H.323, H.320 & SIP
  - 4) Available in Multisite from any site BFCP
- p. NETWORK FEATURES
  - 1) Auto H.320/H.323 dialing
  - 2) SIP
  - 3) Downspeeding
  - 4) Programmable network profiles
  - 5) Intelligent Call Management
  - 6) Maximum call length timer
  - 7) Automatic SPID and line number configuration (National ISDN, GR-2941-CORE)
  - 8) SoftMux
  - 9) H.331 Broadcast Mode
  - 10) NATO standard KG194/KIV-7 encryptor support\*\* URI Dialing
- q. MULTISITE FEATURES
  - 1) H.323/H.320/SIP/Telephony/VoIP in the same conference Audio and Video Transcoding
  - 2) Video rate matching from 56 kbps maximum conference rate CP4 and Voice Switched
  - 3) Best Impression (Automatic CP Layouts)
  - 4) H.264, Encryption, Digital Clarity
  - 5) Dual Stream from any site
  - 6) ISDN & IP Downspeeding and IPLR
  - 7) MultiSite (H.243) Cascading on H,320 & H.323 Unicode h.243 Terminal Names
  - 8) Dial in/Dial out
  - 9) Chair control for host system
  - 10) Snapshot of ongoing conference (JPEG)
  - 11) Snapshot of ongoing DuoVideo/H.239 presentation (JPEG) Separate welcome page for encrypted conferences Conference rates up to 2.3 Mbps with optional bandwidth upgrade (1.5 Mbps is standard conference rate) Up to 4 video and 3 audio sites
  - 12) 4 sites @ 768 kbps (+telephone calls)
- 13) Mix ISDN-BRI and IP up to maximum conference rate Multiway (Beta) r. EMBEDDED ENCRYPTION
  - 1) H.323, H.320 & SIP point-to-point and multipoint calls Standards-based: H.233, H.234, H.235 v2&v3, DES and AES NIST-validated AES
  - 2) NIST-validated DES
  - 3) Automatic key generation and exchange

- 4) Supported in Dual Stream
- s. IP NETWORK FEATURES
  - 1) IEEE 802.1x/EAP Network Authentication H.235 Gatekeeper Authentication DNS lookup for service configuration Differentiated Services (DiffServ) Resource Reservation Protocol (RSVP) IP precedence
  - 2) IP type of service (ToS)
  - 3) IP adaptive bandwidth management (including flow control) Auto gatekeeper discovery
  - 4) Dynamic playout and lip-sync buffering Intelligent Packet Loss Recovery (IPLR) H.245 DTMF tones in H.323
  - 5) Cisco CallManager integration using ECS IP Address Conflict Warning Date and Time support via NTP Call Services
  - 6) IPv6 NETWORK SUPPORT
  - 7) Dual Stack IPv4 and IPv6 simultaneous support
  - 8) Net service support on IPv6: Telnet, SSH, HTTP, HTTPS, ftp, SNMP, DNS, NTP, DHCP
  - 9) Media support on IPv6: H.323,SIP, Streaming
- t. SECURITY FEATURES
  - 1) Management via HTTPS and SSH IP Administration Password Menu Administration Password Dialing Access code
  - 2) Streaming password
  - 3) H243 MCU Password
  - 4) VNC password
  - 5) SNMP security alerts
  - 6) Disable IP services
  - 7) MD-5 Challenge
  - 8) Network Settings protection SIP Authentication via NTLM SIP Authentication via Digest FIPS Mode
- u. NETWORK INTERFACES
  - 1) 4 x ISDN BRI (RJ-45), S-interface
  - 2) 1x LAN/Ethernet (RJ-45) 10/100 Mbit (LAN/DSL/cable modem)
  - 3) 1 x PC card slot (PCMCIA) for wireless LAN
  - 4) 1x X.21/V.35/RS-449 with RS-366 dialing, RS-366 Addran IMUX, Leased
  - Line, Data Triggered, and Manual\*\* 1 x USB for future use
- v. WIRELESS LAN SUPPORT
  - 1) Compliant with IEEE 802.11b, up to 11 Mbit Support for 64/128 bit encryption (WEP) Infrastructure or ad-hoc mode
- w. ETHERNET/INTERNET/INTRANET CONNECTIVITY
  - 1) TCP/IP, DHCP, ARP, FTP, Telnet, HTTP, HTTPS, SOAP and XML, MD-5 Challenge
  - 2) SNMP Enterprise Management
  - 3) Internal web server

### Proposed Technical Specifications Continued:

4) Internal streaming server

x. OTHER MAJOR STANDARDS SUPPORTED: H.231, H.233, H.234, H.235 v2&v3, H.239, H.241, H.243, H.281, BONDING (ISO 13871), H.320, H.323,H.331, RFC 3261, RFC 2237, RFC 3264, RC 3311. RFC 3550, RFC 2032, RFC 2190, RFC 2429, RFC 3407

### y. PRECISION HDTM CAMERA

- 1) 7 x zoom 1/3' CMOS +10°/-20° tilt +/- 90° pan
- 2) 42° vertical field of view
- 3) 72° total vertical field of view
- 4) 70° horizontal field of view
- 5) 250° total horizontal field of view Focus distance 0.3m-infinity
- 6) 1280 x 720 pixels progressive @ 30fps
- 7) Automatic or manual focus/brightness/whitebalance Far-end camera control
- 8) 15 near and far-end camera presets Voice-activated camera positioning Daisy-chain support (Visca protocol camera)

### z. CLOSED CAPTIONING/TEXT CHAT

- 1) T.140 text chat available from RS-232, Telnet, Web and User Interface aa. PRESENTATIONS AND COLLABORATION
  - 1) Natural Presenter Package including:
    - a) PC Presenter (DVI-I, SXGA In)
    - b) PC SoftPresenter
    - c) Digital Clarity & Native Formats
    - d) Advanced Video Layouts
    - e) Streaming compatible with Cisco IP/TV, Apple QuickTime®, RealPlayer® v8 etc.
    - f) DuoVideo
    - g) H.239

### bb. SYSTEM MANAGEMENT

- 1) Support for the TANDBERG Management Suite
- 2) Total management via embedded web server, SNMP, Telnet, SSH, FTP and SOAP
- 3) Remote software upload: via web server, ftp server or ISDN 1  $\times$  RS-232 local control and diagnostics
- 4) Remote control and on-screen menu system
- 5) External Services from TMS

### cc. DIRECTORY SERVICES

- 1) Support for Local directories (My Contacts), Corporate Directory and Global Directory
- 2) Unlimited entries using Server directory supporting LDAP and H.350\*
- 3) Unlimited number for Corporate directory (through TMS) 400 number global directory 200 number local directory

- 4) 16 dedicated Multi Site entries Received Calls with Date and Time Directories in Local Languages Placed Calls with Date and Time Missed Calls with Date and Time
- dd. 16 SELECTABLE MENU LANGUAGES
  - 1) Arabic, Chinese, Traditional Chinese, English, French, German, Italian, Japanese, Korean, Norwegian, Portuguese, Russian, Spanish, Suomi, Swedish, Thai Chinese, Korean and Japanese Input Method Editor
- ee. CUSTOMIZED WELCOME SCREEN AND COMPANY LOGO
  - 1) Picture JPEG (logo.jpg): Recommended maximum size is 704x576 for Welcome Screen and 352x288 for Encryption Required Screen POWER: 100-240VAC, 60/50Hz, 6A
- ff. OPERATING TEMPERATURE AND HUMIDITY: 0° C to 40° C (32° F to 104° F) ambient temperature 10% to 90% Relative Humidity (RH)
- gg. STORAGE AND TRANSPORT TEMPERATURE: -20° C to 60° C (-4° F to 140° F) at RH 10-90% (non-condensing)
- hh. APPROVALS
  - 1) Directive 73/23/EEC (Low Voltage Directive)
  - 2) Standard EN 60950
  - 3) Directive 89/336/EEC (EMC Directive)
  - 4) Standard EN 55022, Class B
  - 5) Standard EN 55024
  - 6) Standard EN 61000-3-2/-3-3 Directive 1999/5/EEC (R&TTE Directive)
  - 7) Standard TBR3
  - 8) Approved according to UL 60950 and CAN/CSA C22.2
  - 9) No. 60950
  - 10) Complies with FCC15B Class B
- ii. FOOTPRINT
  - 1) ROLLABOUT: Width: 35.4'/90 cm Depth: 29.7'/75.5 cm
- 2. Furnish and install transient voltage surge suppressor(s) which comply with the following specification requirements:
  - a. Rating: 20 A
  - b. UL listing

### IEN RFP (RFP02160) UPDATES 29 Dec 2009

The following extracts are provided from our current IEN RFP, as specific updates to vendors responding to our Idaho Education Network RFP02160:

### P.12

### Approach is changed to read:

A phased implementation approach has been established per Idaho House Bill No. 543 – Idaho Education Network. Specifically, the First Phase will connect each public high school with a scalable, high-bandwidth connection, including connections to institutions of higher education as necessary; a parallel effort will also be undertaken during this initial Phase to design and migrate all existing State of Idaho customers from IdaNet to a new IEN backbone system, given the urgency to replace and or upgrade this aging network, coupled with the rising cost of sustaining current IdaNet operations.

### **Subsequent Phase Considerations** include:

- Connectivity to each elementary and middle school.
- The addition of libraries to the IEN.
- Completing the migration of state agency locations from current technology and services.

### P. 14

### 3.3 (ME) REQUIRED QUALIFICATIONS, para c) is amended to read:

Idaho presence: Bidders must demonstrate and provide examples to show either an existing Idaho presence and\or a willingness to establish an Idaho Presence, in the delivery of IEN services and support.

Addition of the Following Schools to Appendix A, Schedules 1 and 2 of the IEN RFP Document:

- Challis District #181: Challis Jr./Sr. High School (Schedule 1, IEN Phase One Public High Schools)
- Challis District #181: Challis Elementary, Clayton Elementary, Stanley School (Elem/Jr.) to Schedule 2, IEN Phase Two, Elementary and Secondary High Schools

Addition of Appendix F, IdaNet Transition Customer Locations and Current Requirements

Addition of Standard Services Order Form to Appendix G, IEN: Standard Service Order Form (Sample)

### **IEN Bidders' Conference Q&A Follow up**

On 29 December 2008, the Department of Administration (ADM), Office of the Chief Information Officer (OCIOC) hosted an RFP Vendor Conference to solicit questions and input in response to an RFP concerning the *Idaho Education Network* (IEN).

NOTE: The last day for filing a specification appeal is January 9, 2009.

### Q-1. When will the answers to these questions be made available?

A-2. Ideally, if the questions are submitted in a timely fashion then the answers should be available by close of business on the 5<sup>th</sup> of January; otherwise, no later than that following Monday, January 12<sup>th</sup> 2009.

### Q-2. Could the deadline be extended by a week?

A-2. No. The deadline is determined by the deadline for E-Rate funding, which is 12 February 2009. To miss this Federally Mandated deadline would potentially cost Idaho, millions of dollars in E-Rate funding.

### Q-3. For an RFP, what is the policy regarding information being marked "confidential and proprietary?"

A-3. Unlike the RFI which could be marked as such in its entirety, with the RFP this is not the case, especially with regards to cost which has to be disclosed. Individual paragraphs can be marked "confidential and proprietary" but not the RFP as a whole. Please refer to Item 31 of the Solicitation Instructions to Vendors that is included in the RFP by reference. (http://adm.idaho.gov/purchasing/TCs/Solicitation\_Instructions.pdf)

### Q-4. For companies that specialize in hardware, do you expect them to partner with organizations that deal with service?

A-4. Yes. The State of Idaho desires an End to End Service Provider, capable of providing us a total services and support solution; we already have hardware providers; but what we need is a total network services support solution, not just hardware.

### Q-5. Is this a single or multiple award contract?

A-5. It is a multiple award contract. 5 years, with 3 Five Year Extensions for a total of 20 years, per IEN RFP02160, para 5.3, page 23.

### Q-6. Does the proposal concern only Phase One of the project, would the bidder be evaluated for Phase Two as well?

A-6. Specific details have been requested for Phase One, to include providing detailed information concerning the migration of public high schools to this IEN network and also providing a general overall plan for migration of IdaNet customers to this IEN network. Bidders\vendors are also tasked to provide a vision and or overall concept on how they would address subsequent phases of the IEN project.

### Q-7. Regarding the pass/fail scoring, you ask for a minimum of 10mg for each location, what if the vendor cannot meet that requirement?

A-7. The vendor needs to articulate in their response why they cannot meet this <u>minimum</u> requirement (e.g. geographical location constraints of a particular location requiring service); this will be taken into consideration. This will be made clear in the RFP amendment that will be posted NLT before close of business, 30 Dec 09.

### Q-8. Will the State be willing to negotiate terms and conditions?

**A-8.** Not necessarily. Vendors will need to identify which term or condition they have a problem with, why and provide language, that they (vendors) think will work and why we (the State of Idaho) should adopt that language. Note also there are new Telecommunications Terms and Conditions that are incorporated in this RFP by reference.

(http://adm.idaho.gov/purchasing/manualsforms/Telecommunications%20Serv%20Special%20TCs% 208-08.pdf)

### Q-9. Does a Vendor have to be present in Idaho in order to bid?

A-9. If a vendor is not present in Idaho, it must be willing to establish a point-of-presence if awarded a contract. The State desires to partner with an entity that can provide quick response to problems throughout the State, to have face-to-face impromptu meetings, and impromptu engineering "brainstorming" meetings. Therefore a presence in Idaho is necessary. An economic presence is defined in Idaho Code § 67-2349(1)(a)-(b).

### Q-10. Is it permissible to bring in an out of state partner?

A-10. Yes, we need to establish partnerships, both inside and outside of our state as applicable.

### Q-11. From the perspective of internet, security and VTC bridging, does the state have a desire to centralized arrangement or a more regionalized arrangement?

**A-11.** The advantage of a decentralized regionalized arrangement is survivability and easier "bell scheduling for Distance Learning engagements due to the different time zones that the State operates under; but we are not stipulating a preference.

### Q-12. Do the costs in Appendix D, Current State of Broadband in Idaho Public Schools refer to annual or monthly costs?

**A-12.** Costs depicted in this chart listing current known connectivity and connection costs to our Public High Schools, represent **ANNUAL** Operating Costs.

APPENDIX F, IDANET TRANSITION CUSTOMER LOCATIONS AND CURRENT REQUIREMENTS

REQUIREMENTS	That	Ta -		T G 1 ·
Agency Name	DSL	Servi	Current	Geographic
	1	Ce	Bandwidth	Location
Assessment Desiral of (Overshop Disco)	<del> </del>	Type	(MB)	Boise Metro
Accountancy, Board of (Owyhee Plaza)	FRS	UBR	1.5	Boise Metro
Aging, Commission on	rks	VBR	1.5	Boise Metro
Agriculture, Department of		Access	7	Daine Mate
Boise IMA Group		<del></del>	3	Boise Metro
Nampa		VBR	1.5	Boise Metro
Twin Falls	DSL	VBR	1.5	Southern Idaho
Arts, Commission	DSL	UBR	1.5	Boise Metro
Blind & Visually Impaired, Commission for				
the Company of the Co	DSL	VDD	1.5	NT
Coeurd'Alene	DSL	VBR	1.5	North Idaho
Lewiston		VBR	1.5	North Idaho
Idaho Falls	DSL	VBR	1.5	Eastern Idaho
Pocatello	DSL	VBR	1.5	Eastern Idaho
Twin Falls	DSL	VBR	1.5	Southern Idaho
Building Safety, Division of		****		
Coeur d'Alene		VBR	1.5	North Idaho
Meridian to CMFONI		VBR	6	Boise Metro
Corrections, Department of - (modified				
pricing)	EDG	***		
Blackfoot Dist 7	FRS	VBR	1	Eastern Idaho
Boise Orchard to CMFONI	ATM	VBR	8	Boise Metro
Boise CWCEB	FRS	VBR	11	Boise Metro
Boise Dist4E	ATM	CBR	1.5	Boise Metro
Boise Dist4W	ATM.	CBR	1.5	Boise Metro
Boise Parole	ATM	CBR	1.5	Boise Metro
Burley	ATM	CBR	1.5	Eastern Idaho
Caldwell Dist3	ATM	CBR	1.5	Boise Metro
CDA	FRS	VBR	1.5	North Idaho
Cottonwood	ATM	CBR	1.5	North Idaho
Idaho Falls CWCIF	FRS	VBR	<u> </u>	Eastern Idaho
Idaho Falls Dist7	ATM	CBR	1.5	Eastern Idaho
Kuna IMSI	ATM	CBR	1.5	Boise Metro
Kuna ISCI	ATM	CBR	1.5	Boise Metro
Kuna SICI	ATM	CBR	1.5	Boise Metro
Lewiston	ATM	CBR	1.5	North Idaho
	FRS			
Meridian Dist 4		VBR	1	Boise Metro
Mountain Home	ATM	CBR	1.5	Eastern Idaho

i away	EDG	TION	<del></del>	T 70 ' 144
Nampa CWCN	FRS	VBR	1	Boise Metro
Orofino	ATM	CBR	1.5	North Idaho
Payette	ATM	CBR	1.5	Boise Metro
Pocatello Dist6	ATM	CBR	1.5	Eastern Idaho
Pocatello PWCC	ATM	CBR	1.5	Eastern Idaho
Rexburg Dist 7	FRS	VBR	1	Eastern Idaho
Sandpoint	ATM	CBR	1.5	North Idaho
SBWCC	ATM	CBR	1.5	Boise Metro
St. Anthony	ATM	CBR	1.5	Eastern Idaho
Twin Falls Dist5	ATM	CBR	1.5	Southern Idaho
Dairy Commission	DSL	UBR	0.75	Boise Metro
Denstistry, Board of	DSL	UBR	0.75	Boise Metro
Developmental Disabilities, Council on	DSL	UBR	1.5	Boise Metro
Endowment Fund Investment Board	DSL	UBR	1.5	Boise Metro
Environmental Quality, Department of –				
(modified pricing)				
Boise (Orchard Campus)		VBR	9	Boise Metro
Coeur d'Alene		CBR	5	North Idaho
Idaho Falls		CBR	10	Eastern Idaho
Lewiston		VBR	5	North Idaho
Pocatello		CBR	10	Eastern Idaho
Twin Falls		CBR	10	Southern Idaho
Finance, Department of		VBR	1.5	Boise Metro
Fish and Game		CBR	4.5	Boise Metro
Health and Welfare, Department of				
Coeur d'Alene - 1120 Ironwood		VBR	14.75	North Idaho
Coeur d'Alene - 1120 Ironwood		CBR	1.5	North Idaho
Coeur d'Alene Aging - 1221 Ironwood		VBR	1.5	North Idaho
Lewiston - 1118 F Street		CBR	9.75	North Idaho
Lewiston - 1118 F Street		CBR	0.5	North Idaho
Moscow - 1350 Troy Highway Suite 2		VBR	1.5	North Idaho
Orofino (SHN) - 300 Hospital Rd		VBR	1.5	North Idaho
Orofino (SHN) - 300 Hospital Rd		VBR	1.5	North Idaho
Nez Perce (Lewiston) Nimiipu Health -		VDIC	1.5	1401ul Idallo
111 Bever Grade Lanwai. ID		VBR	1	North Idaho
Health District 1		VDK	1	Notui Idano
Health District 1 - Coeur d'Alene		VBR	1.5	North Idaho
Health District 1 - Coeur a Atene  Health District 1 - Sandpoint		VBR	1.5	North Idaho
Health District 2				
Health District 3		VBR	1.5	North Idaho
ļ		MDD	1.5	Daiga Matra
Caldwell Norman		VBR	1.5	Boise Metro
Nampa Nampa		VBR	1.5	Boise Metro
Health District 4		CBR	1.5	Boise Metro
Health District 5		VBR	1.5	Eastern Idaho
Health District 6		VBR	1.5	Eastern Idaho

Trade Diagram	1	VBR	1.5	E-4 Idaha
Health District 7			1.5	Eastern Idaho
Hispanic Affairs, Commission on	DSL	UBR	0.25	Boise Metro
Historical Society – Assay Office	DSL	UBR	1.5	Boise Metro
Historical Society – Storage Building	DSL	UBR	0.25	Boise Metro
Historical Society – Museum	DSL	UBR	1.5	Boise Metro
Historical Society – History Center	ATM	UBR	1.5	Boise Metro
Human Rights Commission (Owhyce Plaza)		UBR	1.5	Boise Metro
Insurance, Department of				
DOI - Coeur d'Alene		VBR	1.5	North Idaho
DOI - Pocatello		VBR	1.5	Eastern Idaho
Juvenile Corrections, Department of				
CDA		VBR	1.5	North Idaho
Twin Falls		VBR	1.5	Southern Idaho
Labor, Department of			·	
Blackfoot - 34.HCGL.337784		Access	1.5	Eastern Idaho
Boise - IdaNet		CBR	9.8	Boise Metro
Boise (DDS) (IDHW circuit) -				
34.YBGA.311890		VBR	1.5	Boise Metro
Boise (DDS) (Labor Circuit) -				
61.HCFS.100410		Access	1.5	Boise Metro
Boise (SCO) - IdaNet		CBR	0.25	Boise Metro
Boise (Thomas Dev) - IdaNet		Access	3.0	Boise Metro
Bonners Ferry - 13.HCFJ.003306		CBR	1.5	North Idaho
Burley - 34.HFGJ.000125		Access	5.0	Eastern Idaho
Caldwell - 34.HFGJ.000121		Access	5.0	Boise Metro
Coeur d'Alene - 13.HFFJ.001887	-	CBR	5.5	North Idaho
Emmett - 34.HCGJ.398898		Access	1.5	Boise Metro
Grangeville - 76.0BFJ66417		CBR	1.5	North Idaho
Hailey -		Access	1.5	Eastern Idaho
Idaho Falls - 30.HFFJ.192096			5.0	Eastern Idaho
Kellogg - 13.HCFJ.003329		Access CBR	1.5	North Idaho
Lewiston - 76.HFFJ.02856		CBR	5.0	North Idaho
McCall -		Access	1.5	North Idaho
Meridian - 34.HFGJ.000111			5.0	Boise Metro
- Moscow - 13.HCFJ.003309		Access		
- Moscow - 15,HCFJ.005509 Mountain Home - 34,HCGJ.001670			1.5	North Idaho
ļ <del></del>	+	CDD	1.5	Boise Metro
Orofino - 13.HCFJ.003326		CBR	1.5	North Idaho
Payette - 34.HCGJ.394270		Access	1.5	Boise Metro
Pocatello - 34.HFGJ.000120		Access	5.0	Eastern Idaho
Rexburg - 34.HCFJ.001981		Access	1.5	Eastern Idaho
Salmon -		Access	1.5	Eastern Idaho
Sandpoint - 13.HCFJ.003327		CBR	1.5	North Idaho
Soda Springs -		Access	1.5	North Idaho
St. Maries - 13.HCFJ.003328		CBR	1.5	North Idaho
Twin Falls - 34.HFGJ.000126		Access	5.0	Southern Idaho

		_		
Labor, Department of for: Disability				
Determinations Services		_	-	
Boise DDS - connection to IDHW		VBR	1.5	Boise Metro
Boise DDS - connection to Labor		_ CBR_	1.5	Boise Metro
Lewis-Clark State College		VBR	0.25	North Idaho
Library, Idaho State - Idaho Falls	DSL	UBR	1.5	Eastern Idaho
Liquor Dispensary, Idaho State				
State Store 216 (Ammon ID)	DSL	UBR	0.25	Eastern Idaho
State Store 222 (1175 Parkway Dr Blackfoot)	DSL	UBR	0.25	Eastern Idaho
Boise HQ	ISDL	VBR	1.5	Boise Metro
Boise - Store Net	ISDL	VBR	1.5	Boise Metro
State Store 101 (1101 Grove, Boise)	DSL	UBR	0.25	Boise Metro
State Store 102 (1744 W. State St Boise)	DSL	UBR	0.25	Boise Metro
State Store 103 (5180 Overland, Boise)	DSL	UBR	0.25	Boise Metro
State Store 104 (6916 W State St Boise)	DSL	UBR	0.25	Boise Metro
State Store 107 (2150 Broadway, Boise)	DSL	UBR	0.25	Boise Metro
State Store 108 (3439 N Cole Rd, Boise)	DSL	UBR	0.25	Boise Metro
State Store 109 (10525 Overland Rd Boise)	DSL	UBR	0.25	Boise Metro
State Store 110 (2273 S. Vista Ave #130				
Boise)	DSL	UBR	0.25	Boise Metro
State Store 112 (2448 S. Apple St Boise)	DSL	UBR	0.25	Boise Metro
State Store 114 (10356 Fairview Boise)	DSL	UBR	0.25	Boise Metro
State Store 400 (610 N Raymond St Boise)	DSL	UBR	0.25	Boise Metro
Liquor Store ART (817 N 20th St Boise)	DSL	UBR	0.25	Boise Metro
State Store 329 (6759 Main St Bonners				
Ferry)	DSL	UBR	0.25	North Idaho
State Store 221 (701 Overland Ave Burley)	DSL	UBR	0.25	Eastern Idaho
State Store 106 (918 Blain St Caldwell)		UBR	0.25	Boise Metro
State Store 136 (3110 Cleveland #J7				
Caldwell)	DSL	UBR	0.25	Boise Metro
State Store 200 (825 Brundage Chubbuck)	DSL	UBR	0.25	Eastern Idaho
State Store 205 (4820 Yellowstone Chubbuck)	DSL	UBR	0.25	Eastern Idaho
State Store 302 (1201 E Sherman Ave CDA)	DSL	UBR	0.25	North Idaho
State Store 305 (2611 N Government Way				
CDA)	DSL	UBR	0.25	North Idaho
State Store 308 (3276 W Prairie Ave CDA)	DSL	UBR	0.25	North Idaho
State Store 319 (1607 Northwest Blvd CDA)	DSL	UBR	0.25	North Idaho
State Store 117 (174 W State St Eagle)	DSL	UBR	0.25	Boise Metro
State Store 119 (Eagle)	DSL	UBR	0.25	Boise Metro
State Store 125 (3210 E Chinden #134 Eagle)	DSL	UBR	0.25	Eastern Idaho
State Store 111 (4248 W Chinden Gdn Cty)	DSL	UBR	0.25	Boise Metro
State Store 210 (207 S Main Hailey) [	DSL	UBR	0.25	Eastern Idaho
State Store 300 (1077 W Heron Ave Hayden)	DSL	UBR	0.25	North Idaho
State Store 324 (9170 N Hess St #C Hayden)	DSL	UBR	0.25	North Idaho
State Store 203 (2105 Niagara Dr Id Falls	DSL	UBR	0.25	Eastern Idaho

State Store 206 (190 First St Idaho Falls)	DSL	UBR	0.25	Eastern Idaho
State Store 208 (1717 W Broadway Id Falls)	DSL	UBR	0.25	Eastern Idaho
State Store 220 (1104 S Lincoln St Jerome)		UBR	0.25	Eastern Idaho
State Store 323 (Kellogg)	DSL	UBR	0.25	North Idaho
State Store 209 (360 Leadville Ave N		1		
Ketchum)	DSL	UBR	0.25	Eastern Idaho
State Store 129 (Kuna)	DSL	UBR	0.25	Boise Metro
State Store 301 (913 Main St Lewiston)	DSL	UBR	0.25	North Idaho
State Store 321 (1022 Bryden Ave Lewiston)	DSL	UBR	0.25	North Idaho
State Store 132 (44 E Fairview, Meridian)	DSL	UBR	0.25	Boise Metro
State Store 134 (450 S Meridian Rd,				
Meridian)	DSL	UBR	0.25	Boise Metro
State Store 303 (904 W. Pullman Rd,				
Moscow)	DSL	UBR	0.25	North Idaho
State Store 309 (872 W Troy Hwy #110,				
Moscow)	DSL	UBR	0.25	North Idaho
State Store 122 (275 E. 4th N Mtn Home)	DSL	UBR	0.25	Boise Metro
State Store 105 (205 Caldwell Blvd #7				
Nampa)	DSL	UBR	0.25	Boise Metro
State Store 115 (1225 12th Ave Rs S Nampa)	DSL	UBR	0.25	Boise Metro
State Store 118 (16453 Marketplace Blvd				
Nampa)	DSL	UBR	0.25	Boise Metro
State Store 325 (235 Main St Orofino)	DSL	UBR	0.25	North Idaho
State Store 123 (521 9th St Payette)	DSL	UBR	0.25	Boise Metro
State Store 202 (726 E Sherman Pocatello)	DSL	UBR	0.25	North Idaho
State Store 204 (240 S Main Pocatello)	DSL	UBR	0.25	Eastern Idaho
State Store 212 (1319 Bench Rd Pocatello)		UBR	0.25	Eastern Idaho
State Store 304 (202 E Seltice Way Post Falls)	DSL	UBR	0.25	Eastern Idaho
State Store 306 (4010 E Seltice Way Post		:		
Falls)	DSL	UBR	0.25	North Idaho
State Store 331 (1214 Albeni Hwy Priest			_	
River)	DSL	UBR	0.25	North Idaho
State Store 322 (403 N Fourth Sandpoint)	DSL	UBR	0.25	North Idaho
State Store 201 (1901 Kimberly Rd Twin				
Falls)	DSL	UBR	0.25	Southern Idaho
State Store 207 (1146 Filer Ave E Twin		ľ		
Falls)	DSL	UBR	0.25	Southern Idaho
State Store 214 (1239 Pole Line Rd #311C Twin Fls)	DSL	UBR	0.25	Eastern Idaho
State Sto <b>re 326 (W</b> allace)	DSL	UBR	0.25	North Idaho
State Store 127 (270 E 7th St #B Weiser)	DSL	UBR	0.25	Boise Metro
Lottery Commission		VBR	1.5	Boise Metro
Medicine, Board of	DSL	UBR	1.5	Boise Metro
Nursing, Board of	DSL	UBR	0.75	Boise Metro
Occupational Licensing, Bureau of (Owhyee Plaza)		UBR	3	Boise Metro
Outfitters and Guides Licensing Board	PtoP	UBR	1.5	Boise Metro

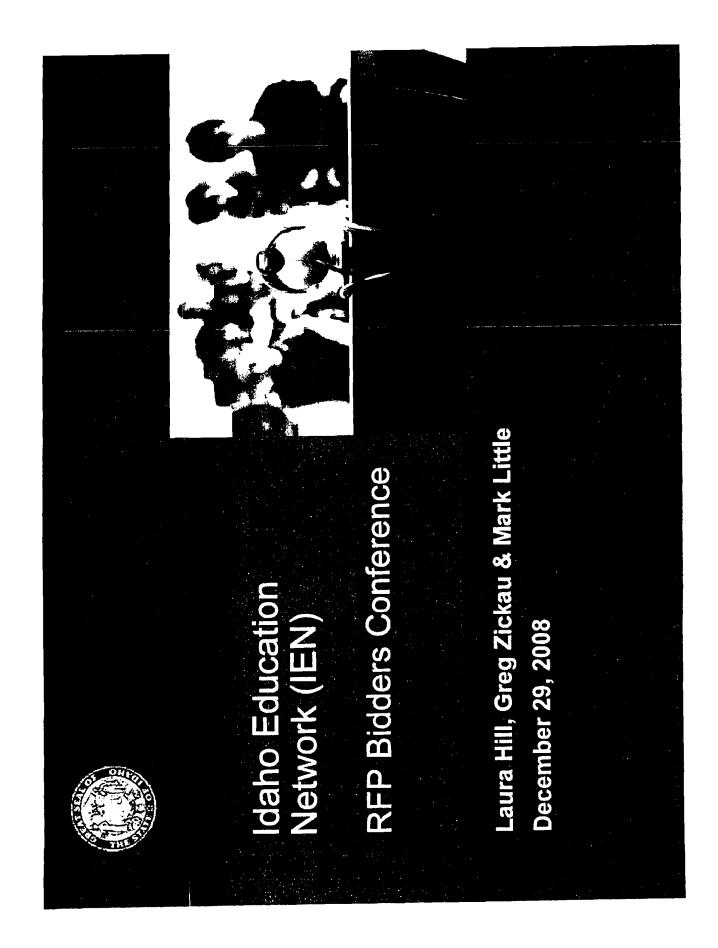
Parks and Recreation	T	UBR	1.5	Boise Metro
Pharmacy, Board of	DSL	UBR	1.5	Boise Metro
Public Works – Facility Services – for Idaho				
Falls		UBR	1.5	Eastern Idaho
Public Works Design & Construction - for Lewiston	DSL DSL	UBR	1.5	North Idaho
Public Works Design & Construction for Moscow	DSL	UBR	0.25	North Idaho
Public Works Design & Construction for Pocatello	DSL	UBR	0.25	Eastern Idaho
Real Estate Commission	DSL	UBR	1	Boise Metro
Snake River Basin Adjudication	ATM	VBR	1.5	Eastern Idaho
Species Conservation, Office of	DSL	UBR	1.5	Boise Metro
State Bar, Idaho		VBR	1.5	Boise Metro
State Independent Living Council	DSL	UBR	1.5	Boise Metro
Tax Appeals, Board of	DSL	UBR	1.5	Boise Metro
Tax Commission				
Tax - Coeur d'Alene Office		VBR	1.5	North Idaho
Tax - Lewiston Office		VBR	1.5	North Idaho
Tax - Twin Falls Office		UBR	1.5	Southern Idaho
Veterans Services				
Veterans Services HQ - Collins St Boise		UBR	3	Boise Metro
Lewiston Veteran's Home - Lewiston		UBR	1.5	North Idaho
Vocational Rehabilitation, Division of				
(modified pricing)				
Boise - 39.YHFJ.001829		CBR	3	Boise Metro
Boise - 39.YHFJ.001829 [		UBR	0.5	Boise Metro
Boise - 39.YHFJ.001832		CBR	0.5	Boise Metro
Boise - 39.YHFJ.001832		UBR	3	Boise Metro
Caldwell - 39.YHFJ.001830		CBR	0.5	Boise Metro
Caldwell - 39.YHFJ.001830 [		UBR	3	Boise Metro
Coeur d'Alene Office #110		UBR	: 3	North Idaho
Coeur d'Alene Office #110 $oxedsymbol{oxedsymbol{oxed}}$		VBR	0.5	North Idaho
CDA Mental Health #130		UBR	0.75	North Idaho
CDA SWT #140		UBR	0.75	North Idaho
Idaho Falls - 39.YHFJ.001833		CBR	0.5	Eastern Idaho
Idaho Falls - 39.YHFJ.001833		UBR	3	Eastern Idaho
Lewiston Office #210		CBR	0.5	Boise Metro
Lewiston Office #210		UBR	3	North Idaho
Moscow VR #230		<u>CB</u> R	0.75	North Idaho
Moscow (Uofl)		UBR	0.75	North Idaho
Orofino #220		UBR	0.75	North Idaho
Pocatello - 39.YHFJ.001831		CBR	0.5	Eastern Idaho
Pocatello - 39.YHFJ.001831		UBR	3	Eastern Idaho
Sandpoint VR # 120		UBR	0.75	North Idaho
Sandpoint SWT #150		UBR	0.75	North Idaho
Twin Falls - 39.YHFJ.001828		CBR	0.5	Southern Idaho
Twin Falls - 39.YHFJ.001828		UBR	3	Southern Idaho

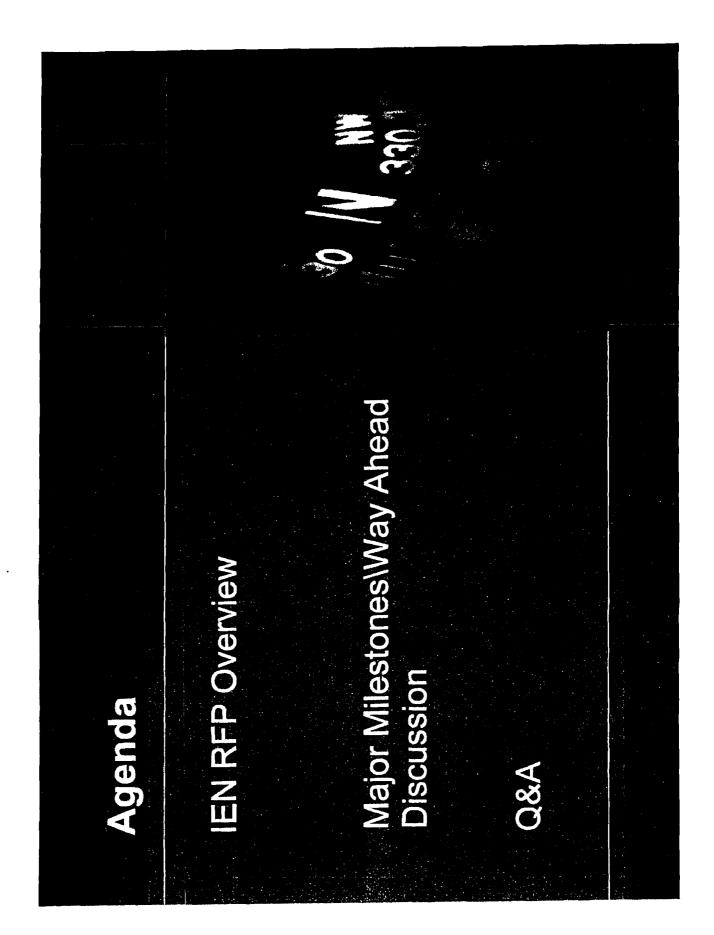
Water Resources, Department of			
Boise	VBR	4.5	Boise Metro
CDA	VBR	1.5	North Idaho
Boise Airport	MAC	1.5	Boise Metro
Idaho Falls	MAC	1.5	Eastern Idaho
Twin Falls	MAC	1.5	Southern Idaho
Soda Springs	VBR	1.5	Eastern Idaho

### APPENDIX G, IEN: Standard Service Order Form (Sample)

### IEN Standard Services Order Form (Sample) SERVICE REQUEST FORM

Office of the CIO, IEN Program M (208) 332-1876								
BILL TO:	APP	APPROVALS						
Office of the CIO, State of Idaho		"Anusham" High Cahaal						
650 W. State Street, Rm 100		"Anywhere" High School						
Boise, ID 83720	Agend	Agency/School/Library Representative						
BILLING CONTACT: IEN Program Management Office Office of the CIO, State of Idaho		Laura Hill 03/24/2009  Reviewed by IEN Services Manager/IEN Statewide Network Ops. Coordinator						
(208) 332-1876								
PON: 2009-0003								
(Insert Info here for each Ser	vice Location	n) (Required Information After Circuit is ASSIGNED)						
Agency: Install. Contact: Phone: Site Contact: Phone: Repair Contact; Phone: Circuit type: Speed: CIR: Location; City: Sip: Sumber of PVCs: Point To: Vire Beyond NI? Ferm At:		Customer Circuit #: Customer DLCI:  Circuit Install. Date: By:  Circuit Turn-up Date: By:  If this is an upgrade, when was the disconnect ordered? Date: PON:  Disconnect Confirmed, Date: By:  Billing Document Updated, Date: By:						
Service Type and Class: Due								
hoose link speed Type of service  DSL Frame		ATM QoS parameters Frame Relay QoX DSL Type						
Fractional Tt ATM	Relay	QoS: CIR: PCR: Frac T1 speed: DSL Connection						
	(interworking)	SCR: DSL Connection  Existing FAX Line						
	er of IMA TIS	Indicate individual MA circuit IDs in the Comments sections New Line						
	to-Point	Service Duration: Phone Number on Line:						





### **IEN Vision**

state infrastructures where possible as well as statewide education network, utilizing existing expected to be a collaborative effort between the state of Idaho and telecommunication The "Idaho Education Network" (IEN) is carrier provided services and support. providers to construct and manage a

## **IEN RFP Highlights Review**

### Required Qualifications:

- Experience: Engineering Design, Implementation, and Maintenance of large scale, state wide, education networks.
- Partnerships: Strong consideration will be given to proposals that incorporate partnerships between multiple providers.
- Idaho Presence: Bidders must demonstrate and provide examples to show an Idaho presence.
- of Idaho to demonstrate their commitment to the State and its long term vision to provide services; bidders need to provide examples of services that they will provide to the State • Long Term Commitment: IEN will serve as the foundation to meet both current and future State Broadband not only for education but for other State agencies and high speed broadband to it's supported customer base.
- Economic Impact: Bidders must demonstrate and provide examples of how their proposal will positively impact the States' Economy.
- Competitive Advantage: Bidders must demonstrate\Communicate the value of their solution brings to Idaho over other competitors.
- Low Risk Transition: Bidders must plan to tell the State how they are going to migrate current broadband users to this new IEN network with minimal impact

# **IEN RFP Highlights Summary Continued**

- ✓ Leveraging of legacy (existing) State\Public and Higher Education communication networks
- ✓ Use of proven new technologies that meet E-Rate requirements
- Quality of Service for all Users of this system despite location
- ✓ Responsive customer support and services
- ✓ E-rate experience and success in Billing for E-Rate reimbursements
- Project Planning and Wanagement Experience
- ✓ Technology Refreshment Plans

# The falsivation of the second 
# IEN Implementation Strategy UPDATE

Background: Due to an urgent need to either upgrade or replace our legacy State Switches), combined with a compelling need to <u>reduce costs</u> associated with operating this network, the State of Idaho has made a conscious decision to <u>re-</u> IdaNet network, due to End of Life Equipment Support Issues (e.g. Cisco MGX phase in the RFP, our Phased Migration plan, to make IdaNet a priority event.

also request that the winning vendor(s) assist the state in implementing a Phase One: The first phase of this project will not only connect all state connections to higher education institutions where applicable; but we will public schools with scalable, high-bandwidth connections, including migration plan for agency customers using IdaNet.

·Subsequent Phases: Follow on phases to this initial project will include connectivity to each elementary and middle school, and the addition of ibraries to the IEN network.

scale and potential savings by aggregating connectivity to an existing POP or more viable ingress\egress point (e.g. School District, Library, State Agency, Middle School, etc.), they need to <u>include</u> those in their proposal submissions, even if Discussion: Bidders need to keep in mind that if they can realize an economy of these IEN connectivity points are slated for subsequent phases of the project.

### Specific IEN RFP Updates

### Approach:

education as necessary; a parallel effort will also be undertaken during urgency to replace and or upgrade this aging network, coupled with this initial Phase to design and migrate all existing State of Idaho customers from IdaNet to a new IEN backbone system, given the A phased implementation approach has been established per Idaho House Bill No. 543 – Idaho Education Network. Specifically, the First bandwidth connection, including connections to institutions of higher Phase will connect each public high school with a scalable, highthe rising cost of sustaining current IdaNet operations.

## Subsequent Phase Considerations Include:

- Connectivity to each elementary and middle school.
- The addition of libraries to the IEN.
- · Completing the migration of state agency locations from current technology and services.

# Specific IEN RFP Updates Continued

 Addition of Appendix F, IdaNet Transition Customer Locations and **Current Requirements**  <u>Addition</u> of the following <u>Schools</u> to Schedules 1 and 2 of the IEN RFP Document: Challis District #181: Challis Jr./Sr. High School (Schedule 1, IEN Phase One Public HS)

Challis District #181: Challis Elementary, Clayton Elementary, Stanley School (Elem/Jr.) to Schedule 2, IEN Phase Two Elementary and Secondary High Schools

Addition of Standard Services Order Form to Appendix G, IEN: Standard Service Order Form (Sample)

## **IEN RFP Evaluation Methodology**

- Division of Purchasing will lead RFP Evaluation Team Effort
- "Vender Neutral" IEN Evaluation Team formed to perform RFP reviews
- RFP Evaluation Team members will be sequestered during this process
- Division of Purchasing will be responsible for handling of all data inputs from evaluation team
- primary factor in evaluation of proposals; however, other relevant factors stipulated in the RFP will also be factored into the process: Reminder that Price per Federal E-Rate Policy must be the
- Cost of E-Rate Eligible Goods & Services
- Prior Experience (Ed Networks, E-Rate, Personal Quals)
- Management Capability
- Non-E-Rate Eligible Cost Factors
- Legislative Initiatives (Partnerships, Idaho Presence, Economic Impact)
- Financial Reports and Risk Mitigation

### **IEN FY09 Key Milestones**

- 5 Jan 09, Deadline to receive Email Questions concerning RFP
   12 Jan 09, 5PM, RFP Responses Due to Division of Purchasing
- 13-16 Jan 09, RFP Evaluation
- 19 Jan 09, Letter of Intent Issued 26 Jan 09, RFP Final Award 12 Feb 09, FCC 471 E-Rate Filing Deadline for Federal Funds

### In Closing

- There is significant potential for all of us, working as a Collective Government and Industry team to impact our State's Core Network capabilities while simultaneously driving Distance Learning Initiatives in support of Public Education as well as improving Communications Support for Public Safety.
- Federal E-Rate Dollars will play a critical part in making IEN a success for the State of Idaho. We just need to work together, to ensure we can meet all critical E-Rate Filing Deadlines (e.g. 12 Feb 09).

**Questions and Answers** ■ What's on your mind?

### JANUARY 6, 2009 AMENDMENT FOUR (4) TO RFP02160

The following are modifications and responses to questions regarding RFP02160. These modifications and responses are made part of and incorporated into RFP02160.

Section 3.1, Funding Methodology, is amended to read

### Funding Methodology:

Given the current state budgetary constraints, coupled with the urgency to qualify for Federal Government E-Rate funding, for this IEN effort, the State is releasing this RFP with <u>limited</u> funding. Much of the work outlined in this RFP is contingent upon approval of legislative appropriations. The work is also contingent upon the Federal Government approving the State's E-Rate application (due Feb 1, 2009). While the State currently has limited funding, it is requesting legislative appropriations in 2009 for FY 2010. A portion of the work described in your proposal(s) and the contract arising from this RFP shall be <u>contingent</u> upon approval of the appropriation, the State's qualification for Federal E-rate funding, <u>and</u> the selected service providers meeting the Federal E-Rate funding qualifications. Anticipated approval and release of State funding would be 1 Jul 09, along with any associated E-Rate dollars.

Because of these contingencies, the service provider may be required to not begin certain work until after 7-1-09, and then only if the above contingencies are met (unless a supplemental appropriation is approved by the legislature before 7-1-09). The State does not expect or require the successful service provider to do or complete any work specified by this RFP prior to 7-1-09, that is in excess of the current amount of funding available. Further, the successful service provider shall not make any reliance or have any claim for work performed prior to 7-1-09, that is in excess of the current amount of funding available, or is prior to the named contingencies being met. This RFP is subject to cancellation and the contract may be subject to termination if the Legislative appropriation is not approved.

Section 5.3, PRICING, LENGTH OF AGREEMENT AND RENEWALS IS AMENDED TO READ:

### 5.3 PRICING, LENGTH OF THE AGREEMENT AND RENEWALS

Contract is for a 5 year time period, with three extensions of five years each for a total of 20 Years.

Any resulting contract from this solicitation may be awarded to up to four providers. Most of the work described by this RFP may not begin to be performed prior to July 2009, because such work as specified by this RFP is contingent upon Legislative appropriation approval. This RFP

is subject to cancellation or termination if Legislative appropriation is not approved. The services provided pursuant to a contract awarded based on this RFP would be available to any "Public agency" as defined by Idaho Code 67-2327.

Section 10, PRICING SCHEDULES, IS AMENDED TO READ:

### 10.0 PRICING SCHEDULES

Developing a statewide distance education network involves several types of cost.

Some costs, such as interregional transport costs will be eligible for e-rate reimbursement. Other costs, including network operations and administration & indirect costs are not eligible for e-rate.

Additionally, an understanding of how USAC defines local area networks (LANs), other Internal Connections, and WANs is important to ensure that vendors submit funding requests that contain only eligible products and services. In addition, vendors should understand the eligibility requirements for the categories of service, such as Telecommunications Services, Internet Access, Basic Maintenance and Internal Connections. For example, Telecommunications Services can only be provided by an eligible telecommunications carrier.

Specifics concerning actual E-Rate eligible services and equipment can be found at the following URLs:

http://www.usac.org/sl/applicants/step06/eligible-services-framework.aspx

http://www.usac.org/ res/documents/sl/pdf/ESL archive/EligibleServicesList 112108.pdf

These comprehensive Eligibility and Services List will indicate what specific products or services may be eligible to receive discounts under the Schools and libraries Support Mechanism. Vendors are highly encouraged to review these documents, in an effort to identify specific terms and conditions, listed by category (e.g. Telecommunication Services, Internet Access, Internal Connections, Basic Maintenance of Internal Connections, Miscellaneous, and Special Eligibility Conditions).

The Bidder will clearly identify each offered service (by service type to include E-Rate Eligibility per the USAC Schools and Libraries list located at the URL above) and be specific on all elements, processes, fees, etc. included in the cost Bid proposals will address the impact of normal growth, as well as planned and unplanned network expansion or service enhancement. All prices shall be proposed on a "per unit" as a recurring or nonrecurring basis. All bidder costs must be reflected in either the monthly recurring or nonrecurring charges. No additional charges will be accepted. The State shall not be required to purchase any specific service or minimum quantities of network services. The quantities provided in this RFP as examples are

for the sole purpose of assisting the Bidders in preparation of their proposals and for the State to evaluate the feasibility of the proposed network solutions. The State shall not be responsible for any cost that is not identified in the Bidders proposal.

Note the following changes have been made to section 10.8, Pricing Schedules:

### 10.8 (E) PRICING SCHEDULES

All pricing schedules must be complete and accurate, containing all costs related to provisioning Internet services. Pricing in these schedules must reflect the Proposer's pricing before the application of any taxes, fees, surcharges or volume discounts. Vendors are also expected to clearly annotate E-Rate vice non E-Rate eligible services and support in their proposed pricing schedules. Vendors are also encouraged to propose pricing strategies that maximize the State's ability to qualify for federal E-Rate funding. For example, a strategy to amortize network build out costs to include equipment and installation costs and including them as part of a Telecommunications or Internet Access service, these now become eligible as Priority One services, thus qualifying the State and\or support public school or library entity as being eligible for E-Rate discounts on an annual basis. Again, for specific information pertaining to E-Rate Priority One and Two Services, the following information is provided:

FCC rules indicate that E-Rate funds will be available for four eligible categories of service: telecommunications services, Internet access, internal connections, and basic maintenance of internal connections.

	First Priority for Funding (Priority 1 Services)
Telecommunications	These are services that are used to communicate information
Services	electronically between sites. The services must be provided by a
	telecommunications carrier - i.e., an organization recognized by the FCC
	as providing telecommunications services on a common carrier basis.
	Examples of telecommunications services include basic telephone
	service and digital transmission services such as T-1 lines.
Internet Access	"Basic conduit access" to the Internet including e-mail is eligible for
	discount and can be provided by a telecommunications carrier or any
	commercial organization.
S	second Priority for Funding (Priority 2 Services)
Internal Connections	Internal connections consist of the wiring and components that expand
	data access within a school or library such as to individual classrooms
	within a school. Internal connections can be provided by any commercial
	organization.
Basic Maintenance	Basic maintenance of internal connections consists of services
	"necessary to enable the continued operation of the eligible equipment."
,	It includes: repair and upkeep of eligible hardware, wire and cable

maintenance, basic technical support, and configuration changes.

In addition, the FCC has determined that a voice mail service can receive support in the telecommunications or Internet access category and voice mail products can receive support as internal connections.

The following Schedules contained in the electronic version of this RFP are embedded Excel worksheets. Please contact the Division of Purchasing if you desire to use or require assistance in using these worksheets.

Schedule A: Propos	ed Vendor II	EN Solution (	(RFP Sectio	n 3.5.2 )	
Item no. <u>Description</u> 1 TOTAL PRICE	One-time charge (\$)	Monthly Recurring Charge (\$)	E-Rate Eligible Yes\No?	Estimated Annual E- Rate Discount	Estimated Net Cost to the State
2 Breakdown of Total Price: Item or Services Descriptions					

## E-Rate Priority One Services:

Schedule B: Incrementa	l Bandwidth	(RFP Secti	on 8.1)		
Item no. Description 1 Fixed incremental bandwidth (indicate incremental units)	One-time charge (\$)	Monthly Recurring Charge (\$)	E-Rate Eligible Yes\No?	Estimated Annual E- Rate Discount	Estimated Net Cost to the State
2 Burstable incremental bandwidth (indicate incremental units)					

Schedule C: Ban	dwidth for II	EN Users (RFI	P Section 8.1	1)	-
				<b>Estimated</b>	<b>Estimated</b>
Í		<u>Monthly</u>	E-Rate	Annual E-	Net Cost
}	One-time	Recurring	<b>Eligible</b>	Rate	to the
Item no. Description	charge (\$)	Charge (\$)	Yes\No?	Discount?	<b>State</b>
1 Fixed bandwidth					
(indicate units)					
2 Burstable bandwid	lth				
(indicate units)					

## Additional E-Rate Priority One and Two Services Support:

Schedule D: Value-add	ed Services for	r IEN Users (	RFP Section	10.4) Estimated	••
	One-time	Monthly Recurring	E-Rate Eliglible	Annual E- rate	Estimated Net Cost to
Item no. Description  1 DNS Caching 2 Network Security 3 Application Level Monitoring	charge (\$)	Charge (\$)	Yes\No?	<u>Discount</u>	the State?
4 Content Filtering 5 IP Maintenance 6 E-Mail & Archiving Services 7 Managed Firewall Services					
8 Traffic Prioritization Services 9 Other value-added services					

Schedule E: Charge Fo	or Performance and I	Jsage Reports Monthly	(RFP Section 8.1)
Item no. Description	One-time charge (\$)	Recurring Charge (\$)	Notes (Non E-Rate Eligible Admin Services
1 2			

THE FOLLOWING ARE QUESTIONS SUBMITTED IN RESPONSE TO RFP02160 AND THEIR RESPECTIVE ANSWERS.

Q-1. In Section 5.3 the State provides for the option to contract with up to four providers as a result of this RFP, however throughout the document the State also references its desire to have a single point of accountability or Contractor/Vendor. In our experience when a State selects multiple providers to deliver telecommunications services, it often results in reduced effectiveness and mixed accountability amongst the selected parties, especially when the objective is to provide an integrated service as part of the deliverable.

Is it the State's preference to achieve a multi-award contract by choosing a single response that represents comprehensive partnerships and coverage but still provides a single point of accountability per end user community (legacy IdaNet/agency users and K-12/libraries), thereby eliminating the finger-pointing often associated with multi-award contracts?

The reason we ask is specific to the E-Rate-eligible (K-12/library) user base as a contract with multiple vendors typically creates E-Rate issues as the E-Rate process expects one winner. A state contract with multiple winners could require each underlying school system to do a mini-RFP to evaluate the state contract providers and select one. Such work would require additional effort and E-Rate paperwork for each school system and could result in a less cost effective solution - i.e. multiple backbones, etc.

- A-1. While the State reserves the right to make multiple awards, it is the State's preference to choose a single response that represents comprehensive partnerships and coverage but still provides a single point of accountability per end user community to including legacy Idanet/State Agency customers and K-12/libraries, to eliminate the finger pointing often associated with multi-award contracts.
- Q-2. As part of the technical requirements in Section 8.1 of the RFP, the State indicates that "[a]nticipated acceptable physical circuits are OC-3, OC-12, Fast Ethernet, Gigabit Ethernet, but

other options will be considered. Ethernet options will have a preference." Given the varied telecommunications and physical territory throughout Idaho, we would certainly expect that service delivery would be provided through a mix of last mile access technologies. Would T-1s, NxT-1, wireless (microwave and other), T-3s and Ethernet services be considered acceptable and preferable physical circuits for last mile delivery, provided that the provider's backbone is composed of the indicated OC-3, OC-12, Fast Ethernet or Gigabit Ethernet circuits?

- A-2. Other acceptable bandwidths will be considered, to include T1-s, NxT-1s, wireless (including microwave and other), T-3s and Ether net services on a case by case basis, depending up the size of the supported customer base, the geographical location and end user equipment capabilities. Vendors per the RFP need to clearly articulate in writing, justifications for such last mile location delivery methodologies.
- Q-3. The State of Idaho has contracts in place for IdaNet that expire in October and November 2010. However, there are individual circuits purchased under those contracts that have service terms that expire before the master contract expiration dates. Will the State renew those circuits whose individual terms expire prior to the contract dates under those existing master contracts or to the service provider awarded as a result of this RFP?
- A-3. The state is currently reviewing options for individual IdaNet contracts that expire prior to the master contract, to see if these customers can be transitioned as early as possible onto a new IdaNet backbone, with the State paying a month to month renewal for existing services, until such time, these customers are migrated.
- Q-4. In Section 5.6, the State indicates that this contract shall be subject to a 1.25% administrative fee. Such a fee is not eligible for discount under the Federal E-Rate program. Will the State consider waiving this fee for any E-Rate-eligible participant in order to maximize both the state and federal funding available?
- A-4. The state will waive the 1.25% administrative fee for any contract resulting from this RFP.
- Q-5. Will the State provide a list of the Idaho communities included in the definition of a Large Metropolitan Area or provide a definition of what constitutes a Large Metropolitan Area versus a rural area? (Sections 8.1 and 8.4)?
- A-5. The state in coordination with the University of Idaho, Rural Distance Education Learning program has established the following definitions for a Large Metropolitan Area versus a rural area. Specifically, the following Idaho Counties are classified as large metropolitan areas:

The <u>Boise Metropolitan Area</u> (officially known as the Boise City-Nampa, ID Metropolitan Statistical Area) is Idaho's largest metropolitan area. Other metropolitan areas in order of size are Coeur d'Alene, Idaho Falls, Pocatello and Lewiston.

As of 2006, six official <u>micropolitan statistical areas</u> are based in Idaho (with populations based on urban areas in the <u>United States</u> based around a core city or town with a population of 10,000 to 49,999). Twin Falls is the largest of these.

Rural Areas are defined per Idaho Code§ 67-9003, Idaho Rural Development Partnership Act as:

- (4) "Rural area" means:
- (a) All the territory of the state of Idaho that is not within the boundary of any standard metropolitan statistical area as defined by the United States office of management and budget;
- (b) All territory within any standard metropolitan statistical area described in subsection (4)(a) of this section within a census tract having a population density of less than twenty (20) persons per square mile, as determined according to the most recent census of the United States as of any date; and
- (c) Such areas as the partnership may identify as rural.
- Q-6. Will the State please specify the certifications required of a bidder, including any required certifications by the Idaho Division of Purchasing to provide the services outlined in this RFP? Additionally, we are not aware of any requirement to file tariffs with the Division of Purchasing (or the Idaho Regulatory Authority) specific to the network proposed; will the State clarify this requirement?
- A-6. The Division of Purchasing does not have any specific and\or required certifications; however bidders must be registered with the Idaho Secretary of State's Office in order to do business in the State of Idaho. Concerning the question about Tariffs, there is no requirement to file tariffs with the Division of Purchasing. Any contract resulting from this RFP is to be construed as an Individual Case Base (ICB) contract.
- Q-7. In Section 9.7 the State requests a list of all customers for the bidder. Will the State please confirm if it would be acceptable to provide a representative list of customers who purchase services from the bidder that are similar to those requested in this RFP in lieu of a full customer list?
- A-7. The State interprets this question to be a request for current users. Based on this interpretation, a customer list was already provided as Appendixes A and F in the IEN RFP and subsequent Amendment 3.
- Q-8. The State requests both resumes of potential IEN engineering support staff in Section 8.1 and biographical information for each staff member responsible for design, implementation, project management or other positions identified in the requirements of the RFP in Section 9.10. Will it be acceptable to the State for the bidder to solely provide any required resumes and biographical information in a single form in our response to Section 9.10?
- A-8. No. The State needs to know who will be assisting the IEN effort and their qualifications.
- Q-9. Does the state have a preference of the physical location for the service provider's Network Operations Center (NOC)?

- A-9. Yes. A service provider's Network Operation Center (NOC), needs to be located within the geographical confines of Idaho.
- Q-10. In the pre-bid conference, the State indicated that there would be future phases of this project. Will there be new RFPs for those future phases or will the State simply place additional orders for service with the service provider awarded as part of this RFP?
- A-10. No, there will not be any new RFPs issued for this IEN effort. The intent is to use the provider. Subsequent phases of this effort will be implemented using service orders.

#### Q-11. 5.6 ADMINISTRATIVE FEE

The prices to be paid by the State shall be the prices bid by the CONTRACTOR plus one and one-quarter percent (1.25%). The additional percentage shall represent the State's Contract Usage Administrative Fee. No more than quarterly, the CONTRACTOR shall remit to the State through its Division of Purchasing, an amount equal to the one and one-quarter percent (1.25%) of the CONTRACTOR's quarterly contract or agreement sales.

Request for clarification: Could the State please expand on the language highlighted above. We currently could not find this requirement in any of our existing agreements such as the IdaNet Master Service Agreement or Telephone Service - Calling Cards, Toll Free, and Direct Dial Services. Please provide an example of the State's expectation with this billing requirement.

A-11. See Q/A 4 above.

#### Q12. STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

9. ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE:

Acceptance of this Agreement binds the Contractor to the terms and conditions of Section 601. Title VI, Civil Rights Act of 1964, in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No other wise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990, are also incorporated into this Agreement. The Contractor shall comply with pertinent amendments to such laws made during the term of the Agreement and with all federal and state rules and regulations implementing such laws. The Contractor must include this provision in every subcontract relating to this Agreement.

Request for clarification: [Our Company], for itself, agrees to comply with the provisions of Section 9.2 of the STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS, but requests a clarification with regard to the final sentence: "The Contractor must include this provision in every subcontract relating to this Agreement." [Our Company] has existing contracts with the subcontractors who will be working with [Our Company] to provide the solutions offered in this RFP response. It would be time consuming and costly to renegotiate those contracts in order to include the exact language set forth in Section 9.2. [Our Company] requests clarification from the State regarding the State's requirement. Following is the language included in [Our Company's] standard contracts with its subcontractors. While the language is not exactly as set forth in Section 9.2, the intent and the effect are the same. Does the State agree that [Our Company's] contracts with its subcontractors which contain the following terms are compliant with Section 9.2?

#### PROCUREMENT STANDARD TERMS AND CONDITIONS

#### 16.2 Compliance with Laws and Policies.

Supplier will obtain, at its expense, all permits and licenses, pay all fees, and comply with all federal, international (if applicable), state and local laws, ordinances, rules, regulations and orders applicable to Supplier or Supplier's performance hereunder including, the Communications Act and orders of the Federal Communications Commission. Supplier agrees to adhere to the [Our Company] Ethical Business Practices, or with Supplier's code of conduct or own similar standards. If any terms of the [Our Company] Ethical Business Practices conflict with the terms of this Agreement, the Agreement will prevail. The [Our Company] Ethical Business Practices may be found at

**Employment Practices** [p. 6 - [Our Company] Ethical Business Practices for Consultants, Contractors and Suppliers]

#### Illegal Harassment—Sexual and Other

[Our Company] complies with all applicable civil rights, human rights, immigration, and labor laws. This includes providing equal employment opportunities to employees and job applicants and maintaining a workplace free from illegal discrimination, harassment, intimidation, and retaliation. While Supplier's employees are not employees of [Our Company], [Our Company] expects Suppliers to share this commitment. [Our Company] will not tolerate illegal harassment or discrimination in any form and supports those Suppliers who provide equal opportunity to all in accordance with the requirements of applicable law. At [Our Company], our business culture promotes mutual respect, acceptance, cooperation, productivity and a work environment free of sexual harassment or other illegal harassment among employees who are diverse in:

- Age
- Sex
- Color
- Sexual orientation
- Race
- Ethnicity
- National origin
- Marital or family status
- Veteran status
- Disability
- Religion
- Any other legally protected category
- A-12. Upon contract issuance, the contract will be modified to using the suggested language.

### Q-13. STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

18. RISK OF LOSS: Risk of loss and responsibility and liability for loss or damage will remain with Contractor until acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Contractor from any obligation under this Agreement.

Exception and Request for Alternate Term: [Our Company] agrees to and will comply with the Acceptance provisions set forth in Section 17, above. However, because there are at least 14 days between the State's physical receipt of hardware or other equipment and its acceptance of the materials, [Our Company] cannot agree to the Risk of Loss terms requested by the State in Section 18.

[Our Company] proposes the following alternate term: The State will ensure that its personnel are available to receive delivery of equipment or materials at the State's site, at a date and time to be determined between [Our Company] and Customer. All risk of loss of equipment or materials will transfer to the State upon delivery, except damage caused by [Our Company], its agents or subcontractors. Mere receipt by the State does not constitute final acceptance.

[Our Company] cannot be responsible for Risk of Loss to equipment or materials not in its possession.

- A-13. Upon contract issuance, the contract will be modified to using the suggested language.
- Q-14. How did the State come up with the Specifications for this proposal?
- A-14. Specifications for this proposal were drafted as a result of lessons learned from similar initiatives of the same size and scope recently undertaken by several States, in the development of their own respective Education Networks. Additionally, a team of State Technical experts was assembled to discuss State of Idaho Specific requirements for agencies migrating to this IEN backbone, to ensure that all technical requirements were captured as part of this RFP process.
- Q-15. Can we bid on a certain appendix?

- A-15. As stated in the RFP, the State desires to partner with a total service solutions provider. Vendors interested in bidding on a particular section of the RFP, are highly encouraged to work with a major service provider partner or partners, in an effort to meet <u>all</u> of the required specifications as set forth in this document.
- Q-16. Will the State accept substitute products or manufacturers?
- A-16. The State will consider all recommendations for substitute products and or manufacturers, if they are fully interoperable with existing legacy State of Idaho network systems, are cutting edge in terms of new technology, have a solid 24/7 maintenance support system, and are in keeping with current industry pricing for such systems.
- Q-17. Appendix "F" lists a number of circuits from various agencies to the Ida-Net back bone. Is the State requesting that these circuits be replaced in phase 1a of this project, or are these circuits just to be re-homed to the new IEN/IdaNet backbone?
- A-17. The circuits listed in Appendix F concerning agencies currently connected to the IdaNet back bone are circuits that must be re-homed to a new IEN\IdaNet backbone wherever applicable and feasible during Phase 1a of the IEN project. Note the State will assist the winning vendor, post award in establishing a priority for these migrations based on customer mission criticality, contract service dates (e.g. expiring connectivity contracts) and the availability of supporting funding. In cases where this is not readily feasible, the vendor may need to consider replacement of these existing circuits to accommodate both user and IEN core backbone network requirements.
- Q-18. When does the management of the IdaNet transition start, up on the RFP award or July 1<sup>st</sup>? The first draft of the RFP emphasized that no work would start before July 1, 2009. Does the addition of phase 1b to replace the IdaNet backbone change the start date of the project?
- A.18. State management of the IdaNet transition will commence upon the RFP award on or about 26 January 2009; RFP Contractual language to amend the RFP to reflect the availability of limited funding for IEN Phase 1a IdaNet transition work is currently being undertaken by our legal staff and will subsequently be posted as an another RFP amendment for vendors to review. Tentative date to start IdaNet Transition activities (discovery and planning phases) is slated for on or about 2 February 2009.
- Q-19. Syringa Networks provides ITD 12 DS3 ATM circuits that are not being used to their full capacity. Can any of the excess capacity on these circuits be used for IEN/IdaNet?
- A-19. Vendors are encouraged to work with current service providers, in this case Syringa, to see if any access capacity on these circuits can be utilized in support of the IEN/IdaNet backbone. If assistance and\or approval from ITD is needed, the State (OCIO and the Division of Purchasing) will assist the winning vendor in trying to broker an agreement to use this excess bandwidth with the Idaho Transportation Department. It will however be incumbent on the winning vendor to broker a discussion directly with the service provider (Syringa).

- Q-20. Will ITD transition its network to the new IEN/IdaNet backbone? When will this occur? What are the locations served by the ITD network if it is to be part of the new IEN/IdaNet network?
- A-20. ITD as a current customer of IdaNet will migrate to the new IEN/IdaNet backbone. The timing of this transition will be dependent upon the criticality of the missions that they (ITD) are supporting, availability of funding to do these migrations and a solid technical plan, developed by the winning contractor, with assistance from the State that is successfully staffed through our Change Management board and approved by ITD. Specific locations served by the ITD network as it pertains to IdaNet, are listed in Appendix F of this RFP. There are no current plans at this time to transition the remaining ITD network entities onto this new IEN/IdaNet backbone.
- Q-21. A Shared Resources Agreement between ITD and 360 Networks provided an OC-3 circuit from ISP in Meridian to North Idaho that is part of the existing IdaNet backbone. Can this circuit be used for IEN/IdaNet network?
- A-21. Again, vendors are encouraged to work with current service providers, in this case 360 Networks, to see if any access agreements can be utilized in support of the IEN/IdaNet backbone. If assistance and\or approval from ITD is needed, the State (OCIO and the Division of Purchasing) will assist the winning vendor in trying to broker an agreement to leverage ITD's existing 360 networks contract with the Idaho Department of Transportation; but only if it is economical to do so, and also makes sense from a technological standpoint. It will however be incumbent on the winning vendor to broker a discussion directly with the service provider (360 Networks).
- Q-22. Can the vendor awarded this RFP collocate new equipment at the existing IdaNet sites in Lewiston and Coeur d'Alene?
- A-22. Yes, the winning vendor can and is highly encouraged to co-locate new equipment at all and all existing IdaNet locations wherever feasible to ensure a smooth network transition to a new IEN\IdaNet backbone system for our supported customer base.
- Q-23. There exist CWDM connections over fiber from ITD on State Street, Department of Health and Welfare Towers, BHS at Gowen Field, and ISP at Meridian. Can any frequencies (lambdas) on this network be used for the IEN/IdaNet network?
- A-23. Yes, but only if it makes both economic and technical sense to do so and will not impact current ITD, Health and Welfare, BHS and IPS missions. We (the State) would work with the winning vendor to see what if any frequencies could be used for the IEN/IdaNet network. Vendors are encouraged to make technical recommendations concerning the use or reuse of existing lambdas in their proposal submissions, enabling the State to review accordingly with the affected customers.
- Q-24. The pricing requirements in Section 10 especially 10.8 appear to combine several different technologies and end customers. The schedules also appear to combine items that have different E-Rate eligibility. Can the State revise these tables or instructions to clearly require separation of pricing and indication of expected E-Rate eligibility, as applicable, for (1)

equipment not eligible for Priority 1 e-rate funding; (2) IdaNet/state agency services and (3) video conferencing equipment and services?

- A-24. See new Section 10 above.
- Q-25. If multiple vendors are selected (up to 4), how will the State of Idaho integrate all of the vendors and the services they offer? Who will coordinate the development, outsourcing and implementation of this statewide network, file for E-Rate, etc? Will the State identify one of the 4 vendors to do this?
- A-25. While it is stated in the amended Section 5.3 (above) that any resulting contract from this solicitation may be awarded up to four providers, it is still the desire of the State to contract with a single end-to-end managed internet service provider with existing partners and/or a willingness to form partnerships, in an effort to achieve the specified requirements of our IEN initiative.
- Q-26. Will the State of ID rebid these services if the funding is not secured this year? What is the State of Idaho's course of action if the funding is not approved?
- A-26. It is the intent of the State to award an IEN contract during FY09. The State has partial funding to start on our IdaNet migration initiative, which is now slated as phase 1a of our amended RFP (Amendment 3 to RFP 02160). Upon completion of that initiative, and contingent upon future availability of funding for our IEN effort, the State intends to issue Service Orders, per the RFP, for any follow on IEN initiatives, to the winning vendor(s). If no additional funding is secured for this IEN project after 5 years (the end of the first contractual period of work), a new RFP will be released. The State reserves the right to cancel any resulting contract due to a lack of funding per Item 26, Appropriation by the Legislature Required, of the State of Idaho Standard Contract Terms and Conditions, incorporated into this RFP by reference.
- Q-27. Regarding section 19 of the State of Idaho Standard Contract Terms and Conditions: The State of Idaho Standard Contract Terms and Conditions are silent as to many details from Contractor's Terms and Conditions regarding how Contractor provides and bills for its services, protects it's investments, and ensures the return of a reasonable profit. Certain provisions of the State of Idaho Contract Terms and Conditions are contrary to Vendor's Standard Terms and Conditions. Contractor has additional terms and conditions it wishes to incorporate into the State's Standard Contract Terms and Conditions, in addition to those Terms and Conditions, and in some cases to replace a particular provision with Contractor's language. Will the State consider these additional terms and conditions listed below?

Contractor agrees to negotiate in good faith any of these terms not acceptable to the State in the proposed form.

Service Orders: State may submit service orders to Contractor to purchase telecommunication and related services under this Agreement ("Service Orders"). The Service Orders describe the telecommunication and related services that are available for purchase ("Services"). When fully executed by both Parties, the Service Orders and these Standard Terms and Conditions form the final written agreement between the Parties ("Agreement"). The Agreement can only be amended or modified in a written document that is signed by both Parties. All Services are

offered subject to availability, and Contractor has the right not to accept a Service Order submitted by the State. If a Service Order has been accepted by Contractor, Contractor will provide Services for the term agreed to in such Service Order and renewal periods ("Service Term").

Cancellation, Modification or Expedition of Orders: "Cancellation", "Modification" and "Expedite Charges" referenced hereunder are posted to the Contractor's Website and are subject to modification by Contractor effective upon posting to that website.

- (a) <u>Cancellation</u>. The State may cancel a Service Order(s) if the request is received in writing by Contractor prior to the planned installation date, and Contractor shall have the right to assess a Cancellation Charge (a Service Order can only be cancelled one time; the execution of a new Service Order restarts the cancellation process). If the request to cancel is received after installation has begun, the State must pay full termination liability as set forth below.
- (b) <u>Modification</u>. The State may request in writing the modification of any Service Order(s). Such request shall result in a Modification Charge. If Contractor receives a written modification request for delay of installation less than 3 days prior to the planned installation date, the State must pay, in addition to the Modification Charge, the monthly recurring charge ("MRC") applicable to the delayed Service for the shorter of one billing month or the period from the original due date to the requested installation date. Contractor reserves the right to limit the number of requests to delay the planned installation date.
- (c) Expedite. The State may request an expedited installation date. If Contractor accepts the expedited installation date, the State must pay an Expedite Charge.
- (d) <u>Third Party Charges</u>. In addition to the charges set forth in (a), (b) and (c) above, Contractor may bill the State for any third party charges it incurs in order to complete the State's request to cancel, modify, or expedite the Service Order(s).

#### Contractor Network, Access and Interconnection:

(a) Responsibilities. Contractor will own and control the telecommunications equipment, cable and facilities installed and operated by Contractor for provision of the Services to the State ("Contractor Network"). The Contractor Network will remain Contractor's personal property regardless of where located or attached. Contractor has the right to upgrade, replace or remove the Contractor Network in whole or in part, regardless of where located, so long as the Services continue to perform. Contractor has the right to limit the manner in which any portion of the Contractor Network is used to protect the technical integrity of the Network. The State may not alter, move or disconnect any parts of the Contractor Network and is responsible for any damage to, or loss of, the Contractor Network caused by the State's (or its end users') breach of this provision, negligence or willful misconduct. Contractor has no obligation to install, maintain or repair any equipment owned or provided by the State, unless otherwise agreed to in a writing executed by the Parties. If the State's equipment is incompatible with the Service, the State is responsible for any special interface equipment or facilities necessary to achieve compatibility.

- (b) Access. Contractor may require access to the State's premises to install and maintain the Services and Contractor's Network. The State must provide Contractor with a contact and/or help desk number that can be reached 24 hours per day/7 days per week. The State also must provide reasonable access rights and/or rights of way from third parties, space, power and environmental conditioning as may be required for the installation and maintenance of the Contractor Network at the State's premises.
- (c) <u>Letter of Authorization / Carrier Facility Assignment</u>. If the State intends to connect the Services to facilities that neither it nor Contractor owns, it must provide Contractor with and maintain (for the Service Term) a current letter of authorization and carrier facility assignment, as applicable.

#### Installation and Maintenance:

(a) <u>Installation</u>. CONTRACTOR will notify the State when the Service has been successfully installed and is available for the State's use ("Service Date"). Unless the State notifies CONTRACTOR by the close of business on the Service Date that the Service is not operational, the Service Term will commence. If the State so notifies CONTRACTOR, the Service Date will occur and the Service Term will commence when the Service is operational. The Service Date will not be delayed or postponed due to problems with the State's equipment or the State's lack of readiness to accept or use Service.

#### (b) Maintenance:

- (i) <u>Scheduled Maintenance</u>. CONTRACTOR will monitor Contractor's Network 24 hours per day, 7 days per week. Scheduled Maintenance will be performed between the hours of midnight and 6:00 a.m. (local time where the maintenance is being performed) unless another time is agreed to by the Parties for the particular circumstance. CONTRACTOR will endeavor to provide the State with at least five business days notice before performing Scheduled Maintenance unless a shorter notice period is required under the circumstances.
- (ii) <u>Emergency Maintenance</u>. If CONTRACTOR has to perform maintenance outside of the Scheduled Maintenance window set forth in subsection (b)(i) above, then CONTRACTOR will provide as much prior notice to The State as is practicable under the circumstances.

#### Charges, Billing, Taxes and Payment:

- (a) Services are billed on a monthly basis commencing with the Service Date. Services are invoiced in advance, but usage charges are invoiced in arrears. Any installation or other non-recurring charges, which are non-refundable, will appear on the first monthly invoice.
- (b) CONTRACTOR may require a deposit prior to the provision of any new Service. CONTRACTOR also may require a deposit as a condition to its obligation to continue to provide Service(s) if The State has failed to timely pay for Service(s) on two occasions during any six month period.

(c) CONTRACTOR will invoice the State for applicable Taxes (defined below) and, whenever possible, will identify such charges as a separate line item on the invoice. The State will be liable for Taxes which were assessed by or paid to an appropriate taxing authority within the applicable statute of limitations period. If the State fails to pay any Taxes properly billed, then as between CONTRACTOR and The State, The State will be solely responsible for payment of the Taxes, and penalty and interest.

"Tax" or "Taxes" mean any federal, state or local excise, gross receipts, value added, sales, use or other similar tax, fee, tax-like fee or surcharge of whatever nature and however designated imposed, or sought to be imposed, on or with respect to purchases by the State from CONTRACTOR for consideration under this Agreement or for Contractor's use of public streets or rights of way, which CONTRACTOR is required or permitted by law or a tariff to collect from the State; provided, however, that the term "Tax" will not include any tax on Contractor's corporate existence, status, income, corporate property or payroll taxes.

(d) Payment for all undisputed amounts due under this Agreement must be received by CONTRACTOR on or before the due date specified on the bill ("Due Date"). Any payment or portion thereof not received by the Due Date is subject to a late charge on the unpaid amount at the lesser of 1.5% per month or the maximum rate permitted by law.

Disputes: If the State disputes any charges, it must log the dispute by completing and submitting a dispute form via Contractor's dispute website [located at: ], or by contacting Contractor's dispute telephone line at 1-800-[]. All disputes must be submitted to CONTRACTOR in the manner specified above within 120 calendar days of the date of the invoice associated with the disputed charges, or the invoice shall be deemed correct and all rights to dispute such charges are waived. Withheld disputed amounts determined in favor of CONTRACTOR must be paid by the State within five (5) business days following written, electronic or telephonic notice of the resolution, and will bear interest at the lesser of 1.5% per month or the maximum rate allowed by law from the Due Date until the date paid. Amounts that were disputed but paid by the State will bear interest at the lesser of 1.5% per month or the maximum rate allowed by law from the date paid through the date of resolution if the resolution is determined in the State's favor.

#### Service Levels / Service Outage Credits:

- (a) Service Level Agreement ("SLAV"). The SLAV for a particular Service, which specifies the applicable performance metrics and outage credit schedule, is contained in each Service Order. If no SLAV is included with a Service Order, then credits for Service Outages (defined below) will be issued at 1/1440 of the applicable MARC per 30 minute outage for up to a 24-hour period, but if a Service Outage lasts greater than 24 hours, at 1/144 of the applicable MARC per 3 hour period. Credits issued during any calendar month will not exceed the MARC associated with the affected Service that experienced the Service Outage's).
- (b) <u>Service Outage Definition</u>. A "Service Outage" is defined as either: (a) material non-compliance with a specific performance metric in a service level agreement; or (b) a complete loss of transmission or reception capability for a Service caused by Contractor's Network.

(c) Reporting and Tracking of Service Outages.

If there is a Service Outage, the State must contact Contractor's The State Network Reliability Center ("CORK") at 800-[], and CONTRACTOR will open a trouble ticket and provide the State with a trouble ticket number for tracking purposes.

- (d) <u>Duration of Service Outage and Application of Credits</u>. For the purpose of calculating applicable credits, a Service Outage begins when the State reports the Service Outage to Contractor's CORK, and ends when the Service is restored. The duration of the Service Outage only includes outages that are caused by Contractor's Network and do not include outages caused by the equipment, acts or omissions of The State, third parties, Force Majuro events, or outages occurring during scheduled or emergency maintenance. The duration of a Service Outage also does not include any time during which CONTRACTOR is not allowed access to the premises necessary to restore the Service. Credits for Service Outages are only issued if requested by the State, and such requests must be submitted to CONTRACTOR within 120 days from the date Service is restored.
- (e) <u>Chronic Trouble Services</u>. If two Service Outages have occurred on a particular Service during a 30-day period, and a third Service Outage occurs within thirty days following the second Service Outage, The State may terminate the applicable Service without early termination liability provided that The State supplies CONTRACTOR with a written termination notice no later than thirty days following the third Service Outage.
- (f) <u>Remedies</u>. Notwithstanding anything to the contrary in this Agreement, the remedies set forth in the service level agreement and in sub-sections (a) and (e) above of this Agreement constitute the State's sole and exclusive remedy for Service Outages.
- (g) <u>Service Outages Not Caused by Contractor's Network</u>. If CONTRACTOR responds to a service call initiated by the State, and CONTRACTOR reasonably determines that the cause of the problem is not due to Contractor's Network, but is due to the State's equipment or facilities, or a third party, the State must compensate CONTRACTOR for the service call at Contractor's then prevailing rates.

### Governmental Regulation - Changes:

- (a) This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each Party must comply with them in performing its obligations hereunder. To the extent any provision herein conflicts with any applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision.
- (b) CONTRACTOR may discontinue or impose additional requirements to the provision of Service, upon 15 days written notice, if necessary to meet regulatory requirements or if such requirements have a material, adverse impact on the economic feasibility of CONTRACTOR providing the Service. The State is not responsible for the termination liability set forth below if CONTRACTOR discontinues the Service under this subsection.

Indemnification: Each Party ("Inseminator") shall indemnify, defend and hold harmless the other Party ("Indemnities") from all losses or damages arising from or related to bodily injury or physical damage to tangible property caused by the negligence or willful misconduct of Inseminator. The State shall indemnify, defend and hold CONTRACTOR harmless from all losses or damages arising from the State's violation of third party intellectual property rights, all claims of any kind by the State's end users, or any act or omission of the State associated with any Service. (TO REPLACE SECTION 11 OF STATES STANDARD TERMS AND CONDITIONS)

Limitation of Liability: Except for the Parties' respective obligations set forth in Section 14 herein, neither Party is liable to the other for indirect, consequential, special, incidental, or punitive damages of any kind or nature whatsoever (including without limitation lost profits, lost revenues, lost savings, lost opportunity or harm to business), whether or not foreseeable, whether or not the Party had or should have had any knowledge, actual or constructive, that such damages might be incurred, and regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. Indirect damages include, but are not limited to, damages of the kinds specified in the preceding sentence that are incurred by a third party and are asserted against a Party (including attorneys' fees and expenses). Contractor's liability to The State for direct damages may not exceed one month's calculation of the applicable Marcs regardless of the form of action, nature of the claim asserted or the frustration of either Party's purpose. CONTRACTOR has no liability for the content of information that The State passes through Contractor's Network, the State's transmission errors, or any failure to establish connections outside of the CONTRACTOR Network.

### Termination by CONTRACTOR:

- (a) <u>Termination With Notice</u>. CONTRACTOR may disconnect all Service's) associated with a delinquent account upon ten (10) days written notice for the State's failure to pay amounts due under this Agreement which remain uncured at the end of the notice period; or upon thirty (30) days written notice for: (i) the State's breach of a non-economic, material provision of this Agreement or any law, rule or regulation governing the Services which remains uncured at the end of the notice period; (ii) any governmental prohibition or required alteration of the Services.
- (b) <u>Termination Without Notice</u>. CONTRACTOR may terminate or suspend Services without notice if: (i) necessary to protect Contractor's Network; (ii) CONTRACTOR has reasonable evidence of The State's illegal, improper or unauthorized use of Services; or (iii) required by legal or regulatory authority.
- (c) <u>Post Termination</u>. Any termination or disconnection shall not relieve the State of any liability incurred prior to such termination or disconnection, or for payment of unaffected Services. CONTRACTOR retains the right to pursue all available legal remedies if it terminates this Agreement or disconnects Service(s) in accordance with this Section. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination of this Agreement. If CONTRACTOR terminates Service in accordance with this section, and The State wants to restore such Service, The State first must pay all past due charges, a reconnection charge and a deposit equal to 2 months' recurring charges. All requests

by The State for disconnection of On-Net Services will be processed by CONTRACTOR in 30 days or less, and for disconnection of long haul Off-Net Services in 45 days or less, following delivery of the written notice. The State must pay for Services until such disconnection actually occurs. The State must submit requests to disconnect or terminate Services to Contractor's Order Entry department in accordance with Section 20 below.

Termination by the State: The State may terminate this Agreement and/or any Service Order hereunder upon thirty (30) days prior written notice, without incurring termination liability, for Contractor's (i) breach of any material provision of this Agreement, or any law, rule or regulation that affects The State's use of Service(s), which remains uncured at the end of the notice period and/or (ii) insolvency, bankruptcy, assignment for the benefit of creditors, appointment of trustee or receiver or similar event.

Termination Liability: If CONTRACTOR terminates this Agreement or any Service Order(s) due to the State's breach of a non-economic, material provision of this Agreement or any law, rule or regulation governing the Services which remains uncured at the end of the notice period or because CONTRACTOR has reasonable evidence of the State's illegal, improper or unauthorized use of Services; or if the State terminates this Agreement or any Service Order(s) for any reason other than Contractor's material breach that remains uncured after written notice and a reasonable cure period, all MRCs associated with the terminated Service(s) for the balance of the applicable Service Term shall become immediately due and payable. If the termination occurs during the second year of any Service Term, and the terminated service is provisioned entirely on Contractor's network, then 50% of all MRCs associated with the terminated Service(s) for the balance of the applicable Service Term shall become immediately due and payable.

Assignment: (EDIT SECTION 20 OF STATE STANDARD CONTRACT TERMS AND CONDITIONS TO READ LIKE THIS: "20. ASSIGNMENTS: No Agreement or order or any interest therein shall be transferred by the Contractor to whom such Agreement or order is given to any other party without the approval in writing of the Administrator, Division of Purchasing, not to be unreasonably conditioned, withheld or delayed except that CONTRACTOR may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, or (c) for purposes of financing. Transfer of an Agreement without approval shall cause the annulment of the Agreement so transferred, at the option of the State. All rights of action, however, for any breach of such Agreement are reserved to the State. (Idaho Code Section 67-5726[1])"

Governing Law - Litigation: This Agreement is governed by and subject to the laws of the State of Idaho excluding its principles of conflicts of law. If litigation is commenced to enforce this Agreement, the prevailing Party is entitled to reimbursement of its costs and attorneys' fees from the other Party.

Headings: Headings herein are for convenience only and are not intended to have substantive significance in interpreting this Agreement.

Notices: Any notice required under this Agreement must be in writing and be delivered to the receiving Party at the addresses listed below (i) in person, (ii) by certified mail with return receipt requested, or (iii) by overnight courier. A notice is deemed given (i) when delivered, if personally delivered, (ii) at the time indicated on the return receipt, if delivered by certified mail, or (iii) at the time the party or its representative executes the delivery receipt, if delivered via courier. CONTRACTOR must provide such notice to the State's billing address, and the State must provide such notice to CONTRACTOR at [] Attn: General Manager. If The State is disconnecting Services for any reason, it also must deliver notice to CONTRACTOR at [] Attn: Order Entry.

Public Releases, Use of Name: Neither Party may issue a news release, public announcement, advertisement or other form of publicity regarding this Agreement or the Services provided hereunder without the prior written consent of the other Party. Neither Party may not use the other's name, logo or service mark without Contractor's prior written consent.

Representations and Warranties: Each Party represents and warrants that it, and the person signing on its behalf, is fully authorized to enter into this Agreement. CONTRACTOR represents and warrants that the Services will be performed by qualified and trained personnel. CONTRACTOR does not guarantee, represent or warrant that the Service(s) will be without interruption. CONTRACTOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, AND DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR OR ORDINARY PURPOSE.

REGARDING SECTION 23 OF THE STATE'S STANDARD CONTRACT TERMS AND CONDITIONS - Replace or negotiate in line with Contractor's Indminification paragraph above.

Regarding Section 30 of State's Standard Contract Terms and Conditions - Edit to read like this:

PRIORITY OF DOCUMENTS: This Agreement consists of and precedence is established by the order of the following documents:

- 1. Service Orders executed between the parties.
- 2. This Agreement;
- 3. The Solicitation; and
- 4. Contractor's proposal as accepted by the State.

The Solicitation and the Contractor's proposal accepted by the State are incorporated herein by this reference. The parties intend to include all items necessary for the proper completion of the scope of work. The documents set forth above are complementary and what is required by one shall be binding as if required by all. However, in the case of any conflict or inconsistency arising under the documents, a lower numbered document shall supersede a higher numbered document to the extent necessary to resolve any such conflict or inconsistency. Provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur.

Where terms and conditions specified in the Contractor's proposal differ from the terms in this Solicitation, the terms and conditions of this Solicitation shall apply. Where terms and conditions

specified in the Contractor's proposal supplement the terms and conditions in this solicitation, the supplemental terms and conditions shall apply only if specifically accepted by the Division of Purchasing in writing.

A-27. The above language will not be adapted or accepted. The State believes between the RFP, the Special Telecommunications Terms and Conditions incorporated in the RFP by reference, and Amendment Three (3) to RFP02160 adequately address the issues raised in this question.

## **EXHIBIT 2**

COPP



State of Idaho Idaho Division of Purchasing 5569 Kendall PO Box 83720

Boise ID, 83720-0075

### Request for Proposal Amendment 03

( Click to Review Prior Amendment Reasons )

Tue Dec 30, 8 26:11 A.M MST 2008 HH:MM:SS adjusted to system server hh:mm:ss

Close

Solicitation Nbr: RFP02160

Reference Number:

Requistion Nbr: REQ011462

Document Nbr: PREQ15608

Solicitation Amendment To provide additional information and to respond to questions

Reason:

IMPORTANT NOTIFICATION: You have not yet responded to this Solicitation

Solicitation Original Date of Issue: MON DEC 15, 2008 **Current Amendment Date of Issue:** TUE DEC 30, 2008

Solicitation CLOSING (Due) Date: MON JAN 12, 2009 05:00:00 PM MST

IN: 13 Days 8 Hours 33 minutes 50 seconds

THIS SOLICITATION REQUIRES A RESPONSE TO ALL ITEMS

Start of Service Date: 07/01/2009

End of Service Date: 06/30/2014

Freight: Freight / Handling Included in Price

FOB: Destination

**Delivery Point: VARIOUS** 

Name 1: State of Idaho Various Agencies

Address 1: \*\*\*

Name 2: Various State Agencies

Address 2: Address 2

Name 3: located throughout ideho

City, State & Zip: Various, ID 83701

Contact Person: MARK LITTLE

Email: mark.little@adm.idaho.gov

Phone Nbr: 208-332-1611

Fax Nbr: 208-327-7320

Buyer: MARK LITTLE

Email: mark.tittle@adm.idaho.gov

Phone Nbr: 208-332-1611

Fax Nbr: 208-327-7320

Click on a link below to view the file.

Right-click and click Save Target As (Internet Explorer) or Save Link As (Mozilla/Netscape) to save it to your

computer.

Header File

Attachments:

5 file(s) found.

Description

IEN Bdders Conference.doc List of Attendees

IEN RFP 29
Dec 08 Changes and or Updates.docx Modifications to the Specs.

IEN Bidders conf QA 29 Dec 08.docx Quastions and responses

APPENDIX FandG to RFP02160.docx New Appendix F and G

RFP IEN Briefing 29 Dec 08.pptx Briefing slides

https://basec.sicomm.net/fasttrackb2b/rfBIP Respond.html?fromApprovalSystem-&bro...

12/30/2008





#### SPECIAL INSTRUCTIONS

1:

3:

4:

7:

STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS AND SOLICITATION INSTRUCTIONS TO VENDORS: The State of klaho Standard Contract Terms and Conditions and Solicitation instructions to Vendors are hereby incorporated by reference into this solicitation as if set forth herein in their entirety, and are located on the Internet at <a href="http://adm.idaho.gov/purchasing/purchasingrules.html.">http://adm.idaho.gov/purchasing/purchasingrules.html.</a>. If you do not have internet access, you may contact the Div. of Purchasing at 208-327-7465 to obtain a copy. The Standard Contract Terms and Conditions and Solicitation Instructions to Vendors shall apply to this solicitation and the State of Idaho Standard Contract Terms and Conditions shall apply to any contract resulting from this solicitation. Failure by any submitting vendor to obtain a copy of such shall in no way constitute or be deemed a waiver by the State of either document, or any part of them. No Ilability will be assumed by the Division of Purchasing for a submitting vendor's failure to consider the State of Idaho Standard Contract Terms and Conditions in its response to the solicitation.

2: RFP DOWNLOAD INSTRUCTIONS: Offerors must download attachments (open, save, or print document(s) on their own computer system), enter pricing where indicated, complete any other required information, sign the Request for Proposal (RFP) signature page, and return the completed solicitation response package to the Idaho Division of Purchasing on or before the proposal closing date and time.

NEGOTIATIONS: The State may, following receipt and evaluation of blds or proposals and any allowed Best and Final Offer procedures, negotiate with the apparent low responsive and responsible bidder. Prior to authorizing negotiations the Administrator, Division of Purchasing, shall determine in writing that negotiations may be in the best interest of the State. In addition to any other negotiation criteria described in the specifications, the State may, for example, negotiate to ensure the submitting vendor has a clear understanding of the scope of work required and requirements that must be met, ensure that the vendor will make available the required personnel and facilities to satisfactorily perform the contract, or agree to any clarifications regarding scope of work or other contract terms. During negotiation, adequate procedures will be used to ensure that disclosure of any information, including price, from competing proposals is not revealed. If negotiations are unsuccessful, they shall be formally terminated and the State may undertake negotiations with the next ranked submitting vendor.

BEST AND FINAL OFFERS: The State may, at its sole option, either accept an offerors initial proposal by award of a contract or enter into discussions with offerors whose proposals are deemed to be reasonably susceptible of being considered for award. Offerors should submit their best proposals initially as there is no guarantee the State will conduct discussions. During the initial evaluation process, offerors proposals deemed incapable of meeting the scope & needs of the RFP in a satisfactory manner may be removed from further consideration during any best & final offer phase.

During the evaluation phase & any discussions conducted, adequate procedures will be used to ensure that the contents of the offerors proposals are kept under strict security & disclosure of any information from competing proposals is prohibited. If discussions are deemed necessary, they may be used to determine in greater detail the offerors qualifications, explore with the offeror the scope & nature of the project, determine that the offeror will make available the necessary personnel & facilities to perform within the required time, or discuss compensation which is fair & reasonable. The primary purpose of any such discussions will be to assure that the offeror has full understanding of the solicitation requirements.

change.

Offerors will be accorded fair & equal treatment with respect to any opportunity for discussions & revisions of proposals. If the offeror does not submit a notice of withdrawal or a best & final offer, once a date & time has been established for receipt of best and final offers, the offerors initial or immediate previous offer will be construed as its best & final offer.

The State will schedule a time for the discussions & provide a date & time for receipt of best & final offers. If during discussions there is a need for clarification or change of the RFP it shall be amended to incorporate such clarification or

5: Shipping: Prices must be stated as FOB-Destination, unless otherwise indicated in the solicitation.

Executive Order 2007-09 [http://gov.ldaho.gov/mediacenter/execorders/eo07/eo\_2007\_09.html] requires the Division of Purchasing in the Department of Administration to develop policies and procedures to ensure that all vendors seeking to enter into a service contract with the State or a contract to develop, sell or lease software to the State of Idaho disclose where work will be performed. If bid, quote, or proposal is for services or the development, lease/licensing of software, the proposer must submit a completed disclosure form located at http://adm.idaho.gov/purchasing/TCs/Instructions\_Executive\_Order\_2007-09.pdf. No contract can be awarded to a supplier until the Division of Purchasing has this completed form.

PUBLIC AGENCY CLAUSE: Contract prices shall be extended to other "Public Agencies" as defined in Section #67-2327 of the Idaho Code, which reads: "Public Agency" means any city or political subdivision of this state, including, but not limited to countles; school districts; highway districts; port authorities; instrumentalities of counties; cities or any political subdivision created under the laws of the State of Idaho. It will be the responsibility of the Public Agency to independently contract (i.e., issue purchase orders) with the vendor and/or comply with any other applicable provisions of Idaho Code governing public contracts.

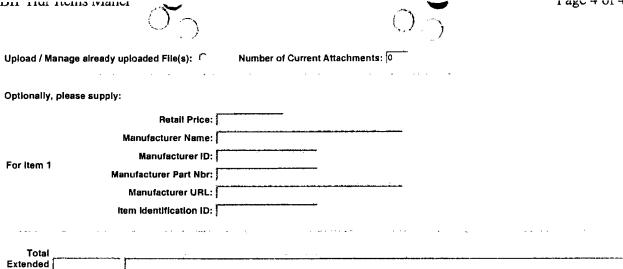
Question: Will you honor this Public Agency clause? Please clearly Indicate answer in the "Comments" field.

8: Quantities given are estimated for bidding purposes only. Actual quantities ordered may vary. The State does not guarantee and shall not be held liable for the estimated quantities in the solicitation.

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9: Awa	ard will be ALL-OR-NONE base	ed on grand total of extended	unit prices bid.
			citation may be responded to electronically by scrolling any comments, and uploading any required documents.
10: sigr any requ abo	nature page be malled, e-malle attachments, enter your prici pired documents to the buyer ve. DO NOT FAX your response d delivered or sent by courier	d, or faxed to you. If responding, and send it with the manual at the Division of Purchasing se. If mailed, address it to: Div	ually, you must contact the buyer and request that a special ng manually, print this entire solicitation document including ally signed and completed signature page and any other so that it is delivered by the closing date and time listed ision of Purchasing, P O Box 83720, Boise, ID 83720-0075. If Division of Purchasing, 5569 Kendall Street, Boise, ID 83706-
11: THE	RFP. NOTE THE BIDDERS' C ECOMMUNICATIONS SPECIA	ONFERENCE INFORMATION	STRUCTIONS FOR MANUAL SUBMISSION CONTAINED IN CONTAINED IN THE RFP. ENSURE YOU DOWNLOAD THE
AGENCY PROMP	T Payment Terms: Fill out this	section only if you offer a dis	count for the agency making its payment to you promptly
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Note: Discount a	nd Terms pertain to each item	on this Solicitation. Changing	; the amount changes it for ALL items previously submitted.
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You will receive an on-screen and an email confirmation of your response. If you do not receive these confirmations, please contact the Sicommnet Help Desk at 800.575.9955 option 2 or email to: support@sicomm.net



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Price:

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## IEN BIDDERS' CONFERENCE ATTENDEES

Steve Maloney - Syringa Networks Tom McFarlin - Compunet Mitch Cunningham - MPC Joel Strickler - Qwest Jodi McCrosky - Qwest David Posey - Qwest Clint Berry - Qwest Gayle Nilson - ENA Jeff Morris - Syringa Networks Adam Johnston - Syringa Networks Meredith Copsey - CISCO Matt Eusterman -- AFS Skip Smyser – ENA David Feller - Boise Networks Gregory Lindstrom - Dept. of Purchasing Sarah Berry - Verizon Victoria Moroz - TW Telecom

### Present by phone

Don Saraeno – One Vision

Oliver Landell - ENA

Ned ??? - Hughes Net (sorry didn't get his last name, but he will be writing in)

Adam Kopczuk – Qwest

Suzanne Axtell – Integra

Rick Bechtel - Cable One

Asher Avital – Verizon

Tim Rogan - CISCO

Mike Taylor - Verizon

Al Diez - IBCI

Ben Hall - One Vision

Joe Petrecee - Northwest WAN





### IEN RFP (RFP02160) UPDATES 29 Dec 2009

The following extracts are provided from our current IEN RFP, as specific updates to vendors responding to our Idaho Education Network RFP02160:

#### P.12

#### Approach is changed to read:

A phased implementation approach has been established per Idaho House Bill No. 543 – Idaho Education Network. Specifically, the First Phase will connect each public high school with a scalable, high-bandwidth connection, including connections to institutions of higher education as necessary; a parallel effort will also be undertaken during this initial Phase to design and migrate all existing State of Idaho customers from IdaNet to a new IEN backbone system, given the urgency to replace and or upgrade this aging network, coupled with the rising cost of sustaining current IdaNet operations.

#### Subsequent Phase Considerations include:

- Connectivity to each elementary and middle school.
- The addition of libraries to the IEN.

Completing the migration of state agency locations from current technology and services.

#### P. 14

#### 3.3 (ME) REQUIRED QUALIFICATIONS, para c) is amended to read:

Idaho presence: Bidders must demonstrate and provide examples to show either an existing Idaho presence and/or a willingness to establish an Idaho Presence, in the delivery of IEN services and support.

Addition of the Following Schools to Appendix A, Schedules 1 and 2 of the IEN RFP Document:

- Challis District #181: Challis Jr./Sr. High School (Schedule 1, IEN Phase One Public High Schools)
- Challis District #181: Challis Elementary, Clayton Elementary, Stanley School (Elem/Jr.) to Schedule 2, IEN Phase Two, Elementary and Secondary High Schools

Addition of Appendix F, IdaNet Transition Customer Locations and Current Requirements
Addition of Standard Services Order Form to Appendix G, IEN: Standard Service Order Form (Sample)



## **IEN Bidders' Conference Q&A Follow up**

On 29 December 2008, the Department of Administration (ADM), Office of the Chief Information Officer (OCIOC) hosted an RFP Vendor Conference to solicit questions and input in response to an RFP concerning the *Idaho Education Network* (IEN).

NOTE: The last day for filing a specification appeal is January 9, 2009.

#### Q-1. When will the answers to these questions be made available?

A-2. Ideally, if the questions are submitted in a timely fashion then the answers should be available by close of business on the 5<sup>th</sup> of January; otherwise, no later than that following Monday, January 12<sup>th</sup> 2009.

#### Q-2. Could the deadline be extended by a week?

**A-2.** No. The deadline is determined by the deadline for E-Rate funding, which is 12 February 2009. To miss this Federally Mandated deadline would potentially cost Idaho, millions of dollars in E-Rate funding.

## Q-3. For an RFP, what is the policy regarding information being marked "confidential and proprietary?"

A-3. Unlike the RFI which could be marked as such in its entirety, with the RFP this is not the case, especially with regards to cost which has to be disclosed. Individual paragraphs can be marked "confidential and proprietary" but not the RFP as a whole. Please refer to Item 31 of the Solicitation Instructions to Vendors that is included in the RFP by reference.

(http://adm.idaho.gov/purchasing/TCs/Solicitation\_Instructions.pdf)

# Q-4. For companies that specialize in hardware, do you expect them to partner with organizations that deal with service?

A-4. Yes. The State of Idaho desires an End to End Service Provider, capable of providing us a total services and support solution; we already have hardware providers; but what we need is a total network services support solution, not just hardware.

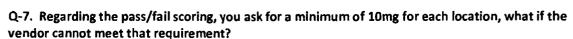
### Q-5. Is this a single or multiple award contract?

A-5. It is a multiple award contract. 5 years, with 3 Five Year Extensions for a total of 20 years, per IEN RFP02160, para 5.3, page 23.

## Q-6. Does the proposal concern only Phase One of the project, would the bidder be evaluated for Phase Two as well?

A-6. Specific details have been requested for Phase One, to include providing detailed information concerning the migration of public high schools to this IEN network and also providing a general overall plan for migration of IdaNet customers to this IEN network. Bidders\vendors are also tasked to provide a vision and or overall concept on how they would address subsequent phases of the IEN project.





A-7. The vendor needs to articulate in their response why they cannot meet this <u>minimum</u> requirement (e.g. geographical location constraints of a particular location requiring service); this will be taken into consideration. This will be made clear in the RFP amendment that will be posted NLT before close of business, 30 Dec 09.

#### Q-8. Will the State be willing to negotiate terms and conditions?

A-8. Not necessarily. Vendors will need to identify which term or condition they have a problem with, why and provide language, that they (vendors) think will work and why we (the State of Idaho) should adopt that language. Note also there are new Telecommunications Terms and Conditions that are incorporated in this RFP by reference.

(http://adm.idaho.gov/purchasing/manualsforms/Telecommunications%20Serv%20Special%20TCs% 208-08.pdf)

#### Q-9. Does a Vendor have to be present in Idaho in order to bid?

A-9. If a vendor is not present in Idaho, it must be willing to establish a point-of-presence if awarded a contract. The State desires to partner with an entity that can provide quick response to problems throughout the State, to have face-to-face impromptu meetings, and impromptu engineering "brainstorming" meetings. Therefore a presence in Idaho is necessary. An economic presence is defined in Idaho Code § 67-2349(1)(a)-(b).

#### Q-10. Is it permissible to bring in an out of state partner?

A-10. Yes, we need to establish partnerships, both inside and outside of our state as applicable.

# Q-11. From the perspective of internet, security and VTC bridging, does the state have a desire to centralized arrangement or a more regionalized arrangement?

**A-11.** The advantage of a decentralized regionalized arrangement is survivability and easier "bell scheduling for Distance Learning engagements due to the different time zones that the State operates under; but we are not stipulating a preference.

# Q-12. Do the costs in Appendix D, Current State of Broadband in Idaho Public Schools refer to annual or monthly costs?

**A-12.** Costs depicted in this chart listing current known connectivity and connection costs to our Public High Schools, represent **ANNUAL** Operating Costs.





# APPENDIX F, IDANET TRANSITION **CUSTOMER LOCATIONS** AND CURRENT REQUIREMENTS

Agency Name of the second seco	DSL	Servi.	Current ::	Geographic 1
and the control of th			(MB)	
Accountancy, Board of (Owyhee Plaza)	100 00 00 00 00 00 00 00 00 00 00 00 00	UBR	1.5	Boise Metro
Aging, Commission on	FRS	VBR	1.5	Boise Metro
Agriculture, Department of				
Boise IMA Group		Access	3	Boise Metro
Nampa		VBR	1.5	Boise Metro
Twin Falls		VBR	1.5	Southern Idaho
Arts, Commission	DSL	UBR	1.5	Boise Metro
Blind & Visually Impaired, Commission for				
the				
Coeurd'Alene	DSL	VBR	1.5	North Idaho
Lewiston	DSL	VBR	1.5	North Idaho
Idaho Falls	DSL	VBR	1.5	Eastern Idaho
Pocatello	DSL	VBR	1.5	Eastern Idaho
Twin Falls	DSL	VBR	1.5	Southern Idaho
Building Safety, Division of				
Coeur d'Alene		VBR	1.5	North Idaho
Meridian to CMFONI		VBR	6	Boise Metro
Corrections, Department of - (modified				
pricing)				
Blackfoot Dist 7	FRS	VBR	1	Eastern Idaho
Boise Orchard to CMFONI	ATM	VBR	8	Boise Metro
Boise CWCEB	FRS	VBR	1	Boise Metro
Boise Dist4E	ATM	CBR	1.5	Boise Metro
Boise Dist4W	ATM	CBR	1.5	Boise Metro
Boise Parole	ATM	CBR	1.5	Boise Metro
Burley	ATM	CBR	1.5	Eastern Idaho
Caldwell Dist3	ATM	CBR	1.5	Boise Metro
CDA	FRS	VBR	1.5	North Idaho
Cottonwood	ATM	CBR	1.5	North Idaho
Idaho Falls CWCIF	FRS	VBR	1	Eastern Idaho
Idaho Falls Dist7	ATM	CBR	1.5	Eastern Idaho
Kuna IMSI	ATM	CBR	1.5	Boise Metro
Kuna ISCI	ATM	CBR	1.5	Boise Metro
Kuna SICI	ATM	CBR	1.5	Boise Metro
Lewiston	ATM	CBR	1.5	North Idaho
	FRS			
			_	
Meridian Dist 4	A 577- 5	VBR	1	Boise Metro
Mountain Home	ATM	CBR	1.5	Eastern Idaho





Name CHICAL	FRS	VBR	1	Boise Metro
Nampa CWCN	ATM	CBR	1.5	North Idaho
Orofino	ATM		1.5	Boise Metro
Payette Payette		CBR		
Pocatello Dist6	ATM	CBR	1.5	Eastern Idaho
Pocatello PWCC	ATM	CBR	1.5	Eastern Idaho
Rexburg Dist 7	FRS	VBR	11	Eastern Idaho
Sandpoint	ATM	CBR	1.5	North Idaho
SBWCC	ATM	CBR	1.5	Boise Metro
St. Anthony	ATM	CBR	1.5	Eastern Idaho
Twin Falls Dist5	ATM	CBR	1.5	Southern Idaho
Dairy Commission	DSL	UBR	0.75	Boise Metro
Denstistry, Board of	DSL	UBR	0.75	Boise Metro
Developmental Disabilities, Council on	DSL	UBR	1.5	Boise Metro
Endowment Fund Investment Board	DSL	UBR	1.5	Boise Metro
Environmental Quality, Department of -				
(modified pricing)				
Boise (Orchard Campus)		VBR	9	Boise Metro
Coeur d'Alene		CBR	5	North Idaho
Idaho Falls		CBR	10	Eastern Idaho
Lewiston		VBR	5	North Idaho
Pocatello		CBR	10	Eastern Idaho
Twin Falls		CBR	10	Southern Idaho
Finance, Department of		VBR	1.5	Boise Metro
Fish and Game		CBR	4.5	Boise Metro
Health and Welfare, Department of				
Coeur d'Alene - 1120 Ironwood		VBR	14.75	North Idaho
Coeur d'Alene - 1120 Ironwood		CBR	1.5	North Idaho
Coeur d'Alene Aging - 1221 Ironwood		VBR	1.5	North Idaho
Lewiston - 1118 F Street		CBR	9.75	North Idaho
Lewiston - 1118 F Street		CBR	0.5	North Idaho
Moscow - 1350 Troy Highway Suite 2	-	VBR	1.5	North Idaho
Orofino (SHN) - 300 Hospital Rd		VBR	1.5	North Idaho
Orofino (SHN) - 300 Hospital Rd		VBR	1.5	North Idaho
Nez Perce (Lewiston) Nimiipu Health -		· DIC		1401111100110
111 Bever Grade Lapwai, ID		VBR	1	North Idaho
Health District 1		VBIC		1401111 144110
Health District 1 - Coeur d'Alene		VBR	1.5	North Idaho
Health District 1 - Sandpoint		VBR	1.5	North Idaho
Health District 2		VBR	1.5	North Idaho
Health District 3		4 DK	1.J	1401til Italio
Caldwell	<del>_</del>	VBR	1.5	Boise Metro
I		VBR	1.5	Boise Metro
Health District 4				
		CBR	1.5	Boise Metro
Health District 5		VBR	1.5	Eastern Idaho
Health District 6		VBR	1.5	Eastern Idaho





Health District 7		VBR	1.5	Eastern Idaho
Hispanic Affairs, Commission on	DSL	UBR	0.25	Boise Metro
Historical Society – Assay Office	DSL	UBR	1.5	Boise Metro
Historical Society – Storage Building	DSL	UBR	0.25	Boise Metro
Historical Society – Museum	DSL	UBR	1.5	Boise Metro
Historical Society – History Center	ATM	UBR	1.5	Boise Metro
Human Rights Commission (Owhyee Plaza)	71111	UBR	1.5	Boise Metro
Insurance, Department of		ODK	1.5	DOISC MICHO
DOI - Coeur d'Alene		VBR	1.5	North Idaho
DOI - Coeur a Atene		VBR	1.5	Eastern Idaho
Juvenile Corrections, Department of		VDIC	1.5	Lastorii idano
CDA		VBR	1.5	North Idaho
Twin Falls		VBR	1.5	Southern Idaho
Labor, Department of		ADK	1.5	Southern Idano
Blackfoot - 34.HCGL.337784		A	1.5	Eastern Idaho
Boise - IdaNet		Access CBR	9.8	Boise Metro
Boise (DDS) (IDHW circuit) -	_	CBK	9.0	Buise Metro
34.YBGA.311890		VBR	1.5	Boise Metro
Boise (DDS) (Labor Circuit) -		VBK	1.3	Doise Metro
61.HCFS.100410		Access	1.5	Boise Metro
Boise (SCO) - IdaNet		CBR	0.25	Boise Metro
Boise (Thomas Dev) - IdaNet		Access	3.0	Boise Metro
Bonners Ferry - 13.HCFJ.003306		CBR	1.5	North Idaho
Burley - 34.HFGJ.000125			5.0	Eastern Idaho
Caldwell - 34.HFGJ,000121		Access Access	5.0	Boise Metro
Coeur d'Alene - 13.HFFJ.001887		CBR	5.5	North Idaho
Emmett - 34.HCGJ.398898		Access	1.5	Boise Metro
Grangeville - 76.0BFJ66417		CBR	1.5	North Idaho
Hailey -		Access	1.5	Eastern Idaho
Idaho Falls - 30.HFFJ.192096		Access	5.0	Eastern Idaho
Kellogg - 13.HCFJ.003329		CBR	1.5	North Idaho
Lewiston - 76.HFFJ.02856	_	CBR	5.0	North Idaho
McCall -		Access	1.5	North Idaho
Meridian - 34.HFGJ.000111			5.0	Boise Metro
- Moscow - 13.HCFJ.003309		CBR	1.5	North Idaho
Mountain Home - 34.HCGJ.001670		Access	1.5	Boise Metro
Orofino - 13.HCFJ.003326		CBR	1.5	North Idaho
Payette - 34.HCGJ.394270		Access	1.5	Boise Metro
Pocatello - 34.HFGJ.000120		Access	5.0	Eastern Idaho
Rexburg - 34.HCFJ.001981		Access	1.5	Eastern Idaho
Salmon -		Access	1.5	Eastern Idaho  Eastern Idaho
Sandpoint - 13.HCFJ.003327		CBR	1.5	North Idaho
Soda Springs -			1.5	North Idaho
St. Maries - 13.HCFJ.003328		Access	1.5	North Idaho
Twin Falls - 34.HFGJ.000126			5.0	Southern Idaho
1 WITH TUILS - 34.11F GJ, UUU 120		Access	೨.∪	Southern roano





Labor, Department of for: Disability				<del></del>	
Boise DDS - connection to IDHW   Boise DDS - connection to Labor   CBR   1.5   Boise Metro   Lewis-Clark State College   VBR   0.25   North Idaho   Library, Idaho State   Idaho Falls   DSL   UBR   1.5   Eastern Idaho   State Store 216 (Ammon ID)   DSL   UBR   0.25   Eastern Idaho   State Store 222 (1175 Parkway Dr Blackfoot)   DSL   UBR   0.25   Eastern Idaho   State Store 222 (1175 Parkway Dr Blackfoot)   DSL   UBR   0.25   Eastern Idaho   Soise HQ   Boise - Store Net   State Store 101 (1101 Grove, Boise)   DSL   UBR   0.25   Boise Metro   State Store 102 (1744 W. State St Boise)   DSL   UBR   0.25   Boise Metro   State Store 103 (5180 Overland, Boise)   DSL   UBR   0.25   Boise Metro   State Store 104 (6916 W State St Boise)   DSL   UBR   0.25   Boise Metro   State Store 104 (6916 W State St Boise)   DSL   UBR   0.25   Boise Metro   State Store 107 (2150 Broadway, Boise)   DSL   UBR   0.25   Boise Metro   State Store 108 (3439 N Cole Rd, Boise)   DSL   UBR   0.25   Boise Metro   DSL   UBR   0.25   Boise					
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Lewis-Clark State College		<u> </u>			<u>-</u> -
Library, Idaho State					
Liquor Dispensary, Idaho State   State Store 216 (Ammon ID)   State Store 222 (1175 Parkway Dr Blackfoot)   Boise HQ   Boise - Store Net   State Store 101 (1101 Grove, Boise)   DSL UBR   0.25   Boise Metro   State Store 102 (1744 W. State St Boise)   DSL UBR   0.25   Boise Metro   State Store 103 (5180 Overland, Boise)   DSL UBR   0.25   Boise Metro   State Store 107 (2150 Broadway, Boise)   State Store 107 (2150 Broadway, Boise)   State Store 109 (10525 Overland Rd Boise)   State Store 109 (10525 Overland Rd Boise)   State Store 110 (2273 S. Vista Ave #130 Boise Metro   State Store 110 (2273 S. Vista Ave #130 Boise Metro   State Store 110 (2073 S. Vista Ave #130 Boise Metro   State Store 114 (10356 Fairview Boise)   DSL UBR   0.25   Boise Metro   State Store 400 (610 N Raymond St Boise)   DSL UBR   0.25   Boise Metro   State Store 400 (610 N Raymond St Boise)   DSL UBR   0.25   Boise Metro   DSL UBR   0.25   Boise					
State Store 222 (1715 Parkway Dr Blackfoot)   DSL UBR   0.25   Eastern Idaho		DSL	UBR	1.5	Eastern Idaho
DSL   UBR   0.25   Boise Metro		  - <u>-</u>			
Solic HQ   Boise - Store Net   State Store 101 (1101 Grove, Boise)   State Store 102 (1744 W. State St Boise)   DSL UBR   0.25   Boise Metro   State Store 103 (5180 Overland, Boise)   DSL UBR   0.25   Boise Metro   State Store 104 (6916 W State St Boise)   DSL UBR   0.25   Boise Metro   State Store 107 (2150 Broadway, Boise)   DSL UBR   0.25   Boise Metro   State Store 107 (2150 Broadway, Boise)   DSL UBR   0.25   Boise Metro   State Store 108 (3439 N Cole Rd, Boise)   DSL UBR   0.25   Boise Metro   State Store 109 (10525 Overland Rd Boise)   State Store 110 (2273 S. Vista Ave #130   Boise)   State Store 110 (2273 S. Vista Ave #130   Boise)   State Store 112 (2448 S. Apple St Boise)   DSL UBR   0.25   Boise Metro   DSL UBR   0.25	,		<del></del>		
State Store 101 (1101 Grove, Boise)   State Store 102 (1744 W. State St Boise)   State Store 103 (5180 Overland, Boise)   State Store 104 (6916 W. State St Boise)   DSL UBR   0.25   Boise Metro   DSL UBR   0.25   Bo	,				
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State Store 206 (190 First St Idaho Falls)	DSL	UBR		
State Store 208 (1717 W Broadway Id Falls)	DSL	UBR	0.25	Eastern Idaho
State Store 220 (1104 S Lincoln St Jerome)	DSL	UBR	0.25	Eastern Idaho
State Store 323 (Kellogg)	DSL	UBR_	0.25	North Idaho
State Store 209 (360 Leadville Ave N				n   v
Ketchum)	DSL	UBR	0.25	Eastern Idaho
State Store 129 (Kuna)	DSL	UBR	0.25	Boise Metro
State Store 301 (913 Main St Lewiston)	DSL	UBR	0.25	North Idaho
State Store 321 (1022 Bryden Ave Lewiston)	DSL	UBR	0.25	North Idaho
State Store 132 (44 E Fairview, Meridian)	DSL	UBR	0.25	Boise Metro
State Store 134 (450 S Meridian Rd,			,	
Meridian)	DSL	UBR	0.25	Boise Metro
State Store 303 (904 W. Pullman Rd,				
Moscow)	DSL	UBR	0.25	North Idaho
State Store 309 (872 W Troy Hwy #110,		}	_	
Moscow)	DSL	UBR	0.25	North Idaho
State Store 122 (275 E. 4th N Mtn Home)	DSL	UBR	0.25	Boise Metro
State Store 105 (205 Caldwell Blvd #7				
Nampa)	DSL	UBR	0.25	Boise Metro
State Store 115 (1225 12th Ave Rs S Nampa)	DSL	UBR	0.25	Boise Metro
State Store 118 (16453 Marketplace Blvd				
Nampa)	DSL	UBR	0.25	Boise Metro
State Store 325 (235 Main St Orofino)	DSL	UBR	0.25	North Idaho
State Store 123 (521 9th St Payette)	DSL	UBR	0.25	Boise Metro
State Store 202 (726 E Sherman Pocatello)	DSL	UBR	0.25	North Idaho
State Store 204 (240 S Main Pocatello)	DSL	UBR	0.25	Eastern Idaho
State Store 212 (1319 Bench Rd Pocatello)	DSL	UBR	0.25	Eastern Idaho
State Store 304 (202 E Seltice Way Post Falls)	DSL	UBR	0.25	Eastern Idaho
State Store 306 (4010 E Seltice Way Post				
Falls)	DSL	UBR	0.25	North Idaho
State Store 331 (1214 Albeni Hwy Priest				
River)	DSL	UBR	0.25	North Idaho
State Store 322 (403 N Fourth Sandpoint)	DSL	UBR	0.25	North Idaho
State Store 201 (1901 Kimberly Rd Twin				
Falls)	DSL	UBR	0.25	Southern Idaho
State Store 207 (1146 Filer Ave E Twin				
Falls)	DSL	UBR	0.25	Southern Idaho
State Store 214 (1239 Pole Line Rd #311C Twin Fls)	DSL	UBR	0.25	Eastern Idaho
State Store 326 (Wallace)	DSL	UBR	0.25	North Idaho
State Store 127 (270 E 7th St #B Weiser)	DSL	UBR	0.25	Boise Metro
Lottery Commission		VBR	1.5	Boise Metro
Medicine, Board of	DSL	UBR	1.5	Boise Metro
Nursing, Board of	DSL	UBR	0.75	Boise Metro
Occupational Licensing, Bureau of (Owhyee Plaza)		UBR	3	Boise Metro
Outfitters and Guides Licensing Board	PtoP	UBR	1.5	Boise Metro





Parks and Recreation		UBR	1.5	Boise Metro
Pharmacy, Board of	DSL	UBR	1.5	Boise Metro
Public Works - Facility Services - for Idaho				
Falls	DSL	UBR	1.5	Eastern Idaho
Public Works - Design & Construction - for Lewiston	DSL	UBR	1.5	North Idaho
Public Works - Design & Construction - for Moscow	DSL	UBR	0.25	North Idaho
Public Works - Design & Construction - for Pocatello	DSL	UBR	0.25	Eastern Idaho
Real Estate Commission	DSL	UBR	1	Boise Metro
Snake River Basin Adjudication	ATM	VBR	1.5	Eastern Idaho
Species Conservation, Office of	DSL	UBR	1.5	Boise Metro
State Bar, Idaho		VBR	1.5	Boise Metro
State Independent Living Council	DSL	UBR	1.5	Boise Metro
Tax Appeals, Board of	DSL	UBR	1.5	Boise Metro
Tax Commission				
Tax - Coeur d'Alene Office		VBR	1.5	North Idaho
Tax - Lewiston Office	·	VBR	1.5	North Idaho
Tax - Twin Falls Office		UBR	1.5	Southern Idaho
Veterans Services				
Veterans Services HQ - Collins St Boise		UBR	3	Boise Metro
Lewiston Veteran's Home - Lewiston		UBR	1.5	North Idaho
Vocational Rehabilitation, Division of				
(modified pricing)				
Boise - 39. YHFJ.001829		CBR	3	Boise Metro
Boise - 39.YHFJ.001829		UBR	0.5	Boise Metro
Boise - 39.YHFJ.001832		CBR	0.5	Boise Metro
Boise - 39.YHFJ.001832		UBR	3	Boise Metro
Caldwell - 39.YHFJ.001830		CBR	0.5	Boise Metro
Caldwell - 39.YHFJ.001830		UBR	3	Boise Metro
Coeur d'Alene Office #110		UBR	3	North Idaho
Coeur d'Alene Office #110		VBR	0.5	North Idaho
CDA Mental Health #130		UBR	0.75	North Idaho
CDA SWT #140		UBR	0.75	North Idaho
Idaho Falls - 39.YHFJ.001833		CBR	0.5	Eastern Idaho
Idaho Falls - 39.YHFJ.001833		UBR	3	Eastern Idaho
Lewiston Office #210		CBR	0.5	Boise Metro
Lewiston Office #210		UBR	3	North Idaho
Moscow VR #230		CBR	0.75	North Idaho
Moscow (UofI)		UBR	0.75	North Idaho
Orofino #220		UBR	0.75	North Idaho
Pocatello - 39, YHFJ.001831		CBR	0.5	Eastern Idaho
Pocatello - 39.YHFJ.001831		UBR	3	Eastern Idaho
Sandpoint VR # 120		UBR	0.75	North Idaho
Sandpoint SWT #150		UBR	0.75	North Idaho
Twin Falls - 39.YHFJ.001828		CBR	0.5	Southern Idaho
Twin Falls - 39.YHFJ.001828		UBR	3	Southern Idaho





Water Resources, Department of			
Boise	VBR	4.5	Boise Metro
CDA T	VBR	1.5	North Idaho
Boise Airport	MAC	1.5	Boise Metro
Idaho Falls	MAC	1.5	Eastern Idaho
Twin Falls	MAC	1.5	Southern Idaho
Soda Springs	VBR	1.5	Eastern Idaho





## APPENDIX G, IEN: Standard Service Order Form (Sample)

## IEN Standard Services Order Form (Sample) SERVICE REQUEST FORM

IF THERE ARE ANY QUESTIONS ABOUT THIS ORDER PLEASE CALL:
Office of the CIO, IEN Program Management Office

Number of PVCs:

Point To: Wire Beyond NI?

Term At:

(208) 332-1876					
BILL TO: Office of the CiO, State of Idaho	APPROVALS				
650 W. State Street, Rm 100	WARRING WAR Cabant				
•	"Anywhere" High School				
Boise, ID 83720	Agency/School/Library Representative				
BILLING CONTACT: IEN Program Management Office	Laura Hill 03/24	4/2009			
Office of the CIO, State of Idaho	Reviewed by IEN Se	Reviewed by IEN Services Manager/IEN Statewide Network Ops. Coordinator			
(208) 332-1876					
PON: 2009-0003					
(Insert Info here for each Service Location)		(Required Information After Circuit is ASSIGNED			
Agency: Install, Contact: Phone:	į	Customer Circuit #: Customer DLCI:			
r none: Site Contact:		Circuit Install, Date:			
Phone:		By:			
Repair Contact:		,   29.			
Phone:		Circuit Turn-up Date:			
Circuit type;	}	By:			
Speed:					
CIR;		If this is an upgrade, when was the disconnect ordered?			
Location:		Date: PON:			
City:					
Zip:		Disconnect Confirmed, Date:			

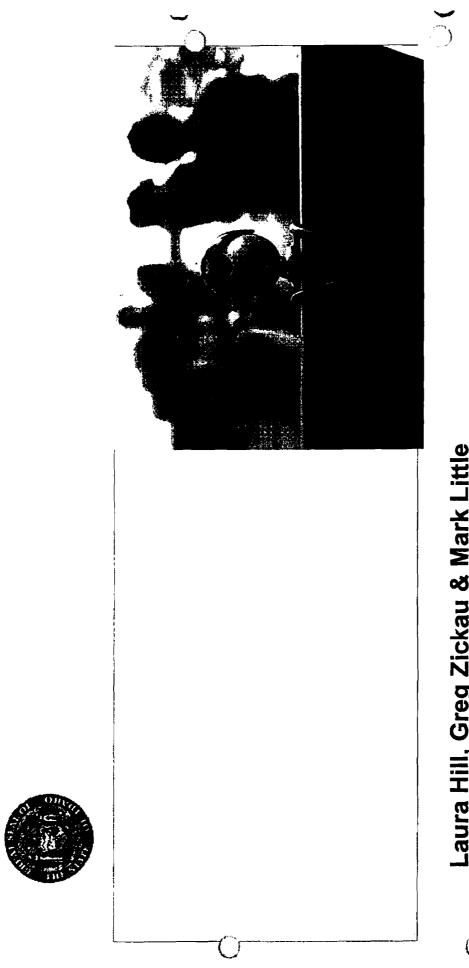
-	,										
Service Type and Class: Due on or before 3/28/09 (Sample Only)											
	e link speed		of service	ATM QoS parameters		Frame Relay OoX	逐續	DSL Type			
	DSL		Frame Relay	QoS:		CIR:					
	Fractional T1		ATM	PCR:	統	Frac T1 speed:		DSL Connection			
	Ti		FRF.8 (interworking)	SCR:				Existing FAX Line			
	IMA		Number of IMATIS	Indicate individual MA cu	cuit IDs	in the Comments sections		New Line			
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Billing Document Updated, Date:

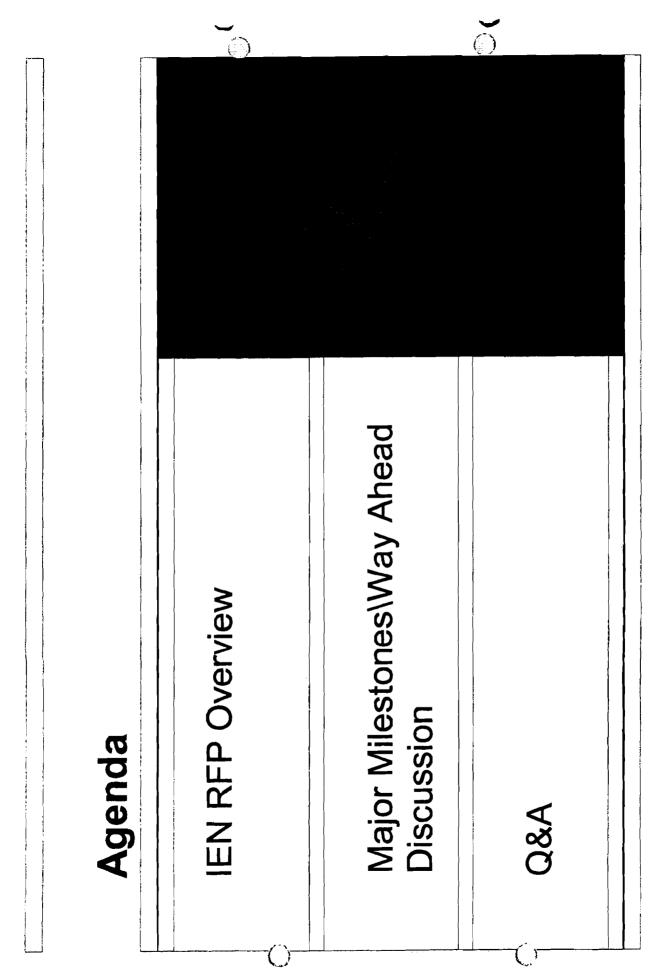






Laura Hill, Greg Zickau & Mark Little

**December 29, 2008** 



# **IEN Vision**

The "Idaho Education Network" (IEN) is expected to be a collaborative effort between the state of Idaho and telecommunication providers to construct and manage a statewide education network, utilizing existing state infrastructures where possible as well as carrier provided services and support.

# **IEN RFP Highlights Review**

- Required Qualifications:
  - **Experience**: Engineering Design, Implementation, and Maintenance of large scale, state wide, **education networks**.
  - **Partnerships**: Strong consideration will be given to proposals that incorporate partnerships between **multiple providers**.
  - <u>Idaho Presence</u>: Bidders must demonstrate and provide examples to show an Idaho presence.
  - Long Term Commitment: IEN will serve as the foundation to meet both current and future State Broadband not only for education but for other State agencies and services; bidders need to provide <a href="mailto:examples of services">examples of services</a> that they will provide to the State of Idaho to <a href="mailto:demonstrate their commitment">demonstrate their commitment</a> to the State and its long term vision to provide high speed broadband to it's supported customer base.
  - **Economic Impact**: Bidders must demonstrate and provide examples of how their proposal will **positively impact** the States' Economy.
  - <u>Competitive Advantage:</u> Bidders must demonstrate\Communicate the <u>value</u> of their solution brings to Idaho over other competitors.
  - Low Risk Transition: Bidders must plan to tell the State how they are going to migrate current broadband users to this new IEN network with minimal impact.

# **IEN RFP Highlights Summary Continued**

- ✓ Leveraging of legacy (existing) State\Public and Higher Education communication networks
- ✓ Use of proven new technologies that meet E-Rate requirements
- ✓ Quality of Service for all Users of this system despite location
- ✓ Responsive customer support and services
- ✓ E-rate experience and success in Billing for E-Rate reimbursements
- ✓ Project Planning and Management Experience
- √ Technology Refreshment Plans



# **IEN Implementation Strategy UPDATE**

- Background: Due to an urgent need to either upgrade or replace our legacy State IdaNet network, due to End of Life Equipment Support Issues (e.g. Cisco MGX Switches), combined with a compelling need to <u>reduce costs</u> associated with operating this network, the State of Idaho has made a conscious decision to <u>rephase</u> in the RFP, our Phased Migration plan, to make IdaNet a priority event. Specifically:
  - •Phase One: The first phase of this project will <u>not only</u> connect all state public schools with scalable, high-bandwidth connections, including connections to higher education institutions where applicable; but we will also request that the winning vendor(s) assist the state in <u>implementing a migration plan</u> for agency customers using IdaNet.
  - •Subsequent Phases: Follow on phases to this initial project will include connectivity to each elementary and middle school, and the addition of libraries to the IEN network.
- Discussion: Bidders need to keep in mind that if they can <u>realize an economy of scale</u> and <u>potential savings</u> by aggregating connectivity to an existing POP or more viable ingress\egress point (e.g. School District, Library, State Agency, Middle School, etc.), they need to <u>include</u> those in their proposal submissions, even if these IEN connectivity points are slated for subsequent phases of the project.

# **Specific IEN RFP Updates**

# Approach:

A phased implementation approach has been established per Idaho House Bill No. 543 – Idaho Education Network. Specifically, the First Phase will connect each public high school with a scalable, high-bandwidth connection, including connections to institutions of higher education as necessary; a parallel effort will also be undertaken during this initial Phase to design and migrate all existing State of Idaho customers from IdaNet to a new IEN backbone system, given the urgency to replace and or upgrade this aging network, coupled with the rising cost of sustaining current IdaNet operations.

# Subsequent Phase Considerations Include:

- Connectivity to each elementary and middle school.
- The addition of libraries to the IEN.
- Completing the migration of state agency locations from current technology and services.

# **Specific IEN RFP Updates Continued**

- **Addition** of **Appendix F**, IdaNet Transition Customer Locations and Current Requirements
- Addition of the following Schools to Schedules 1 and 2 of the IEN RFP Document:
  - Challis District #181: Challis Jr./Sr. High School (Schedule 1, IEN Phase One Public HS)
  - Challis District #181: Challis Elementary, Clayton Elementary, Stanley School (Elem/Jr.) to Schedule 2. IEN Phase Two Elementary and Secondary High Schools
- Addition of Standard Services Order Form to Appendix G, IEN: Standard Service Order Form (Sample)

# **IEN RFP Evaluation Methodology**

- Division of Purchasing will lead RFP Evaluation Team Effort
- <u>"Vender Neutral"</u> IEN Evaluation Team formed to perform RFP reviews
- RFP Evaluation Team members <u>will be sequestered</u> during this process
- Division of Purchasing <u>will be responsible</u> for handling of all data inputs from evaluation team
- Reminder that <u>Price</u> per Federal E-Rate Policy must be the <u>primary factor</u> in evaluation of proposals; however, other relevant factors stipulated in the RFP will also be factored into the process:
  - Cost of E-Rate Eligible Goods & Services
  - Prior Experience (Ed Networks, E-Rate, Personal Quals)
  - Management Capability
  - Non-E-Rate Eligible Cost Factors
  - Legislative Initiatives (Partnerships, Idaho Presence, Economic Impact)
  - Financial Reports and Risk Mitigation

# **IEN FY09 Key Milestones**

- 5 Jan 09, Deadline to receive Email Questions concerning RFP
- 12 Jan 09, 5PM, RFP Responses Due to Division of Purchasing
  - 13-16 Jan 09, RFP Evaluation
  - 19 Jan 09, Letter of Intent Issued
  - 26 Jan 09, RFP Final Award
  - 12 Feb 09, FCC 471 E-Rate Filing Deadline for Federal Funds

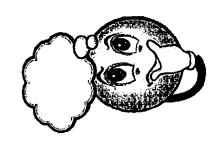
# In Closing

- There is significant potential for all of us, working as a Collective Government and Industry team to impact our State's Core Network capabilities while simultaneously driving Distance Learning Initiatives in support of Public Education as well as improving Communications Support for Public Safety.
- <u>Federal E-Rate Dollars</u> will play a critical part in making IEN a success for the State of Idaho. We just need to <u>work together</u>, to ensure we can meet all critical E-Rate Filing Deadlines (e.g. 12 Feb 09).

# **Questions and Answers**

What's on your mind?

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# EXHIBIT 3

# Sally Brevick

From:

Sent: To:

Greg Zickau Monday, January 12, 2009 5:08 PM Teresa Luna; Mike Gwartney

Cc:

Bill Burns; Mark Little; Laura Hill

Subject:

**RFP Proposals** 

We have four proposals: Verizon, Qwest, ENA/Syringa, and Integra. This is good competition without overwhelming the evaluation team. Evaluations start tomorrow morning.

Regards, Greg



# **EXHIBIT 4**



David M. Pierce President & CEO 1101 McGavock Street Nashville, TN 37203

tel: (615) 312-6009 fax: (615) 312-6099 cell: (703) 395-8598

> dpierce@ena.com www.ena.com

# IEN Alliance

**COST PROPOSAL** 

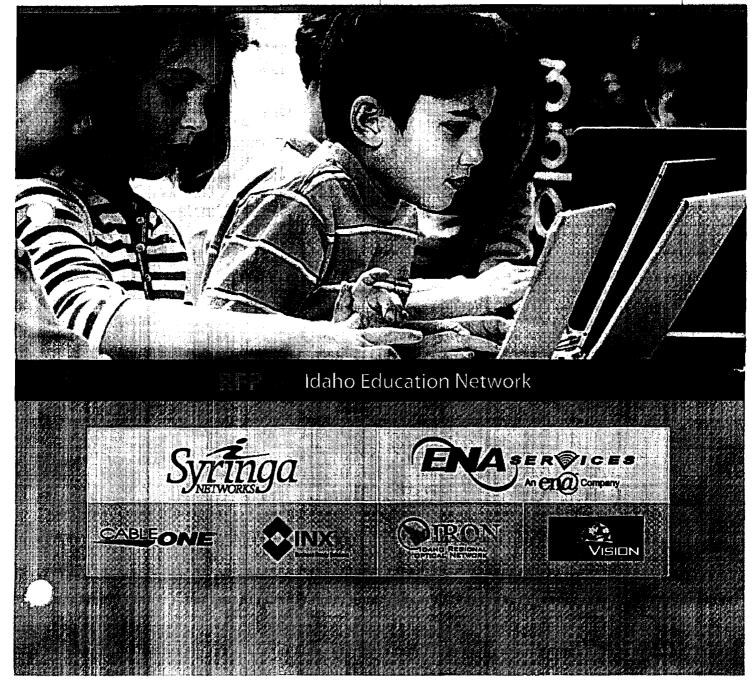
RFP# 02160

**Submission Due:** 

January 12, 2009 • 5:00 PM MST

State of Idaho
Idaho Division of Purchasing

650 West State Street Boise, Idaho 83702







January 12, 2008

Mr. Mark Little
Purchasing Manager
Idaho Division of Purchasing
LBJ Building, Lower Level, Room B-15
650 W. State Street
Boise, ID 83702

# RE: Idaho Education Network (IEN) RFP 02160

In conjunction with our technical response to RFP#02160 for the Idaho Education Network (IEN), ENA, as the prime contractor representing the IEN Alliance, presents this price proposal as requested by this procurement. The IEN Alliance has worked diligently with its vendor partners including Syringa and others across Idaho as well as across the nation to develop this proposal and price information. We believe our offering is inclusive and cost-effective.

As this RFP is complex in nature with numerous components and customer types served, we welcome the opportunity to clarify any of this information as needed for the IEN bid evaluation team to make its decision.

As part of our cost proposal, the IEN Alliance would like to point out a few key items as highlights of this document:

- Our total pricing for Schedule 1 is split between four components for ease of understanding:
  - Managed Internet Access service to Phase 1 High Schools as listed in the REP
  - Video Conferencing Service to Phase 1 High Schools as listed in the RFP
  - Managed Internet Access service to ensure video conferencing capabilities to State Colleges and Universities as listed in the RFP
  - o IdaNet Backbone Replacement transition costs and ongoing service
- Our pricing is based on best available information at the time of this RFP. Upon award the IEN Alliance plans to do the following:
  - o Complete a full inventory of services available at the IEN participant locations and we intend to continue to work with all potential Idaho providers, including all available government networks, to increase the number of sites that are serviceable using fiber optics/ethernet.







- Work with State and potential IEN customers to develop specific service plans for Phase 1 for 2009 - 2010 service as available funding allows.
   Pricing in this cost proposal is based on service to all Phase 1 sites. Pricing adjustments may be necessary if a different selection of sites is ultimately served.
- The IEN Alliance is uniquely positioned to provide the best ongoing service pricing throughout the life of this Contract due to the following factors:
  - o ENA, as a vendor neutral service provider, will utilize all potential Idaho network connectivity vendors as well as national connectivity vendors to maximize the fiber footprint available for IEN users. ENA can leverage any available service provider fiber to develop the consolidated service for IEN users whereas certain competitors are restricted to their own networks or specific industry segments.
    - For example, cable companies and telephone companies do not often work with each other; however, ENA will utilize the best from both of those vendor classes.
  - ENA, with a focus on statewide networks servicing all counties not just easy to service areas, has a strong track record of growing fiber service to rural areas. In Tennessee, ENA has significantly grown the availability of fiber service to rural schools including fiber service to 59 of 62 rural counties served by ENA. ENA is a catalyst for high broadband expansion, which will be extremely valuable to Idaho and its citizens through the IEN network and other potential uses for the network that IEN helps build across the State.
  - O Syringa Networks provides the broadband communications needs of over 100 customers including state agencies, wireless service providers, hospitals, educational institutions, and corporations. This service is provided over 2,000 miles of fiber optic network reaching from Oregon to Wyoming; from Idaho's most populated cities to some of its most remote communities.
  - As a top-10 E-Rate service provider, ENA provides the highest levels of E-Rate support to its customers and will assist Idaho in leveraging E-Rate funds to the maximum extent allowable.

It is the IEN Alliance's intention to earn this award and become a long-term partner with the State of Idaho. We believe we are uniquely qualified to work with the State to grow the service capacity to IEN users consistent with Idaho's vision to leverage this







connectivity technology to enable improved educational outcomes and economic opportunity.

Our cost proposal is our best attempt to match investment to Idaho's vision and we are willing to discuss and provide alternatives or additional information as needed to meet Idaho's requirements.

We strongly encourage a thorough review of this Price Proposal as well as the Price Proposals of other providers. The IEN Alliance believes that it has captured all costs necessary to deliver the service required in this RFP in our Schedule A, Total Price for Phase 1. We recommend that the State make sure that all other vendors have a fixed service price for Phase 1 for comparison purposes and that no allowance for unknown costs such as special construction is included in as part of those proposals. We believe, with all costs clearly identified, that the IEN Alliance Price Proposal will provide a strong value for Idaho.

We thank you for the opportunity to respond to this RFP.

Sincerely, The IEN Alliance







# 10.8 (E) PRICING SCHEDULES

All pricing schedules must be complete and accurate, containing all costs related to provisioning Internet services. Pricing in these schedules must reflect the Proposer's pricing before the application of any taxes, fees, surcharges or volume discounts.

All schedules contained in the electronic version of this RFP are embedded Excel worksheets. Please contact the Division of Purchasing if you desire to use or require assistance in using these worksheets.



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# **Pricing Notes**

Estimated Net Cost to State is a Monthly Cost as Applicable.

IEN Alliance has provided a full price quote for the sites listed in the RFP Phase 1. This offering has no hidden costs based on that set of sites. We strongly encourage the State to make certain that vendors replying to this RFP have included all of their delivery costs and have not left out special construction or other charges or included anything in Phase 1 as Individual Case Basis pricing. As is well known, at the current time, some portions of Idaho are difficult to service at 10mb. This proposal includes all cost to hit that service benchmark statewide and we encourage the State to make sure all vendors have included all costs to make a fair price comparison.

Pricing above reflects best available rates at time of bid. IEN Alliance intends to work with State and local customers to continue to drive down the above prices as well as gain access to additional ethernet services as we grow IEN service.

Connectivity pricing assumes the end facility is ready to receive the service. Facility make ready costs may be required for items such as conduit, electrical, backer boards or similar to allow service to be delivered to the end site. IEN Alliance will work with the State and the end site to minimize any such make ready costs.

- Note 1 Managed Internet Service includes, among other services, connectivity from end site to the Internet at 10mb, customer premise device necessary to connect the Internet Service, backbone connectivity, network monitoring and maintenance and repair of IEN Alliance provided equipment Service pricing covers 136 locations listed in the RFP as Phase 1 sites

  Service pricing expects usage of 10 mb fiber ethernet, wireless service from Idaho Public Safety Microwave Network and minimal usage of T-1 service. In the event that the Idaho Public Safety Microwave Network is not available to service certain sites, monthly cost before E-Rate increases up to approximately \$571,000 per month, depending on the number of sites in each connection type, for a full hard wired 10 mb solution including a mix of fiber/ethernet and multiple T-1 sites. See Note 6 for an additional hard wired alternative based on student population per site.
- Note 2 Video conferencing service includes all end site equipment as indicated in our response as well as all network configuration to make the service functional. This price also includes the cost of video operations and monitoring. Service priced is the Roll About Standard Definition System. See Appendix 2 to the Cost Proposal for additional options available. Service is priced for 136 locations same as Note 1. For recurring service and support, maintenance for Year 1 is provided at no additional cost. Maintenance for Year 2 and future years is based on an annual renewal with pricing subject to future adjustment. In the event that the Contract is renewed beyond the initial 5 year term, equipment replacement will not be available as part of the maintenance and support service due to age of the equipment.

In addition, if the underlying equipment manufacturer sets an "end of life" date for the equipment, parts replacement will be available only as long as the manufacturer has such parts available. IEN Alliance will work with State to optimize the supportable life of all video equipment.

- Note 3 Certain components of the video conferencing solution namely equipment necessary to connect the service inside the facility to the classroom are eligible for E-Rate funding under Internal Connections. Internal Connections funding is expected to be available for schools that have an E-Rate discount rate of 90%. In our response above for simplicity, IEN Alliance has assumed that Idaho will not have any sites qualify for Internal Connections funding. After award, IEN Alliance will work with the State to file for Internal Connections E-Rate funding on all possible locations.
- Note 4 This pricing covers rehoming existing IdaNet connections to the new IEN backbone and ongoing backbone and Internet connectivity for the Ida Net sites listed in Appendix F to the RFP.

  Target pricing for migrating last mile IdaNet connections is included in Schedule C and available for evaluation on a site by site basis.
- Note 5 Managed Internet Service includes, among other services, connectivity from end site to the Internet at 10mb, customer premise device necessary to connect the Internet Service, backbone connectivity, network monitoring and maintenance and repair of IEN Alliance provided equipment Service pricing covers 8 locations listed in the RFP as Phase 1 College and University sites
- Note 6 This option provides 10mb fiber service at all sites where service is available (approx 100 sites currently) and T-1 service at other sites. For this option, we have scaled the T-1 sites based on school population to reduce costs while still providing service matched to user base. T-1 service is provided based on the following scale:

Students at Site	Service Speed
< 50	1 x T-1
<b>51 - 100</b>	2 x T-1
101 - 250	3 x T-1
251 - 400	4 x T-1
400+	6 x T-1

Price for this option is \$476,000 per month before E-Rate discount.



# 001511

# **Pricing Notes**

# Estimated Net Cost to State is a Monthly Cost

Connectivity pricing assumes that the end facility is ready to receive the service. Facility make ready costs may be required for items such as conduit, electrical, backer boards or similar to allow service to be delivered to the end site. IEN Alliance will work with the State and the end site to minimize any such make ready costs.

Incremental bandwidth requires 10mb fiber service. For sites served with T-1s, T-1 pricing on Schedule C applies.

- Note 1 Service over 100mb subject to availability and site readiness evaluation.
- Note 2 IEN Alliance's burstable bandwidth feature consists of IEN Alliance providing a higher level circuit (e.g. 100mb fiber) and making all bandwidth on that circuit available for customer usage. Customer is charged for their base circuit level (for example 20 Mbps) at fixed service pricing. Customer is charged for incremental usage on a monthly basis based on actual usage at the 95 percentile. Customer is also charged the Burstable Bandwidth Feature charge for availability of additional bandwidth.

  Burstable bandwidth requires a minimum purchase of 15 Mbps of base service.

	Description:	One-time	-Monthly -Recurring	AND PROPERTY OF THE PROPERTY O	Annual E-	Estimated Net Cost to	
lem no.	Description	charge (S)			Discount?		Notes
1	Fixed bandwidth	STATE OF THE PARTY	8500		The second profession of the design of the second		Note 1
	(indicate units)						
	K-12 Schools and Public Libraries -						
	1.544 Mbps	0	900	Yes	73%	243	
	Incremental 1.544 Mbps	0	750	Yes	73%	203	Note 4
	10 Mbps	0	2,500	Yes	73%	675	
	Other Customers -						
	1.544 Mbps	0	900	No	0%	900	
	Incremental 1.544 Mbps	0	750	No	0%	750	
	10 Mbps	0	2,500	No	0%	2,500	
2	Burstable bandwidth						
•	(indicate units)						
	K-12 Schools and Public Libraries -			<u></u>	<del> </del>		
	Burstable Bandwidth Feature	0	100	Yes	73%	27	Note 2
	Other Customers -						<del></del>
	Burstable Bandwidth Feature	0	100	No	0%	100	Note 2
	Optional Bandwidth Reduction		See Note 3			<del>                                     </del>	Note 3



# **Pricing Notes**

## Estimated Net Cost to State is a Monthly Cost.

Connectivity pricing assumes that the end facility is ready to receive the service. Facility make ready costs may be required for items such as conduit, electrical, backer boards or similar to allow service to be delivered to the end site. IEN Alliance will work with the State and the end site to minimize any such make ready costs.

Service pricing above is subject to site visit and availability. Fiber optic/ethernet service not available in all locations. IEN Alliance is targeting the above prices as statewide averages over time as we partner to grow the IEN service.

- Note 1 Fixed pricing indicates base rate for a specific bandwidth which includes all components of managed internet Access service. Service levels can be adjusted between 10 Mbps and 1 Gbps by purchasing incremental bandwidth from Schedule B.

  Service pricing is based on connectivity from end site to Internet. Circuits from end sites to central aggregation point for local customer are also available typically at discounts off the above pricing for fixed service speeds.
- Note 2 IEN Alliance's burstable bandwidth feature consists of IEN Alliance providing a higher level circuit (e.g. 100mb fiber) and making all bandwidth on that circuit available for customer usage. Customer is charged for their base circuit level (for example 20 Mbps) at fixed service pricing. Customer is charged for incremental usage on a monthly basis based on actual usage at the 95 percentile. Customer is also charged the Burstable Bandwidth Feature charge for availability of additional bandwidth.

  Burstable bandwidth requires a minimum purchase of 15 Mbps of base service.
- Note 3 As requested in the RFP in Section 8.1, IEN Alliance will offer an optional price reduction from June 15 through August 15th based on a 50% reduction in end user service levels for that period. IEN Alliance offers a 10% reduction on the service price for the specific Internet Access service taking advantage of this option.

  As IEN Alliance will be required to maintain the same infrastructure and circuits during this time period as the rest of the year, only a minimal discount is available for reducing the service. Neither IEN Alliance nor any other vendor has the ability to avoid any significant cost during the reduction period.

  Price reduction may also be obtained by using the burstable option above.
- Note 4 The incremental T-1 target price is also available for sites wishing to add a second circuit for redundancy.

	Schedule D: Value-adde	d Services for	IEN Users (I	RFP Section	10.4)	an kalan ilan katalan kana	
- 114.4	Description		Monthly	E-Rate	Estimated		
17.		One-time	Recurring	Fliglible	Annual E-rate	Net Cost to	
Y	Think is a second of the second	charge (C)	Charge (C)	VelNo?	Discount	the State?	
Hem: no.	Description	Enar Se (3)	Charge (2)	1 cau 10:	Piscount	1,000,000,000,000,000,000	Charles Con
1	DNS Caching	0	0	Yes	73%	0	Note 1
2	Network Security	0	0	Yes	73%	0	Note 1
3	Application Level Monitoring	0	0	Yes	73%	0	Note 1
4	Content Filtering						
	Basic Statewide Service - one list	0		No	0%	20,000	Note 5
	Incremental Users for Statewide Service	0	80.0	No	0%	0.08	Note 5
	End Customer Customized Filtering:						
	Per Initial Rule Set	0		No	0%		
	Per Incremental Rule Set	0	100	No	0%	100	
5	IP Maintenance	<del>                                     </del>		Yes	73%		Note 1
-		1					
6	E-Mail & Archiving Services	_		·			
	E-Mail Accounts - per account	0	1.50	Yes	73%	0.41	
	E-Mail Archiving Service:						
	Archiving for Current Year	0	0.58	No	0%		per E-mail account
	Archiving Setup Fee (External Systems)	1,000	0		0%		Note 2
	Data Warehousing Per Year of Data	0		No	0%		per E-mail account
	Importing Prior Data for Archive	0		No	0%		per E-mail account
	Prior Data Warehousing Cost	0		No	0%		per E-mail account
	Pass-Thru Spam & Virus Control	0	0.42	No	0%		per E-mail account
	Spam & Virus Control Setup Fee	1,000	-	No	0%	1,000	Note 2
7	Managed Firewall Services	_					
	Centrally Hosted Firewall Services:						
	Less than 10 Sites served	0		Yes	73%		Note 2
	11 to 30 Sites served	0		Yes	73%		Note 2
	Over 30 Sites Served	0		Yes	73%		Note 2
	Local Firewall Integration and Monitoring	0	750	Yes	73%	203	Note 2
8	Traffic Prioritization Services	0	50	Yes	73%	14	per application
	Other value-added services	<del> </del>			+	<del> </del>	<del>                                     </del>



# Pricing Notes IEN Alliance

Estimated Net Cost to State is a Monthly Cost or a one-time charge as applicable.

- Note 1 DNS Caching, basic Network Security, Application Level Monitoring and IP Maintenance services are included in our base.

  Managed Internet Access service as included on Schedule A.

  For Application Level Monitoring, base service includes on demand reports produced.
- Note 2 Charges for these services are per district served.
- Note 3 Consulting services are available for technology consulting outside of IEN Alliance's Internet Access service for example LAN consulting. These services are priced on an hourly basis and can be purchased in blocks of 20 hours in advance at a discount.

  Consulting services are subject to availability of IEN Alliance personnel and advanced appointment scheduling.
- Note 4 IEN Alliance Training Services are available on a variety of topics including our voice products, value-add products and current lopics.

  Training Services are priced on a per class basis related to length of session. Training classes are typically held at the customer facility.

  These training services are optional and in addition to the training requirements of the RFP.

- Note 5 Basic Statewide service for up to 300,000 users (students, teachers, administrators, employees, library patrons).

  Service includes centrally hosted equipment, filtering list service using one statewide list and agreed upon categories as provided by State/customers. Initial Service based on a statewide K-12 population with incremental volumes available. Incremental user pricing is per user per month.

  Customized filtering lists are also available beyond base service on a per customer basis.
- Note 6 Redundant router service or upgraded router service is available at the prices listed above for low and high level routers.

  High-dense level router service requires site survey and specific quote. Routers listed are expected models; however, equivalent service routers may be substituted due to specific service requirements or available routers at the time of the service change. IEN Alliance will work with State and local customer to determine best router solution available at time of service change.

Performance and Usage Reports as requested by this RFP and described in IEN Alliance's technical response are included as part of our managed internet access service as no additional charge.

If significant incremental reporting is required by State or local participating entity, such reporting will be developed at our hourly consulting rates indicated on Schedule D. IEN Alliance will provide a detailed quote to State specifying hours required to develop such reporting and receive State approval prior to performing work.

If incremental reporting requires purchase of incremental software or hardware, IEN Alliance will provide a specific quote for such services prior to beginning any work.







# Taxes, Fees, and Surcharges

While the State is generally except from payment of taxes, identify and explain the various existing taxes, fees and surcharges that apply to offered Internet services. Provide an average overall percentage markup that may be applied to the Proposer's pricing in the preceding schedules that reflects the taxes, fees and surcharges that Users will pay.

ENA does not anticipate any mark-up on the above costs for taxes, fees and surcharges. In the event that any such fees are assessed in the future, ENA will work with the State to understand and obtain exemptions as available for all such taxes. In the event that any such taxes, fees or surcharges are levied for which the State is not exempt, ENA will pass through such charges to the State with no mark-up.

ENA's prices above do not include the 1.25% state administrative fee. To the extent this fee is required to be paid, ENA's pricing will be increased to reflect that fee.

# Volume Discounts

Identify and explain any volume discounts the Proposer is willing to offer and the basis for qualifying for them (e.g., revenue, usage, number of access points).

The IEN Alliance pricing for Phase 1 is included in Schedule A based on service to all sites listed in the RFP. The IEN Alliance pricing for additional services on Schedules B and C are based on pricing targets that we believe we can achieve based on network growth and actions of the IEN Alliance team and State to expand availability of fiber service across Idaho.

The IEN Alliance team will work with the State during the initial implementation phase to maximize use of all available fiber sources to potentially reduce the service price based on actual sites to serve. Such collaborative effort should allow the State to receive the best available price for the sites serviced.

The IEN Alliance team will commit to a full review of pricing upon completion of 250 site connections and then annually thereafter. This review is in addition to all other ongoing efforts to maximize cost-effectiveness of the network and is expected to include an opportunity to save up to 10% based on volume and network design decisions.

State of Idaho Idaho Education Network (IEN) RFP02160





Appendix 1 - ENA Voice Services

Note that all voice services are subject to availability and site assessment prior to order acceptance Note that all voice services are subject to availability and site assessment prior to order acceptance

E-Rate Eligibility is also noted below

ENA Dialtone Connect

All ENA Dialtone Connect connections (Analog & PRI) include the following: Unlimited local and domestic LD at no extra charge. Annoyance Call Trace, Blacklist/Whitelist Dialing, Call Waiting, Caller ID, Caller ID Block/Unblock, DID, Hunt Groups, MWI, and user-controlled Caller ID restriction all included at no extra charge.

All monthly costs are Priority 1 e-rate eligible. One time costs for demarc extensions are not E-Rate eligible.

Services 建造業分類 人名英格兰		One-time	Monthly.
Analog Connection	Includes one analog line equivalent and one phone number per line.  Local Number Portability (LNP) included at no extra charge. Cannot be used for FAX, modem, or alarm lines	\$0	\$50
PRI Connection	Full 23-channel PRI. 23 numbers included at no extra charge.  LNP included at no extra charge.	\$0	\$700
Direct IP Connection	IP (SIP) Trunk - minimum 100 port/channels - price per channel	\$0	\$27
CO-powered POTS line		<b>\$</b> 0	<b>\$</b> 65
Voice Mail	Per mailbox - minimum 25 mailboxes per customer	80 (1) (1) (1) (1) (1) (1) (1) (1) (1) (1)	\$5
Demarc Extensions Additional Telephone Numbers*	Extensions from ENA Demarc to PBX/Key System - hourly rate	<b>\$125</b>	NA
USF and government fees estimate** 911/E-911 Local Government fees***	Based on monthly voice service Per line/port	<b>\$0</b> <b>\$</b> 0	6% <b>\$</b> 2

\* Availability and rates for additional telephone numbers vary per LATA. Please see your ENA Account Manager for more details. Additional numbers are available with Dialtone Connect PRI and IP Trunking service. \*\*USF fees & taxes, 911 local county taxes, 411 (Directory Assisted) Calls, International & non-Continental US LD, and 900/976 calls are billed in addition to the flat monthly rate. See miscellaneous charges for per call & per minute charges not included. \*\*\*By Default, Service comes w/ International LD, 900/976 Calls disabled. International LD can be re-enabled upon

customer request: 411 Calls can be disabled upon customer request.

ENA Connect

All ENA Connect services include the following: On-line user interfaces, dial-by name and dial-by extension directory. Administrator's console, Local Number Portability (LNP) at no extra charge. 

All monthly costs are Priority 1 e-rate eligible. One time costs for are not E-Rate eligible - all related to phone equipment and configuration

	One-time	Monthly"
Line Commercial Service Services	endere de capital que el aportado de	
arear in its al	\$0	\$15
	\$0	<b>\$</b> 25
	\$0	<b>\$</b> 35
	\$0	\$45
إن خوا	\$0	\$45
	\$0	\$40
	\$0	ICB
	\$0	<b>\$</b> 65
Service of the State Service S	\$0	6%
	\$0	\$2
	\$1,500	N/A
	\$125	N/A
	\$750	N/A
and the same of the	\$1,000	N/A
THE PARTY OF THE PROPERTY OF	edges Telger, einerst des Kieffensetze	
ى ئىلى ئىشۇرۇپ ساھىدى. ئىدىدىن ئاتار	\$10	N/A
	1	N/A
	Included	14/7
		\$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$

1 Year Advanced Replacement Warranty

no aliametize i tilo allamen da catalogia \*USF fees & taxes, 911 local county taxes, 411 (Directory Assisted) Calls, International & non-Continental US LD, and 900/976 calls are billed in addition to the flat monthly rate. See miscellaneous charges for per call & per minute charges not included. \*\*By Default, Service comes w/ International LD, 900/976 Calls disabled. International LD can be re-enabled upon customer request. 411 Calls can be disabled upon customer request. \*\*\*Phone models and pricing subject to change

# Miscellaneous Per Use Charges -- ENA Connect & Dialtone Connect

International LD & Domestic LD	to Alaska, Hawaii,	and US territories		The second secon	Tariff rate/minute	N/A
411/Directory Information Calls	- per call	with the second			NA S	\$1
Other Call Types		•				2 100 20
1-900 Calis			*		Not Available	
Operator Assisted Dialing	* # # * * * * * * * * * * * * * * * * *	* * * * * * * * * * * * * * * * * * *	*		*Note 1	
I-800 Number	First 100 min	utes included; extra minute	s at \$0.03 per mli	vute		<b>\$1</b>
	200 (200 )	r service requires purchase	of ENA Connect	or 🚎 🛒 🖫 💮		
`	Dialtone Con	nect Services		, . v		on the commencer
Phone Services - Changes, Rep	Company down in a think who was in	nect Services	The state of the s			
Phone Services - Changes, Rep Custom Phone/Handset Configura Replacement Shipping & Handling	lacement, Returns ation Change	nect Services			\$10 \$25	N/A N/A

#### Appendix 2 Video Services



	The state of the s	E	ach
Systems & Eq			
	Roll About Systems		
	HD Roll About System		
	HD Roll About System - TANDBERG Edge 95 + Roll About Cart Bundle (see below for part list)		
SIDHDRLL	(1st Year direct Response Maintenance, training, shipping, and installation included)	\$	14,596.67
SIDBWED95	ISDN 512Kbps add on	\$	690.00
	SD Roll About System	4 4 4	
. •			
	SD Roll About System - TANDBERG 990 + Roll About Cart Bundle (see below for part list)(1st		
SIDSDRLL	Year directResponse Maintenance, training, shipping and installation included)	2	14,142,27
SIDBW990		s	690.00
	Fixed Room Systems		
	HD Fixed Room Solution		
	SD Fixed Room Solution - TANDBERG Edge 95 + Roll About Cart Bundle (see below for part list)	İ	
	(1st Year direct Response Maintenance, training, and shipping included) Does not include	1_	
SIDHDF	installation*	\$	14,844.44
SIDBWED95	ISDN 512Kbps add on SD Fixed Room Solution	\$	690.00
···			
	SD Fixed Room Solution - TANDBERG Edge 95 + Roll About Cart Bundle (see below for part list)	i	
SIDSDF	(1st Year direct Response Maintenance, training, and shipping included) Does not include installation*		14,305,04
SIDBW990		<u> </u>	690.00
SIDBAAAAO	ISDN 512Kbps add on	<b> </b>	090.00
	Desk Top Solution		
	TANDBERG MOVI Desktop Solution - 100 User Licenses	er weren	
	LIVIANDELIA MAAI Desvioù solitifali - Inn asel mesuses		
SIDMVx100	TANDBERG MOVI Desktop Solution - 100 User Licenses (maintenance & shipping included)	s	12,216.D0
OIDMAX 100	Assumptions	├*	12,210.00
	Utilizing existing PC's and web cams		
	- Annual	L	

	Utilizing the state of Idaho's existing Tandberg Management Suite and VCS	
	Solution upgradable to additional users	
	Licenses are shared by all state employees, limited to 100 users at any one time	
TRAINING	UNLIMITED TRAINING via VIDEO	NO CHARGE

# **HD Roll About System**

Tandberg Edge 95

Tandberg Natural Presenter Package

Tandberg Multi-Site Software Option - Tandberg Edge 95

Extra table top microphone (2 total in package)

LG 42" Plasma Display

Mobile cart

**DVD/VCR Combo appliance** 

Elmo TT-02S Document Camera

Cables and Misc

# **SD Roll About System**

Tandberg 990

Tandberg Natural Presenter Package

Tandberg Multi-Site Software Option - Tandberg Edge 95

Extra table top microphone (2 total in package)

LG 42" Plasma Display

Mobile cart

**DVD/VCR** Combo appliance

Elmo TT-02S Document Camera

Cables and Misc

#### **HD Fixed Room Solution**

TANDBERG Edge 95 MXP Base Model (2 Mbps IP only)
TANDBERG Edge 95 MXP Natural Presenter Package (NPP) Option
TANDBERG 990 MXP MultiSite (MS) Option (Requires NPP)

TANDBERG MXP Remote Control for Advanced Control of Sources (TRC 4)

Extron SI 3 compact surface mount speaker

Extron SPK 16 cable

Mitsubishi 3000 Lumens DLP Business Projector 1280 x 1024 SXGA Supported

Chief Mfg. UNIVERSAL CEILING MOUNT

CHIEF MANUFACTURING BLACK FIXED EXTENSION COLUMN 6"

Suspended Ceiling Kit

Five Conductor MHR - Mini High Resolution Cable

buik cable wall plate

WP Wall plate with Computer Video and PC Audio Connectors and XLR

Wall plate XLR

DVI-A Male to BNC Female Adapter

Connectors for bulk cable

Three Conductor audio cable

DVD/VCR Combo appliance

Elmo TT-02S Document Camera

DOES NOT INCLUDED INSTALLATION - Due to room variance, cost can not be computed on available information

#### **SD Fixed Room Solution**

TANDBERG 990 MXP (Maintenance Contract Required)

TANDBERG 990 MXP Natural Presenter Package (NPP) Option

TANDBERG 990 MXP MultiSite (MS) Option (Requires NPP)

TANDBERG MXP Remote Control for Advanced Control of Sources (TRC 4)

AT871R Table Microphone with 7.5m cable

Wall Mounting System for Tandberg 550, 770, 880,990

Extron 22 Watt Two Channel Mini Power Amplifier

Extron SI 3 compact surface mount speaker

Extron SPK 16 cable

Mitsubishi 3000 Lumens DLP Business Projector 1280 x 1024 SXGA Supported

Chief Mfg. UNIVERSAL CEILING MOUNT

CHIEF MANUFACTURING BLACK FIXED EXTENSION COLUMN 6"

Suspended Ceiling Kit

Five Conductor MHR - Mini High Resolution Cable

bulk cable wall plate

WP Wall plate with Computer Video and PC Audio Connectors and XLR

Wall plate XLR

DVI-A Male to BNC Female Adapter

Connectors for bulk cable

Three Conductor audio cable

DVD/VCR Combo appliance

Elmo TT-02S Document Camera

DOES NOT INCLUDED INSTALLATION - Due to room variance, cost can not be computed on available information

#### **Pricing Notes**

See also Schedule A for additional information and pricing

Fixed Room solution installation is available based on site survey and specific quote. Fixed Room installation typically runs from \$2,000 to \$5,000 with average installation at the \$2,000 level.

State Scheduling and Bridge ongoing support available based on specific quote. Various levels of customized support are available based on the needs of the State. One time consulting service is also available if needed related to this equipment.

Annual direct Response maintenance and help desk support is available for the Roll About and Fixed Room solutions at the rates listed on Schedule A.

Year 1 - \$50 per served site per month

Year 2 - \$125 per served site per month

These rates are subject to the same restrictions as listed on Schedule A and may require adjustment if limited volume is purchased

Annual direct Response maintenance and help desk support is available for the Movi Desktop solution at the following rates

Year 1 - \$50 per user per month

Year 2 - \$175 per user per month

These rates are subject to the same restrictions as listed on Schedule A and may require adjustment if limited volume is purchased

See attached sample terms and conditions for video conferencing maintenance services.

#### 1. Term and Termination

- (a) The term shall be for 12 months beginning on {Date} and ending on {Date} 05/31/09 ("Initial Term"). Upon Customer's {Customer Name} written agreement, the term may be renewed for an additional 12 months ("Renewal Term"). For renewal terms, unless otherwise agreed to by the parties, Customer shall pay OneVision Solutions maintenance charges in accordance with the schedule of rates that OneVision Solutions, will furnish to Customer not less than sixty (60) days, prior to the expiration of the then current term.
- (b) Either party may terminate this Agreement if the other Party is in default of any material terms of this Agreement and it is not cured within thirty (30) days from the date or receipt of such written notice.

#### 2. Maintenance Obligations

- (a) Maintenance Services shall include the provision of parts and labor required to keep the Equipment in good operating condition. The Equipment covered under this Maintenance and Services Agreement and associated fees are set forth on Exhibit B. OneVision Solutions shall, at its option, either repair or replace any part or component that fails as a result of the normal usage of such Equipment.
- (b) OneVision Solutions maintenance response and repair obligations for Direct Response Remote and optional (additional cost) Direct Response On-Site are listed on Exhibit A.
- (c) Upon receipt of RMA'd equipment, the customer has 5 business days to return the existing equipment to the RMA depot from which the replacement was originated, utilizing the packaging and return bill provided with the replacement system. If equipment is not returned within 5 day period, an invoice for the MSRP value of that item will be generated and delivered to the accounts contact. Any exchanged/replaced items become the property of {Customer Name} once installed and tested as a resolution of the problem.
- (d) OneVision Solutions shall furnish the personnel, labor and/or supervision; technical, professional, and other items required to perform the services or work described in this Agreement and to return the equipment to good working condition, or replace under the terms of this agreement
- (e) One Vision Solutions shall, at its expense, promptly and satisfactorily correct any services or work performed by One Vision Solutions found to be defective or not in compliance with this Agreement. One Vision Solutions is not liable for repair costs due to negligence or abuse on the part of the Customer.
- (f) Maintenance Services include software updates for all Equipment still supported by the original equipment manufacturer (OEM) during the term of this Agreement.

#### 3. Maintenance Fees

(a) The fees for maintenance services are set forth on Exhibit B to this Agreement. Fees consist of the following: (i) an annual maintenance fee which shall cover all maintenance services as set forth in this Maintenance and Services Agreement; and (ii) OneVision Solutions's hourly rates for all maintenance services not covered under this Agreement. OneVision shall not perform any maintenance services that are not included in the annual maintenance fee without Customer's prior written authorization.

In addition to the Maintenance and Services Agreement fees, Customer shall pay any applicable sales, use, transfer or excess tax, tariff or duty imposed with respect to the subject of this Agreement, except for taxes based upon the income of OneVision Solutions

OneVision Service Agreement (Rev 6-2-08).doc

Page 1 of 8

- (b) OneVision shall invoice Customer for annual maintenance services at the bill-to address set forth in paragraph 3(c) below. Payment terms for all invoices are "Net 30" days from receipt of invoice. Payment for hourly based services which have been pre-authorized by Customer is "Net 30" days upon receipt of invoice. Any undisputed amount past due for more than forty five (45) days shall bear interest at the rate of 10% simple per annum from the due date. OneVision Solutions may withhold maintenance services or may terminate this Agreement if Customer's account is delinquent for more than forty five (45) days. In the event of an invoice dispute, Customer shall pay the undisputed part of the invoice and the parties shall work in good faith to resolve the amount in dispute within 30 days.
- (c) Bill to Address and Primary Account Contact

{Customer Name} {Address} {City, State, Zip} ATTN: {Acounts Payable Contact}

# 4. Customer's Obligations

- (a) Customer shall direct all requests for Maintenance Services to the phone number designated in writing by OneVision Solutions and shall provide adequate working space including heat, light, ventilation, electric current, and telephone and power outlets for the use of OneVision Solutions personnel.
- (b) Customer's personnel shall perform business reasonable basic Equipment maintenance and shall not, unless agreed to by OneVision Solutions in writing, attempt to make repairs to Equipment. OneVision Solutions shall not be responsible for any problems caused by maintenance performed by other than OneVision Solutions personnel, and its authorized agents.
- (c) The Equipment shall be under Customer's exclusive management and control. Customer shall be responsible for ensuring that the Equipment is connected to a network and is operational, and that the Equipment is operated only by competent personnel of the Customer, or in the direct employ of OneVision Solutions or its agents, in accordance with the instructions issued by the manufacturer and with all applicable governmental rules and regulations.
- (d) Customer shall provide connectivity and a customer representative to assist OneVision Solutions in performing remote diagnostics to the equipment.

OneVision Service Agreement (Rev 6-2-08).doc

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#### 5. Exclusions

- (a) Specifically excluded from OneVision Solutions' obligations to perform Maintenance Services under this Agreement are the following: (i) the maintenance, service, or replacement of equipment not listed in the Maintenance Equipment Agreement or approved by OneVision Solutions pursuant to Section 1; (ii) painting or refinishing the Equipment; (iii) electrical work external to the Equipment; and (iv) installation, maintenance, service, replacement or removal of alterations, attachments or other devices not furnished or approved in writing by OneVision Solutions
- (b) Maintenance Services necessitated by any of the following causes shall be performed by OneVision Solutions at its hourly rates plus parts and materials; i) failure by Customer to continually provide a suitable environment as directed in the manufacturers' maintenance specifications; (ii) neglect or misuse of the Equipment; (iii) damage to the Equipment resulting from acts beyond OneVision Solutions reasonable control, such as fire, transportation, burglary or malfunctions caused by the telecommunications network; (iv) alterations to the Equipment, including any interconnect and devices not specifically allowed and as outlined in manufacturers' published owners guide; (v) repair of Equipment other than OneVision Solutions or a party approved in writing by OneVision Solutions

#### 6. No Warranties

THE PARTIES HERETO AGREE AND ACKNOWLEDGE THAT THIS IS A SERVICE AGREEMENT. EXCEPT AS SET FORTH IN SECTION I ABOVE, ONEVISION SOLUTIONS MAKES NO PREREPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED. WITH RESPECT TO THE MAINTENANCE SERVICES OR SPARE PARTS TO BE PROVIDED UNDER THIS AGREEMENT, ONEVISION SOLUTIONS EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

# 7. Limitation of Liability

EXCEPT FOR ONE VISION'S INDEMNIFICATION OBLIGATION SET FORTH BELOW, IN NO EVENT SHALL EITHER PARTY. OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE FOR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE OR LOST BUSINESS, REVENUE, OR

GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT, THE MAINTENANCE SERVICES OR OTHER SERVICES PROVIDED UNDER THIS AGREEMENT, THE EQUIPMENT AND/OR THE INTENDED USE THEREOF,

UNDER ANY THEORY OR TORT, CONTRACT, STRICT LIABILITY OR

NEGLIGENCE, EVEN IF A PARTY AND/OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBCONTRACTORS HAVE BEEN

ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBLITY OF SUCH DAMAGES. IN NO EVENT SHALL ANY DAMAGES WHICH MAY BE

ASSESSED UPON EITHER PARTY FOR ANY REASON EXCEED THE MAINTENANCE CHARGES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE PRECEDING TWELVE MONTH PERIOD.

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#### 8. Indemnification

OneVision Solutions shall indemnify, defend and hold Customer harmless from any and all claims, demands, suits, losses, costs, and damages of every kind and description, including attorneys' fees, brought or made against or incurred by OneVision Solutions resulting from, arising out of, or in any way connected with any act, error, omission, fault, or negligence of OneVision Solutions it's employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives in the performance or nonperformance of OneVision Solutions' obligations under this Agreement or in any way related to this Agreement. Without limiting the generality of the foregoing, OneVision Solutions assumes potential liability for actions brought by OneVision Solutions' employees or other support.

#### 9. Force Majeure

OneVision Solutions shall not be liable for damages for any delay which is substantially the result of any act or cause beyond OneVision Solutions' control, including, without limitation, utility or communication failures or delays, labor disturbances (including strikes, lockouts, slowdowns, picketing or boycotts), acts of terror, acts of God, acts of war, fire, storm, explosions, or governmental action. No delay in OneVision Solutions' performance shall excuse the payment by Customer of any monies then due and payable.

#### 10. Insurance

One Vision agrees to carry the following minimum insurance:

- Comprehensive General Liability, including coverage for advertising liability with limits not less that \$1,000,000 /\$1,000,000 bodily injury and \$1,000,000 property damage or \$1,000,000 combined single limit:
- b. Umbrella Liability, with limits not less than \$1,000,000 each occurrence.
- c. Auto Liability, at least \$500,000 for each accident;
- d. Workers' Compensation with not less than Statutory limits and Employers Liability with not less than \$1,000,000 limits.

#### 11. Press Release/Advertisement

Neither Party shall issue a news release, public announcement, advertisement or any other form of publicity concerning its efforts in connection with this Agreement without obtaining the prior written approval of the other Party.

#### 12. Confidentiality

"Confidential information" includes all information identified by the disclosing party as proprietary or confidential and all such Confidential Information shall not be disclosed to any third party without the express written consent of the disclosing Party. Information will not be deemed confidential or proprietary if (1) available to the public without breach any agreement, (2) received from a third party without breach of any obligation of confidentiality, (3) independently developed by one Party without access to Confidential Information and as proven by its written record, (4) disclosed or used with the prior written approval of the disclosing Party, (5) disclosed by the receiving Party in response to a legal mandate by order of a court or administrative body, after the receiving Party promptly notified the disclosing Party and provides reasonable opportunity to oppose such order. Definition of Customer Confidential Information - "All information conveyed by Customer, either written or oral, shall be deemed as Confidential Information of the Customer."

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#### 13. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given on receipt by the parties at their respective addresses set forth below:

{Customer Name} {Address} {City, ST, ZIP} Attn: {Contact}

DirectPacket Research Inc. dba OneVision Solutions 4545 Fuller Drive Suite 326 Irving, TX 75038 Attn: E.M. Riley, III Co-Principle

#### 14. General

- (a) Any term of this Agreement may be waived in writing by the party entitled to the benefits thereof. No waiver of any condition or breach shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of the right or remedy.
- (b) Any provision of this Agreement which shall be determined by a court of competent jurisdiction to be invalid or unenforceable shall be severed from this Agreement without invalidating the remaining provisions thereof.
- (c) This Agreement represents the entire agreement between the parties with respect to the maintenance of the Equipment and supersedes any prior agreement between the parties. Any modifications of this Agreement shall be in writing and signed by the parties.
- (d) Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Texas. The courts of the State of Texas located in the County of shall have exclusive jurisdiction of any legal proceeding regarding this Agreement, and the parties expressly submit to the jurisdiction of said courts. The parties acknowledge that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from application to this Agreement.

\*\*\*\*\*\* SEE NEXT PAGE FOR AGREEMENT EXECUTION SIGNATURE BLOCK \*\*\*\*\*\*\*

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IN WITNESS HEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative on the date(s) shown below, to be effective as stated herein.

directPacket Research Inc. ba OneVision Solutions	("Customer")	
ignature:	Signature:	<del></del>
rinted Name:	Printed Name:	
itle:	Title:	<del></del>
ate:	Date:	<u> </u>

# Exhibit A

Direct Response Remote Response and Optional Direct Response On-Site



# directResponse Services

Direct Response Services provides the Customer with a high level of support for your videoconferencing investment. The OneVision Solutions philosophy underscores our commitment to consistently anticipate and meet your videoconferencing needs, work to make your experience rewarding, and provide reliable service and training.

# directResponse Maintenance

Direct Response Services provides you with essential service elements throughout a product's lifetime to support and enhance your real communication experience.TM

Direct Response Services demonstrates OneVision Solutions commitment to quality, simplicity, and value enabling you to:

- Obtain software upgrades providing you with access to new product features and enhancements.
- Free user training on the products under maintenance.
- Extend the support and enhance the operation of your equipment.

Support Features	Direct Response Services
Software updates: directResponse coverage entitles Customer to all software updates made available by product manufacturers to maintain and enhance the user experience for all purchased functionality components	
For the purposes of this Agreement, "Software Updates" is defined as including version releases (example: version 4.x to 5.x), dot releases (example: 4.1 to 4.2) and bug fixes (example: 4.2.1 to 4.2.2) for all purchased functionality components	X
FREE USER TRAINING	x
Help Desk Support	X
Primary system units, parts and accessories replacement	X

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#### Components in Detail

#### Software updates

A practical notification service, providing customers with:

· Tools for easier, faster software upgrade.

#### Free Training

Get the maximum benefit from your videoconferencing system.

- · Remote User training via video
- Remote Base Level Administrator Training via video

(Additional In-Depth Training available via seminars and/or certification courses via most Manufacturers)

#### Help Desk

OneVision Solutions' help desk provides technical assistance. Telephone response times are 1 Hour call back If <u>not</u> answered immediately during OneVision Solutions Business Hours (7:00AM-7:00PM CST).

After Business hours and on weekends, OneVision Solutions will notify an on-call technician, with 3 Hour call back commitment response time.

#### **Replacement Parts**

Should you ever need replacement parts, these will be dispatched to you on the same day as an order is received for next business day delivery.\*\*\*

\*\*\* Shipped same day, up to 3:30pm EST for Equipment. All replacement Equipment is shipped via next day delivery service. OneVision Solutions strives to deliver replacement Equipment within the referenced time periods indicated above but this service level commitment is sometime impacted because of situations beyond our control and manufacturer product/part availability.

#### **Network Assistance**

OneVision Solutions maintains tremendous experience in identifying and isolating network issues with regards to ISDN and IP video conferencing. OneVision Solutions Service Agreement cover up to the identification aspect of network challenges and provides information and direction to how Customer may isolate the problem carrier to which they should contact for resolution or opening of a Trouble Ticket. It is the responsibility of the customer to monitor progress made by the associated Network Carrier.

#### Optional Service

# directResponse Services Onsite

#### **Onsite Service**

If needed and after preliminary troubleshooting a technician may be dispatched to customer location for advanced troubleshooting which may include onsite diagnostic support, onsite part replacement, and resolution testing.

Without a valid Onsite Service Contract, onsite services are provided to Customer at a rate of \$175.00 per hour with a three (3) hour minimum plus travel and expenses. Prior to any onsite service taking place or being scheduled, OneVision Solutions must obtain written authorization from Customer for services to be performed.

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# **EXHIBIT 5A**

1	IN THE DISTRICT COURT OF	THE FOURTH JUDICIAL	
2	DISTRICT OF THE ST	ATE OF IDAHO,	
3	IN AND FOR THE C	OUNTY OF ADA	
4			
5	SYRINGA NETWORKS, LLC, an	)	
6	Idaho limited liability	)	
7	company,	)	
8	Plaintiff,	)	
9	VS.	) Case No.	
10	IDAHO DEPARTMENT OF	) OC 0923757	
1 1	ADMINISTRATION, et al.,	)	
12	Defendants.	) VOLUME I	
13		) (Pages 1-234)	
14			
15			
16	RULE 30(B)(6) DEPOSITION OF	SYRINGA NETWORKS, LLC	
17	TESTIMONY OF GREG LOWE		
18	AUGUST 5, 2010		
19			
20	REPORTED BY:		
21	JEFF LaMAR, C.S.R. No. 640		
2.2	Notary Public		
23			
24			
25			

- the Department of Administration to
- 2 inappropriately split the proposal submitted by
- 3 the 1EN Alliance?
- 4 A. Well, I don't know -- I'm sorry. Your
- 5 question is asking me in what way. I can only
- 6 infer, due to the result, with any lack of
- 7 supporting evidence that they must have influenced
- 8 it.
- 9 Q. In what way?
- 10 A. There was no rationale in the scoring,
- 11 no rationale in the price that would warrant a
- 12 dual award.
- 13 Q. And the scoring was done by the
- 14 Department of Administration?
- 15 A. They had six independent evaluators
- 16 that I believe reported up through the Department
- 17 of Administration.
- Q. And the award as well was made by the
- 19 Department of Administration?
- 20 A. As I understand it, correct.
- Q. And do you have any understanding of
- 22 what Qwest's role in either the scoring or the
- 23 awarding was?
- 24 A. I do not.
- 25 Q. Do you have any knowledge as to

- 1 whether Qwest, for example, bribed anyone?
- 2 A. Ch, no.
- 3 Q. Do you have any facts that would
- 4 indicate that Qwest bribed anyone?
- 5 A. No.
- 6 Q. Do you have any facts that would
- 7 indicate that the Department of Administration,
- 8 anyone there accepted any bribes?
- 9 A. I do not.
- 10 Q. Do you have any information that would
- 11 indicate that Qwest threatened anyone at the
- 12 Department of Administration in order to induce
- them to award it the contract?
- 14 A. I de not.
- 15 Q. To you have any facts whatsoever what
- 16 would support such an inference?
- 17 MR. LCMBARDI: What interence?
- THE WITNESS: Which inference?
- 19 Q. (BY MR. PERFREMENT): That Qwest
- 20 threatened anyone at the Department of
- 21 Administration to award it the contract.
- A. No. "Threat's" a strong word.
- Q. Anything at all?
- 24 A. Only the outcome.
- 25 Q. So all you have is the outcome, and

- 1 Q. (BY MR. PERFREMENT): Why?
- 2 A. Because they had a much higher price.
- 3 Q. Anything else?
- 4 A. They had the lowest score.
- 5 O. Is there any other reason it would be
- 6 inappropriate, in your view, for Qwest to seek to
- 7 be the section 471 carrier?
- 8 MR. LCMBARDI: Object to the form.
- 9 THE WITNESS: Not legally, that I'm aware
- 10 of.
- 11 Q. (BY MR. PERFREMENT): Are you aware of
- 12 any influence that Qwest wielded with the DOA in
- order to induce it to make Qwest the section 471
- 14 carrier?
- 15 A. You mean besides the multiple meetings
- 16 where they met and discussed?
- 17 O. Correct.
- 18 A. Not direct. Only inferred.
- 19 Q. What occurred at those multiple
- 20 meetings?
- A. Again, I wasn't present. And we can
- 22 only infer from the outcome.
- Q. Do you know what Qwest said at those
- 24 meetings?
- 25 A. Only what's in the book that I have

1 previously? Ο. Yes. 3 No, not to my memory. Α. 4 Thank you. That's all I'm trying to Q. 5 do is nail it down there. T know. 6 Α. 7 0. So let's talk about the July 16th, 8 2010 meeting. 9 Okay. Α. 10 Who was in attendance? Ο. 11 A. So if memory is serving me, it was 12 Mike Gwartney, Greg Zickau, Teresa Luna, Melissa Vandenberg, Ken McClure, and myself. 13 14 Q. And who is Melissa Vandenberg? 15 A. I believe she's the assistant AG that works in DOA. 16 17 0. Close enough. 18 Α. Close enough. 19 0. She's employed by the State? 20 Yes. Α. 21 And Mr. McClure is your lobbyist? 0. 22 A. Correct. Now, that was the in-person

attendees. On the phone we had Bob Collie and

Gayle Nelson from Education Networks of America.

Okay. Let me just make sure I have

23

24

25

0.

- 1 the full roster here.
- Live we have Mr. Gwartney, Mr. Zickau,
- 3 Ms. Luna, Ms. Vandenberg, Mr. McClure, and
- 4 yourself?
- 5 A. I believe that's correct.
- 6 Q. On the telephone we had Mr. Collie
- 7 and --
- 8 A. Gayle Nelson.
- 9 Q. Gayle, is that a --
- 10 A. G-a-y-l-e.
- 11 Q. The reporter was going to ask you
- 12 anyway, so we might as well get that down.
- 13 A. That's fine.
- 14 Q. Mr. Collie is with ENA?
- 15 A. Correct.
- 16 Q. Is it Ms. Nelson?
- 17 A. I don't know if it's Ms. or Mrs.
- Q. Gayle Nelson is with ENA as well?
- 19 A. Yes.
- 20 Q. Okay. During this July 16, 2010
- 21 meeting, was anyone representing Qwest in
- 22 attendance?
- 23 A. No.
- Q. Who called the meeting?
- 25 A. Mike Gwartney invited Ken and myself

- 1 Q. Where was the meeting held?
- 2 A. I believe it was in Mike Gwartney's
- 3 office.
- 4 Q. And how long did it last?
- 5 A. I don't recall.
- 6 Q. I may have asked this question -- I
- 7 apologize if 1 did -- but was anyone representing
- 8 Qwest in attendance during any portion of the
- 9 meeting, whether in person or on the phone?
- 10 A. They were not.
- 11 Q. Okay. Tell me what happened at the
- 12 meeting.
- 13 A. In the meeting Mike allowed us to
- 14 speak and discuss and try to get answers why,
- 15 again, we were not participating in the project.
- 16 There was some --
- 17 Q. What did you say?
- 18 A. Oh, I don't remember everything
- 19 exactly I said. But the basic thing that I
- 20 continue to say here today, "We had the best
- 21 scoring, we had the lowest cost, how is it we have
- 22 none of the business"?
- 23 Q. Okay. And what was the response?
- A. Well, Greg Zickau stated that we, in
- 25 fact, did not have the lowest cost, which I found

- very odd. And Greg -- I can't remember the exact
- 2 numbers, but he said that there was a subsequent
- 3 bid where Qwest had come in at something like
- 4 469,000 a month and we were 475,000 a month.
- 5 First I'd ever heard of it. And which I was very
- 6 surprised at.
- 7 Mike said he was unaware of the
- 8 scoring, unaware of the price advantage that we
- 9 had in the RFP response. There was a lot of
- 10 conversation back and forth.
- But in the end, Nike asked, "Well,
- 12 what do you want besides the whole contract?
- 13 because you're not going to get that."
- 14 And I said, "Well, I thought we
- 15 deserved the whole contract based upon the merits
- 16 of the process. But, you know, we'd be happy to
- allow ENA to, if you will, hold a bid, a
- 18 competition for every school, site by site, where
- 19 Qwest could participate and we could participate,
- 20 and the lowest bid got it."
- 21 O. Was that acceptable to you?
- 22 A. Was that acceptable to me at the time?
- 23 0. Yes, sir.
- A. You bet.
- Q. Did you accept that?

- A. It wasn't offered. That's what --
- 2 Mike asked me what I wanted.
- 3 Q. Oh, I got it.
- 4 A. I said I would do that. That's when
- 5 Mike said "It wouldn't be fair." And I think
- 6 that's in his letter as well.
- 7 O. Okay. So he asked you what you
- 8 wanted?
- 9 A. Yes. Except for the whole contract,
- 10 which he wouldn't give me.
- 11 Q. Understood. And your alternative was
- 12 a site by site bidding contest?
- 13 A. Yeah. In lieu of not getting what we
- 14 thought we earned, trying to find a compromise.
- 15 Q. And Mr. Gwartney's response was that
- 16 that wouldn't be fair?
- 17 A. Yeah. I think that was his response.
- 18 Q. Okay. I'm going to just try and break
- 19 it down as much as possible.
- 20 A. Sure.
- Q. You talked about Mr. Gwartney and
- 22 Mr. Zickau.
- 23 Did Ms. Luna contribute anything to
- 24 the conversation?
- A. You know, and Teresa Luna is the

- under this project under the Teaming Agreement?
- 2 A. Syringa Networks was to provide all of
- 3 the connectivity and management of that
- 4 connectivity.
- 5 Q. Would Syringa be a subcontractor to
- 6 ENA?
- 7 A. It would have been a partner with ENA
- 8 for the Teaming Agreement.
- 9 Q. Well, it says at the end of the next
- 10 paragraph, 2(b), "The parties are and will be
- 11 independent contractors" --
- 12 A. Correct.
- 13 Q. -- "with respect to this agreement and
- 14 the project."
- Do you see that?
- 16 A. Right.
- 17 Q. Okay. So they wouldn't have been
- 18 partners?
- 19 MR. LOMBARDI: Objection to the form and
- 20 asks for a legal conclusion.
- 21 THE WITNESS: There was no legal entity
- formed between the two companies for the purpose
- 23 of responding.
- Q. (BY MR. PERFREMENT): Okay. Would
- 25 Syringa, then, have been a subcontractor to ENA

- bandwidth, the, you know, service availability
- 2 terms, things like that.
- 3 A. There was a list of schools with a
- 4 list of stated bandwidth and delivery methods that
- 5 was part. That's how we quoted it.
- 6 Q. Gkay. And you'll note in section 2(a)
- 7 it says "If ENA or Syringa are awarded the Prime
- 8 Contract, ENA and Svringa shall enter into an
- 9 agreement pursuant to which Syringa shall provide
- 10 connectivity services statewide to ENA."
- 11 Do you see that?
- 12 A. I do.
- 13 Q. Subsequent to ENA being awarded a
- 14 contract, did ENA and Syringa enter into an
- 15 agreement pursuant to which Syringa shall provide
- 16 connectivity services statewide to ENA?
- 17 A. Well, this agreement specifically
- 18 states how the workflow would happen. What this
- 19 agreement does not state is how the money flow
- 20 would happen.
- 21 O. Explain.
- 22 A. The logistics of how orders would be
- 23 placed, the logistics of how billing would occur,
- 24 when billing would occur, how you would get paid.
- 25 The subsequent agreement was for the logistics of

- what this Teaming Agreement defined as a work --
- you know, as a work body should the IEN Alliance
- 3 win.
- 4 Q. So if you turn to paragraph 3 --
- 5 A. Uh-huh.
- 6 Q. -- it talks about ENA and Syringa
- 7 responsibilities.
- 8 Is that the workflow you were
- 9 discussing?
- 10 A. Yes, division of labor.
- 11 Q. Division of labor. And if I
- 12 understand your testimony correctly, there is not
- within this Teaming Agreement a division of money?
- 14 A. There is not the logistics of how all
- of that would work.
- 16 Q. And at the time you entered into this
- 17 Teaming Agreement, how did you expect that to be
- 18 worked out?
- 19 A. In subsequent negotiations upon
- 20 winning. We knew what things cost. We didn't
- 21 know the way the money would flow.
- 22 Q. Did you at any time enter into a
- 23 second contract with ENA delineating how the money
- 24 would flow?
- A. We did not.

- 1 Q. Ckay. Did you at any time enter into
- 2 a subsequent contract with ENA regarding the
- 3 logistics of order entry, billing, and whatnot?
- 4 A. We did not.
- 5 Q. Okay. Those terms remained
- 6 unresolved?
- 7 A. Correct.
- 8 Q. If you'll look at section 1 on the
- 9 first page of Exhibit 6, it talks about
- 10 confidential information?
- 11 A. Correct.
- 12 Q. And the second sentence says,
- 13 "Confidential Information includes the Proposal
- 14 and the terms of this agreement."
- Do you see that?
- 16  $\Lambda_{\star}$  I do.
- 17 Q. Are you aware of any violation by ENA
- of this confidentiality provision with respect to
- 19 the terms of this agreement?
- 20 A. I am not.
- Q. Did Syringa at any time violate
- section 1's -- actually, are you aware of any
- 23 violation of this provision with respect to
- 24 Syringa?
- A. I don't know exactly how to answer

# **EXHIBIT 5B**

1	IN THE DISTRICT COURT OF	THE FOURTH JUDICIAL
2	DISTRICT OF THE STA	TE OF IDAHO,
3	IN AND FOR THE CO	UNTY OF ADA
4		
5	SYRINGA NETWORKS, LLC, an	)
6	Idaho limited liability	)
7	company,	)
8	Plaintiff,	)
9	vs.	) Case No.
10	IDAHO DEPARTMENT OF	) OC 0923757
<u> </u>	ADMINISTRATION, et al.,	)
12	Defendants.	) VOLUME II
13		) (Pages 235-307)
1.4		
15		
16	RULE 30(B)(6) DEPOSITION OF S	SYRINGA NETWORKS, LLC
17	TESTIMONY OF G	REG LOWE
18	AUGUST 6, 2	2010
19		
20	REPORTED BY:	
21	JEFF LaMAR, C.S.R. No. 640	
22	Notary Public	
23		
24		
25		

- 1 relationship with Syringa related to TEN?
- 2 A. Not at this time.
- 3 Q. If you'll turn to the next page,
- 4 page 71, the second full paragraph begins "After."
- 5 Do you see that?
- 6 A. I see it.
- 7 O. "After the initial award,
- 3 Administration then unilaterally determined how
- 9 best to divide the work between the two
- 10 awardees/contractors."
- 11 Do you see that?
- 12 A. I do.
- 13 O. To you know whether that's a true
- 14 statement, that the Administration unilaterally
- determined how to best divide the work between the
- 16 two awardees slash contractors?
- 17 MR. LCMBARDI: Object to the form.
- 18 THE WITNESS: I don't know if it's a true
- 19 statement.
- Q. (BY MR. PERFREMENT): Don't know one
- 21 way or the other?
- 22 A. Don't know one way or the other.
- 23 Q. If you'll look at the next sentence,
- 24 it states, "Administration's determination was
- 25 based on the individual strengths of each

1 awardees/contractors' proposals." 2 Do you have any direct knowledge as to 3 whether that is a true statement?  $\Lambda$  . I do not. 4 5 The next sentence, "For example, ENA Ο. 6 had expertise in providing E-Rate services and 7 providing video teleconferencing operations." 8 Do you have any direct knowledge as to 9 whether that is a true statement? 10 The only conclusion I can draw is from 11 the independent analysis I did of the scoring, 12 which would tend to support that statement. 13 Q. And the next statement, "Qwest had expertise in providing the technical operations, 14 15 and then parentheses (i.e., the backbone)." Do you have any independent knowledge 16 17 as to whether that's a true statement? 18 A. I do not. 19 The next sentence, before Amendment 1 Ο. 2.0 to SBPO 01308 and SBPO 01309 were issued, administration contemplated various ways to divide 21 22 the responsibilities between Owest and ENA, including but not limited to dividing the services 23 24 to be provided by Qwest and ENA regionally."

Do you have any independent knowledge

25

1 Q. (BY MR. PERFREMENT): And do you know 2 whether Qwest in any way influenced the Administration to conclude that the division of 3 4 responsibilities reflected in the Amendment 1s 5) best serve the State of Idaho and the schools? MR. LOMBARDI: Object to the form. 6 7 THE WITNESS: I do not. (BY MR. PERFREMENT): The next 8 Q. 9 paragraph -- and I'll take you to the last half of 10 it. And it begins "ENA confirmed." 1.1 A. [ see it. 12 It says, "ENA confirmed that it had 0. 1.3 not been consulted about the division of responsibilities until it received a draft of 14 15 Amendment 1 in February." 16 Do you know whether that is a true 17 statement or not? I do not. 18 Α. 19 The next sentence says, "ENA also 20 confirmed that it had not provided a copy of or 21 the information in the Teaming Agreement to the 22 State prior to the Deputy Attorney General's request for the same on July 17th, 2009." 23 Do you know whether that is a true 24 25 statement or not?

#### TEAMING AGREEMENT

This teaming agreement is dated January 7, 2009 between Education Networks of America, Inc., a Delaware corporation and its wholly-owned subsidiary ENA Services, LLC, a Delaware limited liability corporation (collectively "ENA"), and Syrings Networks, LLC, an Idaho limited liability company ("Syrings").

#### 1. Definitions

- (a) Confidential Information. "Confidential Information" means any information that is not generally available to the public, whether of a technical, business, or other nature and that the receiving party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing party. Confidential Information includes the Proposal and the terms of this agreement. Confidential Information does not include information that is in the public domain through no breach of this Agreement by the receiving party or that is already known or is independently developed by the receiving party.
- (b) Prime Contract. "Prime Contract" means the resultant contract(s) between ENA and/or Syringa with the State of Idaho regarding the Project.
- (c) Project. "Project" means that certain request for proposal, request for quotation, invitation for bid, or similar invitation for (i) the provision of products or services in connection with the State of Idaho Request for Proposal #RFP02160 to construct the Idaho Education Network ("IEN") and (ii) services provided under the Prime Contract.
  - (d) Proposal. "Proposal" means the written response to the Project.
- (e) Syringa Members. "Syringa Members" refers to the companies that are members and owners of Syringa Networks, LLC upon execution of this Agreement.

#### 2. Teaming

- (a) Purpose. ENA is seeking to become either (i) the prime contractor for the Project or (ii) the prime contractor for the portion of the Project which provides all services to schools and libraries. If ENA or Syringa are awarded the Prime Contract, ENA and Syringa shall enter into an agreement pursuant to which Syringa shall provide connectivity services statewide to ENA. The purpose of this agreement is to define the parties' respective rights and obligations in connection with the Proposal, the Project, and the Prime Contract.
- (b) Relationship. The parties agree that, as between the parties, ENA will be the prime contractor for either (i) the Project or (ii) the prime contractor for the portion of the Project wich provides all services to schools and libraries, and, if ENA wins the Prime Contract, Syringa will provide connectivity services in connection with the Project. The parties are and will be independent contractors with respect to this agreement and the Project.
- (c) Proposal. ENA shall assume the lead role in preparing the Proposal. Syringa shall provide such input, review and information into the Proposal as is required to complete all requirements of the Request for Proposal.
- (d) Communications. As between the parties, ENA will assume the lead role for external communications regarding the Project and the Proposal, unless mutually agreed to by both parties. Syringa shall promptly notify ENA and obtain ENA's authorization prior to any response by Syringa in the event the customer or any employee or officer of the executive or legislative branch of the State of Idaho contacts Syringa or vice-versa concerning the Proposal.
- (e) Joint Participation. Neither party shall participate in efforts related to submitting a Proposal, whether by itself as a prime contractor or with another party, independently of the other party without the other party's prior written consent. Nothing in this agreement however, is intended to preclude either party from fulfilling its existing obligations, or from independently submitting proposals or performing work, unrelated to the Project.

-1-

Exh. N	, •,
Date	8/5/10
Name	Lowe
м &	M Court Reporting

EXHIBIT 2

a

- (f) Existing and Future Customer Relationships. Nothing in this agreement is intended to preclude either party from fulfilling its existing obligations to provide service under existing contracts or service agreements with customers that may be eligible to receive service under the Project regardless if such obligations may be in conflict with Section 2(e) above. Neither party shall enter into a new contract or future arrangement with any customer that may be eligible to receive service under the Project without written approval of the other party, which shall not be unreasonably withheld should the requesting party be able to prove that such a contract or service arrangement will not be entered into in bad faith to the goals of the Project or the other party.
- (g) Confidentiality. Neither party shall disclose to any third party, or use for any purpose other than in furtherance of ENA's efforts to win the Prime Contract, any Confidential Information of the other party.
  - (h) Termination. This agreement will terminate without liability upon any of the following events:
    - (i) the customer formally and finally rejects the Proposal or cancels the Project;
    - (ii) Either party notifies the other that it is ceasing its efforts with respect to the Project, however such a notification shall not absolve either party of its obligations under Section 2(e) and 2(g) above;
    - (iii) the anniversary of this agreement in the absence of an award, extension, cancellation, or withdrawal of the Project;
    - (iv) mutual written agreement of the parties; or
    - (v) execution of the service agreement contemplated in Section 3(a) below.

#### 3. Service Agreement

- (a) Generally. If ENA wins the Prime Contract as provided in Section 2(a) above, the parties shall execute a partnership agreement as specified in this agreement that will also include any required flow-down provisions or other appropriate terms similar to those set forth in the Prime Contract.
- (b) ENA Responsibilities. If ENA wins the Project as provided in Section 2(a) above, in connection with performing the Prime Contract, ENA shall be responsible for the following functions for all participating schools and libraries: (i) procuring and owning all customer premises equipment, (ii) coordinating field service, (iii) managing the customer relationship, (iv) serving as the fiscal and contracting agent, including responsibility for involving and collections, (v) management of E-Rate funds, and (vi) procuring, managing, and provisioning last mile circuits.
- (c) Syringa Responsibilities. If ENA wins the Project as provided in Section 2(a) above, in connection with performing the Prime Contract, Syringa shall be responsible for (i) providing the statewide backbone for the services, (ii) providing and operating a network operations center for the backbone, (iii) providing for co-location of core network equipment, (iv) procuring and owning all customer premises equipment not provided by ENA, (v) coordinating field service for non-school or library sites, (vi) managing the customer relationship for non-school or library sites, and (vii) procuring, managing and provisioning last mile circuits for non-school or library sites.

In addition, Syringa and Syringa Members shall have the first opportunity and first right of refusal to provide last mile circuits delivered by ENA as part of this Project. ENA shall notify Syringa of all last mile circuits needed for the Project. Syringa and Syringa Members shall have the first opportunity to provide ENA a cost estimate, a statement of service and quality requirements of the last mile circuits proposed to be provided by Syringa or Syringa Members and a timeline for providing such last mile circuits. After reviewing the Syringa or Syringa Member proposal(s), ENA may seek proposals from other providers. ENA shall award the contract for last mile circuits to Syringa or Syringa Members unless the following conditions are met: (i) such other providers can provide such last mile circuits meeting or exceeding the quality requirements requested by ENA and (ii) such other providers can provide such last mile circuits at a better price than that proposed by Syringa or Syringa



Members; after Syringa and Syringa Members have an opportunity to match the lower price point or (iii) if the timeframe for providing such last mile circuits proposed by Syringa or Syringa Members would result in a prime contract default for inability to deliver service in a timely manner. In soliciting proposals from any other providers, ENA shall maintain the confidentiality of Syringa or Syringa Members' proposal.

- (d) Joint Responsibilities. If ENA wins the Project, in connection with performing the Prime Contract, the parties shall jointly be responsible for (i) leveraging the best price from existing carrier relationships, (ii) developing additional carrier relationship for the purposes of this project and (iii) interfacing between last mile circuits and Syringa's backbone. Additionally, if selected for the Project, the parties shall also have Project review meetings, in a location and manner to be agreed upon in advance of the meeting, to ensure successful execution and high levels of customer satisfaction; such meetings shall occur not less than once per calendar quarter.
- 4. General. The parties can amend this agreement only by a written agreement of the parties that identifies itself as an amendment to this agreement. The parties can waive this agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. Each party shall pay its own fees and expenses (including, without limitation, the fees and expenses of its agents, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution, delivery, and performance of this agreement and the transactions it contemplates. Neither party may assign any of its rights under this agreement, except with the prior written consent of the other party. All assignments of rights are prohibited under the preceding sentence, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law or any other manner. Any change of control transaction is deemed an assignment hereunder. Neither party may delegate any performance under this agreement. Any purported assignment of rights or delegation of performance in violation of this agreement is void.

ENA	Syringa
	By:



C.L. "Butch" OTTER
Governor
MIKE GWARTNEY
Director
BILL BURNS
Administrator

## State of Idaho

Department of Administration Division of Purchasing

650 W State Street, Room B15 P. O. Box 83720 Boise, ID 83720-0075 Telephone (208) 327-7465 PAX (208) 327-7320 http://adm.ideho.gow/pwohstifts

January 20, 2009

Education Networks of America, Inc./ENA Services, LLC Attn: David Pierce
1101 McGavock St.
Nashville, TN 37203

Via Facsimile (615) 312-6099 Original via USPS

RE: RFP02160, Idaho Education Network, for the State of Idaho, RFP closed January 12, 2009.

Dear Mr. Pierce:

Your proposal has been received and been evaluated based on pre-determined criteria by subject matter experts. Below is a comparison of the scores each proposal received.

Criteria	Points	Qwest	ENA	Verizon
Prior Experience	200	110	145	65
Legislative Intent	100	73	83	15
Management Capability	100	56	72	35
Financial & Risk	100	29	82	35
Subtotal	500	268	382	150
B-Rate Cost(1)	400	267	400	278
Non-E-Rate Cost(1)	100	100	74	64
TOTAL	1000	635	856	492

Cost points were determined by dividing any Non-reoccurring (one-time) charges (if any) by the length
of the contract (60 months) and adding that amortized monthly cost to the monthly reoccurring charges.

Please consider this as a Letter of Intent to award to Owest Communications Company LLC and Education Networks of America, Inc./ENA Services, LLC for being awarded the most points.

Do not take any action until you receive a Purchase Order or Contract from the Division of Purchasing and in accordance with the provisions of the RFP.

State Purchasing Manager

CC: OCIO

Exh. No. 27
Date 9/1/10
Name Gwartney
M&M Court Reporting

"Serving Idaho citizens through effective services to their governmental agencies"

Stephen R. Thomas, ISB No. 2326
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Post Office Box 829
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meredith.johnston@hro.com

ATTORNEYS FOR DEFENDANT QWEST COMMUNICATIONS COMPANY, LLC

# IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,

Plaintiff,

Case No. OC 0923757

VS.

**AFFIDAVIT OF JIM SCHMIT** 

IDAHO DEPARTMENT OF ADMINISTRATION; et al.

Defendants.

STATE OF IDAHO ) ss. COUNTY OF ADA )

I, James ("Jim") Schmit, affiant herein, state as follows under oath:

- 1. I have worked for Qwest Communications Company, LLC ("Qwest") for twenty-seven years in a variety of capacities. From 2001 to the present, I have been Idaho President for Owest.
- 2. Part of my responsibilities as Idaho President included working on Qwest's bid for and role in the Idaho Education Network ("IEN"). Among other things, the purpose of the IEN is to provide broadband access and related services, such as Internet and video services, to Idaho public schools and state libraries, as well as institutions of higher education and state agencies.
- 3. On December 15, 2008, the Idaho Division of Purchasing issued Request for Proposal RFP02160, seeking bids for work on the IEN. On December 29, 2008, representatives of Qwest attended a bidders conference hosted by the DOA, Office of the Chief Information Officer. Representatives of Syringa Networks, ENA, Verizon, and Integra, and others, also attended the bidders conference.
- 4. I worked with the team responsible for preparing Qwest's bid in response to the RFP. Three other vendors submitted proposals in response to the RFP: ENA, Verizon, and Integra.
- 5. On January 20, 2009, the Idaho Division of Purchasing issued a Letter of Intent ("LOI") to award the IEN project to Qwest and ENA.

- 6. Between December 15, 2008 (the day RFP02160 was issued) and January 20, 2009 (when the LOI was issued), no representative of Qwest initiated any communications or attempted to influence anyone associated with the Idaho state government regarding RFP02160. Qwest did communicate with the DOA at the bidders conference in December 2008, but the event was initiated by the DOA and Qwest did not attempt to influence anyone from the DOA regarding the RFP at the bidders conference. In January 2009, after Qwest submitted its proposal, the DOA contacted Qwest to request that Qwest provide a signature page that matched the one provided in the RFP package, which Qwest promptly provided. Again, the DOA initiated the communication with Qwest, and Qwest did not attempt to influence anyone at the DOA regarding the RFP.
- 7. After the five-day appeal period expired, on January 28, 2009, the DOA issued two identical Statewide Blanket Purchase Orders one each to Qwest and ENA awarding each a contract related to the IEN project.
- 8. Around the same time, the DOA also met with representatives from ENA and Qwest, including myself, to discuss how the DOA would implement the IEN project.

  Specifically, the DOA asked both ENA and Qwest to provide recommendations to be used in drafting a strategic plan for DOA regarding the IEN implementation. In response to this request, Clint Berry and I met with Teresa Luna, Laura Hill, and Greg Zickau of the DOA on February 9, 2009. At this meeting, the DOA asked us to put Qwest's concerns and recommendations for IEN implementation in writing.
- 9. Qwest then provided its written recommendation to the DOA on February 10, 2009. Qwest recommended that Qwest be the designated IEN network provider with overall responsibility for the project, with ENA providing certain training and filing assistance and

application support. Qwest also provided a proposed amendment to the RFP award to implement this division of responsibilities.

- 10. I do not know if the DOA did anything with Qwest's recommendation. Later, when we received the amendments to the purchase orders from the DOA, the DOA had designated ENA, not Qwest, as the service provider for the IEN project and allocated to ENA responsibility to coordinate overall delivery of all IEN network services and support. The amendments designated Qwest as the general contractor for all IEN technical network services. Qwest did not have an opportunity to negotiate the terms of these amendments with the DOA. They were issued unilaterally by the DOA.
- learned that after the purchase order amendments were issued, Syringa contacted the DOA seeking to have part of the IEN project awarded to Syringa. Specifically, in July 2009, Syringa's CEO, Greg Lowe, and its lobbyist, Ken McClure, met with Mike Gwartney, the Director of the DOA, and three other state employees about the IEN project. In addition, ENA representatives participated in the meeting by phone. At the time, Qwest was not informed of the details of the meeting, and no Qwest representatives attended the meeting.
- 12. After the July 2009 meeting, Mr. Gwartney sent a letter to Mr. Lowe, outlining the state's reasoning in determining how to divide the IEN project between Qwest and ENA. The letter states that the DOA unilaterally determined how best to divide the work between the two awardees. Qwest had no involvement in the drafting of the DOA letter to Syringa.
- 13. Qwest did not do anything to unduly influence the DOA to award Qwest the IEN contract. Qwest did not bribe anyone, offer anything of value to anyone, threaten anyone, intimidate anyone, disparage Syringa or anyone else, violate any known standards of trade in the

industry, or exert any political, moral, or other influence to cause the DOA to award Qwest the IEN contract or any part of it.

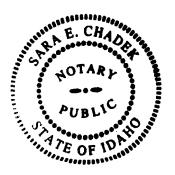
14. Moreover, Qwest has not attempted to exclude Syringa from participation in the IEN project. To the contrary, Qwest's RFP response contemplated that Syringa would have a role in the project as a subcontractor to Qwest, and Qwest has repeatedly attempted to engage Syringa as a subcontractor on the project.

Affiant says nothing further in this affidavit.

Dated: October 29, 2010.

James Schmit

SUBSCRIBED AND SWORN to before me this 27th day of October, 2010.



NOTARY PUBLIC FOR IDAHO

Residing at Bojes, Id

My Commission Expires 912811

Stephen R. Thomas, ISB No. 2326
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ATTORNEYS FOR DEFENDANT QWEST COMMUNICATIONS COMPANY, LLC

# IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,

Plaintiff,

Case No. OC 0923757

VS.

AFFIDAVIT OF CLINT BERRY

IDAHO DEPARTMENT OF ADMINISTRATION; et al.

Defendants.

STATE OF IDAHO ) ss. COUNTY OF ADA )

I, Clinton ("Clint") Berry, affiant herein, state as follows under oath:

- 1. I worked for Qwest Communications Company, LLC ("Qwest") for thirty-two years in a variety of capacities. From 2003 to 2010, I served as a Senior Manager at Qwest. In September, 2010, I decided it was time to retire, and I left Qwest for my retirement.
- 2. While I was at Qwest, part of my responsibilities included working on Qwest's bid for and role in the Idaho Education Network ("IEN"). Among other things, the purpose of the IEN is to provide broadband access and related services, such as Internet and video services, to Idaho public schools and state libraries, as well as institutions of higher education and state agencies.
- 3. On December 15, 2008, the Idaho Division of Purchasing issued Request for Proposal RFP02160, seeking bids for work on the IEN. On December 29, 2008, I and other representatives of Qwest attended a bidders conference hosted by the DOA, Office of the Chief Information Officer. Representatives of Syringa Networks, ENA, Verizon, and Integra, and others, also attended the bidders conference.
- 4. I worked with the team responsible for preparing Qwest's bid in response to the RFP. Three other vendors submitted proposals in response to the RFP: ENA, Verizon, and Integra.
- 5. On January 20, 2009, the Idaho Division of Purchasing issued a Letter of Intent ("LOI") to award the IEN project to Qwest and ENA.

- 6. Between December 15, 2008 (the day RFP02160 was issued) and January 20, 2009 (when the LOI was issued), no representative of Qwest initiated any communications or attempted to influence anyone associated with the Idaho state government regarding RFP02160. Qwest did communicate with the DOA at the bidders conference in December 2008, but the event was initiated by the DOA and Qwest did not attempt to influence anyone from the DOA regarding the RFP at the bidders conference. In January 2009, after Qwest submitted its proposal, the DOA contacted Qwest to request that Qwest provide a signature page that matched the one provided in the RFP package, which Qwest promptly provided. Again, the DOA initiated the communication with Qwest, and Qwest did not attempt to influence anyone at the DOA regarding the RFP.
- 7. Qwest also did not meet with anyone from DOA during the five-day appeal period following the LOI, other than as requested by the DOA. Qwest's sole other contact with the DOA during the appeal period was a request I sent to the State's Chief Information Officer, Greg Zickau, to discuss the IEN over coffee. I do not recall that the meeting ever took place.
- 8. After the five-day appeal period expired, on January 28, 2009, the DOA issued two identical Statewide Blanket Purchase Orders one each to Qwest and ENA awarding each a contract related to the IEN project.
- 9. Around the same time, the DOA also met with representatives from ENA and Qwest, including myself, to discuss how the DOA would implement the IEN project.

  Specifically, the DOA asked both ENA and Qwest to provide recommendations to be used in drafting a strategic plan for DOA regarding the IEN implementation. In response to this request, Jim Schmit and I met with Teresa Luna, Laura Hill, and Greg Zickau of the DOA on February 9,

- 2009. At this meeting, the DOA asked us to put Qwest's concerns and recommendations for IEN implementation in writing.
- 10. Qwest then provided its written recommendation to the DOA on February 10, 2009. Qwest recommended that Qwest be the designated IEN network provider with overall responsibility for the project, with ENA providing certain training and filing assistance and application support. Qwest also provided a proposed amendment to the RFP award to implement this division of responsibilities.
- 11. I do not know if the DOA did anything with Qwest's recommendation. Later, when we received the amendments to the purchase orders from the DOA, the DOA had designated ENA, not Qwest, as the service provider for the IEN project and allocated to ENA responsibility to coordinate overall delivery of all IEN network services and support. The amendments designated Qwest as the general contractor for all IEN technical network services. Qwest did not have an opportunity to negotiate the terms of these amendments with the DOA. They were issued unilaterally by the DOA.
- 12. Qwest did not do anything to unduly influence the DOA to award Qwest the IEN contract. Qwest did not bribe anyone, offer anything of value to anyone, threaten anyone, intimidate anyone, disparage Syringa or anyone else, violate any known standards of trade in the industry, or exert any political, moral, or other influence to cause the DOA to award Qwest the IEN contract or any part of it.
- 13. Moreover, Qwest has not attempted to exclude Syringa from participation in the IEN project. To the contrary, Qwest's RFP response contemplated that Syringa would have a

role in the project as a subcontractor to Qwest, and Qwest has repeatedly attempted to engage Syringa as a subcontractor on the project.

Affiant says nothing further in this affidavit.

Dated: October 29, 2010.

Clinton Berry

SUBSCRIBED AND SWORN to before me this 29th day of October, 2010.

NOTAA, PUBLIC OF IDARONA

NOTARY PUBLIC FOR IDAHO

Residing at Boy S
My Commission Expires

9/28/11

### 9/20/2010 Zickau, Jack G. "Greg" - Vol. I

1	IN THE DISTRICT COURT OF THE F	OURTH JUDICIAL DISTRICT
2	OF THE STATE OF IDAHO, IN AND	FOR THE COUNTY OF ADA
3		
4	SYRINGA NETWORKS, LLC, an Idaho	)
5	limited liability company,	) Case No. CV OC 0923757
6	Plaintiff,	)
7	vs.	) VOLUME I
8	IDAHO DEPARTMENT OF	) (Pages 1 through 182)
9	ADMINISTRATION, et al.,	)
10	Defendants.	)
11		_)
12		
13		
14	VIDEOTAPED DEPOSITION OF J	ACK G. "GREG" ZICKAU
15	TAKEN SEPTEMBER	20, 2010
16		
17		
18		
19		
20		
21	REPORTED BY:	
22		
23	SHERI FOOTE, CSR No. 90, RPR, C	RR
24		
25	Notary Public	

#### 9/20/2010 Zickau, Jack G. "Greg" - Vol. I

- 1 A. That is my recollection, yes.
- Q. Did you before you made the call have
- 3 any communications with any representatives of
- 4 either ENA or Qwest concerning the recommendation
- of the -- or the recommendation that had been
- 6 expressed to you during the meeting?
- 7 A. Do you mean -- from between the time
- 8 that I spoke with the evaluators and the time
- 9 that we made the call to Mr. Gwartney, I did not
- 10 talk with anyone from ENA or Owest.
- 11 Q. Prior to that time had anyone in the
- 12 Department of Administration expressed any
- 13 preference to you concerning who should be
- 14 providing the Idaho Education Network services?
- MR. CLARK: Objection to form. Prior to
- what time, Counsel?
- 17 MR. LOMBARDI: Can I hear it back
- 18 because I think it's in there.
- 19 (Record read back.)
- Q. (BY MR. LOMBARDI) "That time" being the
- 21 time of the telephone call to Mr. Gwartney from
- 22 his office.
- A. Not that I recall.
- Q. Prior to your call to Mr. Gwartney from
- 25 his office following your coming in to a meeting

#### 9/20/2010 Zickau, Jack G. "Greq" - Vol. I

- involving the evaluators, had you been solicited
- 2 by Qwest with the recommendation that Qwest be
- 3 the selected contractor for the Idaho Education
- 4 Network?
- 5 A. I had not spoken to anyone from Qwest
- 6 since prior to the issuance of the RFP.
- 7 Q. Had you spoken with anyone from ENA
- 8 concerning selection of ENA as contractor for the
- 9 Idaho Education Network between the time of the
- 10 issuance of the RFP and the time of your
- 11 telephone conversation with Mr. Gwartney from his
- 12 office?
- 13 A. No.
- Q. You said you also spoke with Mark
- 15 Little. When did you have a conversation with
- 16 Mark Little between the meeting with the
- 17 evaluators and the issuance of the letter of
- 18 intent on January 20?
- 19 A. My recollection is that Mark came
- 20 upstairs and indicated we needed to make a final
- 21 decision related to the contracts, of whether it
- 22 would be a multiple award or not.
- Q. And that was on the same day as the day
- that you called Mr. Gwartney?
- 25 A. Yes.

#### Sally Brevick

From:

Laura Hill

Sent:

Friday, January 23, 2009 11:18 AM

To:

Greg Zlckau

Subject:

FW: Idaho Educational Network RFP

FYI..Laura

From: Bill Burns

Sent: Friday, January 23, 2009 8:37 AM

To: Mike Gwartney, Gregory Lindstrom; Teresa Luna Cc: Mark Little; Laura Hill; Melissa Vandenberg Subject: Idaho Educational Network RFP

Hello all,

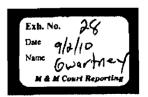
As you are all aware, the State of Idaho has issued a Letter of Intent on January 20 to award business for the Idaho Educational Network to two suppliers. Laura Hill and Mark Little (along with evaluators and others) have burned the candle at both ends to make this happen. I want to commend them on the expediency, although I do believe we placed ourselves in this expedited process due to inadequate advanced planning.

in addition, it has come to my attention that conversations and meetings may be occurring/planned currently between the state, the suppliers and other third parties concerning this procurement. As you all know, we have 5 working days after issuance of a Letter of Intent for appeals. In that regard and if happening, I would like any and all conversations around this procurement to cease and desist immediately. Any questions and concerns can be forwarded to the Division of Purchasing during this time.

If you should have any questions, please let me know.

#### Bill Burns

Administrator
Division of Purchasing
Department of Administration
PO Box 83720
Boise, Idaho 83720-0075
208-332-1610
bill.burns@adm. idaho.gov
www.adm.idaho.gov/purchasing/



#### Debra Stephenson-Padilla

From: Laura Hill

Sent: Wednesday, January 21, 2009 5:03 PM

To: Greg Zickau; Teresa Luna
Cc: Mark Little; Sally Brevick

Subject: IEN Update

All, the following actions, post award have been initiated concerning this IEN project:

- Pro bono E-Rate paperwork filing assistance from ENA has already started in earnest. Again, I did not request, ENA offered their pro bono support. Specific steps that must be completed prior to midnight on the 12<sup>th</sup> of February 2009:
  - Identification and validation of Idaho Free School Lunch Data, initial information sent to ENA this morning, but need to validate that this is the most updated information by Department of Education. Note sent to Troy Wheeler, CIO for assistance.
  - LOAs for School Districts to review and sign, so we can validate their addition and agreement to participate
    in the IEN program, per the Form 471 that must be filled out annotating all participating districts. Note we
    plan to simply draft up one Form 471 with all Districts listed and then scratch them out, if they don't want to
    sign an LOA (which is non-binding) for participation in the IEN network.
  - Strategy that ENA and I discussed to get these LOAs socialized and signed is to have the document prepared
    next week to present during the IETA conference, which ENA is participating in and will be briefing the How
    to dos of E-Rate to all district attendees.
  - IETA marketing effort. We (myself and ENA) will also be jointly developing "What is IEN" marketing flyers,
    draft will be done by Friday for all to review. These can also be used to socialize to The Albertson Foundation
    as well and any other key stake holder agency.
  - Teaming Agreement. ENA is working up a draft teaming agreement, with ENA as the Lead, supported by two
    subcontractors, Qwest and Syringa, which they will socialize with Mark Little, after vetting internally with
    both Qwest and Syringa. Note this includes a proposed governance model, where ENA would serve as the
    overall lead and responsible entity for this network.
  - Once final price and terms and conditions of this contract are worked out, Final price will be mathematically broken down by School District, a non binding figure, to expedite the completion of the required Erate Form 471 paperwork.
- 2. Next steps: Department of Education needs to validate Free School Lunch Data sent to ENA today, ENA also needs a sanitized copy of the Qwest proposal for their review.

Laura

Laura Hill Office of the CIO Statewide Enterprise Networks Work Phone: 208-332-1877 Cell Phone: 208-863-2846



#### Greg Lowe

∕nt:

**Greg Lowe** 

Wednesday, January 21, 2009 4:57 PM

To:

Bob Collie; Steve Maloney

Subject:

RE: IEN award

Attachments:

image001.gif

Okay with me. Want to come over or want us to call into a bridge?

Regards, **Greg Lowe** 

CEO

Syringa Networks, LLC

3795 S Development Ave, Suite 100

Boise, ID 83705 Office: 208-229-6136

Cell:

208-473-1661

Main: 208-229-6100

Email: glowe@syringanetworks.net

Assistant: Faye Baxter

Email: fbaxter@syringanetworks.net

Desk: 208.229.6141 ·



aho's Premier Fiber Optic Network"

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From: Bob Collie [mailto:bcollie@ena.com] Sent: Wednesday, January 21, 2009 4:57 PM

To: Greg Lowe; Steve Maloney Subject: RE: IEN award

No problem. What about 10a?

-Bob

From: Greg Lowe [mailto:glowe@syringanetworks.net]

Sent: Wednesday, January 21, 2009 17:54

To: Steve Maloney; Bob Collie Subject: RE: IEN award

ry...been in meetings. Tomorrow is wide open for me so whatever works for you Bob.

Regards, **Greg Lowe**  CEO

yringa Networks, LLC

力95 S Development Ave, Suite 100

oise, ID 83705 fice: 208-229-6136 cell: 208-473-1661 Main: 208-229-6100

Email: glowe@syringanetworks.net

Assistant: Faye Baxter

Email: fbaxter@syringanetworks.net

Desk: 208.229.6141



"Idaho's Premier Fiber Optic Network"

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From: Steve Maloney

Sent: Wednesday, January 21, 2009 3:14 PM

: Bob Collie; Greg Lowe abject: RE: IEN award

aly time tomorrow works for me.

From: Bob Collie [mailto:bcollie@ena.com]
Sent: Wednesday, January 21, 2009 2:55 PM

To: Greg Lowe; Steve Maloney

Subject: IEN award

Greg, Steve--

I'm finally back with a cell phone! Sorry that I haven't contacted before now. I met with Laura Hill this morning and have had several follow-up phone calls and contacts and I would like to get together with you all to discuss. I can either do this over the phone or come by your office as I am in Boise through tomorrow at 3:00p. Let me know what works best.

Thanks,
-Bob

Bob Collie Education Networks of America, Inc. (ENA) p: +1 615 312-6004 f: +1 615 250-0535

Bill To: State of Idaho Various Agencies Various State Agencies located throughout Idaho

Address 2 Various, ID 83701



State of Idaho Various Agencies

Statewide Slanket Purchase Order

THIS HUMBER INST APPEAR
ON ALL DOCUMENTS

Statewide Blanket Purchase Order SBPO1308

Date: Wed Jan 28, 2009

F.O.B: Destination Terms: N30

**VENDOR:** 

QWEST COMMUNICATIONS CORPORATION 1801 California Street Denver, CO 80202 Attn: Director-Business Development

richard.fernandez@qwest.com

Phone: 800 899-7780 Fax: 303 672-5901

DELIVER TO: State of Idaho Various Agencles

Various, ID 83701

Address 2

Various State Agencies located throughout idaho

Mark.Little@adm.idaho.gov

Account Number: P00000067075

Start of Service Wed Jan 28, 2009

Date

Mon Jan 27, 2014

End of Service Date:

> RFQ#: RFP02160 DOC#: PREQ15608

File Attached: [ IEN\_Bdders\_Conference.doc

C IEN RFP 29

Dec\_08\_Changes\_and\_or\_Updates.docx

- C IEN\_Bidders\_conf\_QA\_29 Dec\_08.docx
- ← APPENDIX\_FandG\_to\_RFP02160.docx
- C RFP\_IEN\_Briefing\_29\_Dec\_08.pptx
- ☐ AMENDMENT4\_RFP02160.doc
- RFP02160\_WITH\_APPEN\_A.doc
- C RFP02160 APPEN C THRU E.doc

Buyer: MARK LITTLE 208-332-1611

item No	Description	Quantity UOM	Unit Price	EXTENSION
000	BLANKET PURCHASE AGREEMENT ( line item particulars follow )	1 lot		5000000.00
	Total:			5000000.00
Blanket Comments:	Contract for the Idaho Education Network (IEN) for the benefit of the State of Idah subdivisions, or public agencies as defined by Idaho Code, Section 67-2327. The requisitioning agency will issue individual releases (delivery or purchase orders) needed basis per the IEN Strategic implementation Plan for a period of five (5) ye 2009 ending January 27, 2014, with the option to renew for three (3) additional five	Division of against the ar comme	of Purchals Continued Including James 1985   Purchase   asing or the ract on an as inuary 28,	
Item No			Unit Price	EXTENSION

001	COMMUNICATIONS AND RELATED SERVICESIdaho Education Network related services (915-51) (nt)	5 YEAR	1000000.00	5000000.00
Comments:	Contract for the Idaho Education Network (IEN) per State of Idaho RFP 2160 f schools, agencies, institutions, and departments and eligible political subdividefined by Idaho Code, Section 67-2327. The Division of Purchasing or the reindividual releases (delivery or purchase orders) against this Contract on an with the IEN strategic implementation plan.  The Contract TERM is for a period of five (5) years commencing January 28, 2 the option to renew for three (3) additional five (5) year periods.  Contract Title:	he ORDER vard Num tannot be ders, requ f the Cont	RING AGENC ber on any guaranteed. lirements, or rect. TITUTES THE	es as il issue cordance 7, 2014, with The actual tasks given STATE OF FERENCE
Instructions: Freight / Handling Included in Price		San San San San San San San San San San	v	
		By: MARK	LITTLE	
		HZ:	1/28/	09

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Print

Bill To: State of Idaho Various Agencies Various State Agencies located throughout Idaho

Address 2 Various, ID 83701



## State of Idaho **Various Agencies**

Statewide Blanket Purchase Order

THIS HUMBER MUST APPEAR ON ALL DOCUMENTS

Statewide Blanket Purchase Order SBPO1309

Date: Wed Jan 28, 2009

F.O.B: Destination

Terms: N 3D

**VENDOR:** 

**EDUCATION NETWORKS OF AMERICA** 1101 McGavock St Nashville, TN 37203 Attn: Vice President gnelson@ena.com

Phone: 703-727-0866 Fax: 615-312-6099

DELIVER TO: State of Idaho Various Agencies

Various, ID 83701

Address 2

Various State Agencies located throughout idaho

Mark.Little@adm.idaho.gov

Account Number: P00000074871

Start of Service Wed Jan 28, 2009

Date

Mon Jan 27, 2014

**End of Service** Date:

> RFQ#: RFP02166 DOC#: PREQ15758

File Attached: FIEN\_Bdders\_Conference.doc

C IEN\_RFP\_29

Dec\_08\_Changes\_and\_or\_Updates.docx

C iEN\_Bidders\_conf\_QA\_29 Dec\_08.docx

APPENDIX\_FandG\_to\_RFP02160.docx

C RFP\_IEN\_Briefing\_29\_Dec\_08.pptx

← AMENDMENT4\_RFP02160.doc

C RFP02160\_WITH\_APPEN\_A.doc

C RFP02160 APPEN C THRU E.doc

Buyer: MARK LITTLE 208-332-1611

item No	Description	Quantity UOM	Unit Price	EXTENSION
000	BLANKET PURCHASE AGREEMENT ( line item particulars follow )	1 lot		5000000.00
	Total:			5000000.00
Blanket Comments:	Contract for the Idaho Education Network (IEN) for the benefit of the State of Idaho eligible schools, political subdivisions, or public agencies as defined by Idaho Code, Section 67-2327. The Division of Purchasing or the requisitioning agency will issue individual releases (delivery or purchase orders) against this Contract on an asineseded basis in accordance with the IEN strategic implementation plan, for a period of five (5) year commencing January 28, 2009 ending January 27, 2014, with the option to renew for three (3) additional five (5) year periods.			
		antity	Unit	

001	COMMUNICATIONS AND RELATED SERVICESidaho Education Network related services (915-51) (nt)	5 YEAR	1000000.00	5000000.00
	(915-51) (nt)	or the bensions or pusitionings needed 2009 endings needed 2009 en	RING AGENCE ber on any guaranteed.  ITTUTES THE REIN BY RE	es as ill issue cordance 7, 2014, with The actual tasks given STATE OF
giving precedence in the following order:  1. This Statewide Blanket Purchase Order document. 2. The state of idaho's original solicitation document RFP02160. 3. The Education Networks of America's signed offer.				
Instructions	Instructions:			
	dling included in Price	11 kin	hel	
		By: MARK	(LITTLE	
	NA:	t ;	1/28/1	9
				7

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Print

1.	IN THE DISTRICT COURT OF T	HE FOURTH JUDICIA
2	DISTRICT OF THE STAT	E OF IDAHO,
3	IN AND FOR THE COU	NTY OF ADA
4		
5	SYRINGA NETWORKS, LLC, an	)
6	Idaho limited liability	)
?	company,	)
8	Plaintiff,	)
9	VS.	) Case No.
10	IDAHO DEPARTMENT OF	) OC 0923757
11	ADMINISTRATION, et al.,	)
12	Defendants.	)
13		_)
14		
15		
16	VIDEOTAPED DEPOSITION OF	LAURA LOU HILL
17	SEPTEMBER 21,	2010
18		
19		
20	REPORTED BY:	
21	JEFF LaMAR, C.S.R. No. 640	
22	Notary Fublic	
23		
24		
25		

- 1 Q. Do you recall when he had started?
- 2 A. Ch, a couple weeks before, I guess.
- 3 Q. Se --
- A. He used to work at HP, I think.
- 5 O. So he was fresh?
- A. Yeah, he was new meat.
- 7 Q. Okay. So I believe you've told me
- 8 that the meeting took place -- that is, the
- 9 meeting with ENA, Qwest, and Syringa -- took place
- sometime after January 28, 2009?
- 11 A. That's correct.
- 12 Q. Where did it take place?
- 13 A. In the Department of Admin conference
- 14 room.
- 15 Q. Who was present?
- 16 A. My bess, Mike Gwartney; Teresa Luna;
- 17 Mark Little; Coilie, Bob Collie. Gayle -- what's
- 18 Gayle's last name?
- 19 Ç. Nelson?
- 20 A. Yeah.
- 21 David Pierce was not there. I think
- 22 Gayle Nelson was there. Jim --
- Q. Schmit?
- A. Jim Schmit. That's all I remember
- from Qwest. I think there was one other person,

- 1 but I don't remember.
- Q. Mr. Berry?
- 3 A. Clint was there.
- And Greg, Mr. Lowe, was sitting on the
- 5 end of the table, because Mike was on that side of
- the table (indicating). I was sitting where
- Jeremy is.
- 8 ENA was over there, Qwest was -- Qwest
- 9 was kind of right there (indicating), and then my
- 10 boss was sitting to the -- next to me. And Mike
- 11 was at the head of the table, Mike Gwartney.
- 12 Q. Mike Gwartney?
- 13 A. Yes.
- 14 Q. What time was the meeting?
- 15 A. It was in the morning, but I don't
- 16 know the exact time.
- 17 Q. Okay. And how long did the meeting
- 18 take?
- 19 A. It wasn't -- about an hour, hour and a
- 20 half.
- 21 MR. SCHOSSBERGER: Laura, when you said my
- 22 boss, can you clarify for the record, is that Greg
- Zickau or Bill Burns?
- 24 THE WITNESS: Greg Zickau. My boss.
- 25 Pardon me.

- 1 Did you keep a computer calendar?
- 2 A. I did, yes, sir.
- 3 Q. Did you keep a separate handwritten
- 4 calendar?
- 5 A. No.
- 6 Q. Did you keep any other kind of
- 7 calendar, other than the written calendar that's
- 8 there before you?
- 9 A. No. But sometimes I didn't write
- 10 everything in my -- on my calendar either.
- 11 Q. Okav.
- 12 A. I just kept it in my head.
- 13 Q. Okay. Can you tell from your calendar
- 14 when the initial meeting with the evaluators took
- 15 place?
- 16 A. Not really. I don't know if I even
- 17 put it in there.
- Q. Well, Exhibit 27 is -- that is the
- 19 letter of intent -- is dated January 20.
- 20 A. Okay.
- Q. Does that help you at all to refresh
- your recollection concerning when you -- or the
- 23 week during which the evaluation was taking place?
- 24 A. I know it was either the first or
- second -- probably the second week in January. I

- just don't remember. These are the type of things
- I never really put down. I'm not a real anal
- 3 calendar person. So...
- 4 Q. So you can't really tell or you don't
- 5 really know when the evaluation was taking place?
- 6 A. Well, it was obviously before the
- 7 20th. So it might have been the week of the 11th
- 8 through the 16th. I just don't remember.
- 9 Q. All right. And we talked about the
- 10 fact that the meeting that you've described with
- Mr. Burns, Mr. Gwartney, Ms. Luna, Mr. Little, Bob
- 12 Collie, Gayle Nelson, Jim Schmit, Clint Berry, and
- 13 Greg Lowe had to have occurred after the 28th of
- 14 January; correct?
- 15 A. That is correct, because it was a
- 16 meeting to discuss how were we going to play nice
- 17 together.
- 18 Q. Okay. When did that meeting take
- 19 place?
- 20 A. It was sometime after the week of the
- 21 28th.
- Q. Do you know when that meeting took
- 25 place?
- 24 A. I don't know the exact date.
- 25 Q. Is there any documentation, of which

- 1 Q. So what did the representatives from
- 2 Qwest say during that meeting?
- 3 A. Not much. I mean they weren't --
- 4 people were not really very -- you know, other
- 5 than Mr. Lowe's comment, a couple other folks, you
- 6 know, ENA was trying to figure out what to do.
- 7 I mean finally I guess Gayle said
- 8 "Well, we'll just get together."
- 9 I said, "Who is 'we'?"
- 10 And they said Gayle and Qwest and
- 11 they'd all figure it out. And they were supposed
- to come back to us with a plan. And that's what
- 13 she told Mr. Gwartney. For some reason Gayle
- 14 spoke up.
- 15 O. So who called the meeting?
- 16 A. Mr. Gwartney.
- 17 Q. Mr. Gwartney called the meeting. And
- 18 did Mr. Gwartney open the meeting?
- 19 A. Yes, he was at the head of the table.
- 20 Q. Okay. What did he say to open the
- 21 meeting?
- A. He said that "Now that the award's
- 23 been made, we have to figure out how we're going
- 24 to play together."
- 25 Q. So how did the meeting proceed from

- there? Who was the next person to speak?
- 2 A. I honestly don't remember. It was
- 3 just kind of a strange meeting.
- Q. Well, do the best you can, please, to
- 5 tell me what the flow of the meeting was. What
- 6 was said and who was saying it?
- 7 A. Well, I just remember Greg's comments,
- 8 Mr. Lowe's comments, you know. And then after
- 9 that Gavle or Bob Collie was trying to play the
- 10 emissary role, "We'll figure this out," blah,
- 11 blah, blah. And then just kind of really spun
- 12 around in circles.
- 13 Q. What specifically did Mr. Lowe say?
- 14 A. He said if he didn't get the entire
- award that he wasn't going to play. And that
- 16 really bummed me out, because vou're sitting at
- the table, you're trying to get people to say
- 18 "Okay. You're all in this. Let's figure it out.
- 19 It's game day. Let's go forward with a plan."
- 20 You know, that just bummed me out.
- Q. Well, prior to this statement that
- 22 you've attributed to Mr. Lowe, was there any
- 23 discussion about how -- how the award might be
- 24 structured and who would do what?
- 25 A. Well, if you recall -- and during that

- 1 award that was that first draft of the strategic
- 2 plan, and that was what was presented. And they
- 3 had copies that were sent that night previous to
- 4 them to look at, and that's what they came with.
- 5 And that's what they were trying to discuss, yes.
- 6 That's what happened.
- 7 Q. So the first draft of your strategic
- 9 plan was discussed at the meeting?
- 9 A. Yeah, that was present at the meeting.
- 10 That's the purpose of the meeting.
- MR. LOMBARDI: Okay. I think this is a
- 12 good time to break.
- MR. SCHOSSBERGER: Okay.
- 14 THE VIDEOGRAPHER: The time is 11:52, and
- 15 we're off the record.
- 16 (Lunch recess.)
- 17 (Exhibit 20.1 marked.)
- 18 THE VIDEOGRAPHER: The time is 1:11, and
- 19 we're on the record.
- MR. LOMBARDI: Just for the record,
- 11 Mr. Reporter, we've provided you with
- 22 Exhibit 20.1, which counsel have agreed can be
- 23 placed in the exhibit book and in the record. It
- is a full copy of Exhibit 20, which we discovered
- 25 yesterday was missing some pages.

- 1 Q. That's the number that you inserted
- 2 onto the E-Rate application?
- 3 A. Yes. Lowest bid.
- 4 O. Do you have Exhibit 42 there before
- 5 you?
- 6 A. I don't think so, no.
- 7 Q. Would you like me to take that?
- 8 A. Yeah. Sorry.
- 9 Q. Thanks.
- 10 A. Thank you.
- 11 Q. I've given you the binder that has
- 12 Exhibit 42 in it. Could you please take a look at
- 13 that.
- What is Exhibit 42?
- 15 A. It's an e-mail I guess sent from Clint.
- 16 Berry to three of us, Teresa, Laura -- that's
- 17 myself -- and then my boss, Greq. It's probably
- 18 their feedback on the draft strategic plan, which
- 19 remember, the last one was on the 5th. And this
- is the 10th, two days before I left,
- 21 February 10th.
- 22 Q. The first -- the first line of the
- 23 e-mail says, "Thanks again for meeting with Jim
- and me yesterday afternoon on such short notice."
- 25 Do you recall meeting with Jim Schmit

- and Clint Berry on February 9, 2009?
- A. I think we had one meeting with Qwest,
- 3 and then we also had a meeting with ENA. And this
- 4 was, I think, Qwest's feedback, their proposed
- 5 recommendations.
- 6 Q. Do you recall the discussion that took
- 7 place at that meeting?
- 8 A. They were just trying to figure out
- 9 who's who in the zoo and who was going to be in
- 10 charge of the network, who was going to do what.
- 11 And we asked Qwest to put what they
- 12 had in writing. And this is apparently what
- 13 they -- they did do that, their concerns and their
- 14 recommendations. That's what all this is.
- 15 Q. Do you recall receiving Exhibit 42?
- 16 A. Vaguely. Obviously, I did.
- 17 Q. To you recall doing anything as a
- 18 consequence of your receipt of Exhibit 42?
- 19 A. I just thanked her for the
- 20 information, and I -- like I said, I was there for
- 21 two more days, so I didn't do anything with it.
- 22 Q. Okay. Did you attend any meetings
- 23 with other members of the Department of
- 24 Administration where Exhibit 42 was discussed?
- 25 A. No. This is when I was back and

- 1 totally out. This is when I was getting ready to
- 2 exit stage left.
- 3 Q. Do you know if you actually read
- 4 Exhibit 42 when you received it?
- 5 A. To be totally honest with you,
- 6 probably not. I was being politically correct in
- 7 my response back, and then I was trying to get the
- 8 E-Rate paperwork done.
- 9 Q. Because the E-Rate paperwork had to be
- 10 done in the next two days?
- A. Had to be done by the 12th by
- 12 midnight. And the document, as you saw, was
- 13 2 inches thick. It wasn't fun. Now I know why
- 14 the last E-Rate guy quit.
- Q. Were you involved at all in the -- in
- any discussions that resulted in the amended
- 17 Statewide Blanket Purchase Orders that were issued
- 18 on February 26th?
- A. No. I was in Washington, D.C.,
- 20 meeting my new command chain at the Yates building
- 21 next to the holocaust building.
- Q. Did you know when you left the employ
- 23 of the State of Idaho on --
- 24 A. 12th.
- 25 Q. -- August -- or rather on February --

- 1 (Exhibit 47 marked.)
- 2 THE WITNESS: Gosh. Sorry. It looks like
- 3 I slobbered all over this stuff.
- 4 MR. OBERRECHT: Is there a number on that?
- 5 MR. LOMBARDI: Yes. This is Exhibit 47.
- 6 It's DOA000314 through -318.
- THE WITNESS: I think this was done on the
- 8 12th, my last day, wasn't it?
- 9 Q. (BY MR. LOMBARDI): Yeah, it was. So
- we've handed you Exhibit 47, which appears to be a
- 11 proposed amendment to the -- well, it says,
- 13 "Amendment to State of Idaho Education Network RFP
- 13 No. 01260."
- 14 Is this an e-mail that you sent on
- 15 February 12th?
- 16 A. Yeah, I think it was my last day
- 17 there.
- 18 Q. Yes. And you sent this to Mark
- 19 Little, Teresa Luna, and Greg Zickau, with copies
- 20 to Melissa Vandenberg and Sally Brevick?
- 21 A. Uh-huh. Uh-huh.
- 22 Q. Do you recall this at all?
- 23 A. Vaguely. I'd remember some last act I
- 24 had to do.
- 25 Q. Do you --

- 1 A. I need to really look at this.
- 2 This is just a recap of if you went
- 3 back to the chart in the last draft on the 5th of
- 4 roles and responsibilities, basically just putting
- 5 them in verbiage form.
- 6 Q. Well, do you recall actually doing any
- 7 drafting on the document that's attached to the
- 8 cover e-mail that's part of Exhibit 47?
- 9 A. I don't understand your question.
- 10 Q. This (indicating).
- 11 A. Gkay. Here's the --
- 12 Q. Do you recall actually drafting any
- part of the document that's attached?
- 14 A. Okay. Melissa was our legal. I'm
- 15 trying to recall this. Melissa made me take that
- 16 chart -- could we go back to the exhibit on
- 17 whatever exhibit that was? It was the 5th. I got
- 18 to find the exhibit. It was the last draft I did
- of the strategic plan, and I had to articulate in
- 20 writing that chart.
- 21 Remember where it said --
- 22 O. Yes.
- 23 A. -- "ENA" and you had Qwest.
- 24 Q. Okay.
- A. And I had to put that in writing. I

- 1 had to put it in words. Again, it's like those
- 2 Army diagrams. I had to undiagram it and put it
- 3 into words.
- 4 Q. In doing that, did you use the draft
- 5 amendment sent by Mr. Berry to you on February 10,
- 6 which is Exhibit 42, as a template?
- 7 A. No, I did not, because 1 had to go
- 8 back to the original document that Melissa looked
- 9 at, which was the draft -- where is that? I have
- 10 to find the RFP. Where is that? It's the
- 11 draft -- it's that last strategic plan dated on
- 12 the 5th, and I had to go back to that chart that
- 13 had the two providers in it.
- Q. Uh-huh.
- 15 A. Just like I had to put into words, you
- 16 know, the chain of command.
- 17 O. Sure.
- 18 A. And so Melissa stuck me for this, and
- 19 said "You got to put that stuff in there." Sorry
- 20 I'm getting mad.
- MR. SCHOSSBERGER: Exhibit 37?
- THE WITNESS: Yeah, 37. I had to take that
- 23 chart and stick it in there, and that's what I
- 24 did.
- Q. (BY MR. LOMBARDI): Okay. Well, let

- 1 me just ask you to take a look at Exhibit 42,
- because at a glance, at least, it appears that
- 3 Exhibit 42 may have also been used by you as a
- 4 template for your preparation of Exhibit --
- 5 MR. PERFREMENT: To the extent that's a
- 6 question, I'll object to it.
- 7 Q. (BY MR. LOMBARDI): Well, I'll just
- 8 ask --
- 9 A. It was not.
- 10 Q. It was not. Okay.
- 11 A. It was not, no. It was the 5th -- it
- was -- because remember, she was reviewing all of
- 13 my documents for the strategic plan, and that was
- 14 the last change I had to make.
- 15 Q. And you don't know what came of that?
- 16 A. No. I had the short-timer's attitude.
- MR. LOMBARDI: Okay. Thank you. That's
- all I have for today. We still are receiving
- documents from the State and discovery is still
- 20 ongoing.
- I'll reserve the right to recall the
- 22 witness, but I have no further questions today,
- 23 unless they're in follow-up.
- MR. PERFREMENT: And my apologies.
- 25 ///

EXAMINATION

BY MR. PERFREMENT: Ms. Hill, my name is Steve Perfrement. Ο. 4 I represent Qwest. I'll try and keep it brief and 5 get you out of here. I have a few follow-up auestions. 7 We can start with Exhibit 42, which 8 you had last in front of you. q Okay. This one from Qwest? 10 Yes, ma'am. At the top that's your Q. e-mail back to Mr. Berry. 11 12 Do you have that in front of you? 1.3 I do. I do. Α. I believe -- let's see. If we go down 14 0. 15 to the e-mail from Mr. Berry to you and some 16 others from February 10th, 2009, this e-mail has -- addresses some attachments. And I believe 17 18 your prior testimony was that you asked Qwest to 19 put the information that was attached together. 20 Do you recall that? 21 In the meeting that Mike Gwartney had 22 with the group, we asked both the primes to come back with suggestions to the draft strategic 23 24 visions that we had. 25 Q. Okay. And what exactly, if you can

1

- 1 recall, did you ask the parties to do? And beyond
- 2 that --
- 3 A. We asked them to come back and comment
- 4 on them and say -- "Give us a proposal. We don't
- 5 have all the answers. We're trying to figure this
- 6 thing out."
- 7 Q. After you received this e-mail from
- 8 Mr. Berry on February 10th, did you have any
- 9 further communications with him with respect to
- the issue being addressed in this document?
- 11 A. I -- to be honest, I punted over to
- 12 Greg and Teresa and said "I'm not dealing with
- 13 this. I got E-Rate to do."
- Q. And if you'll turn next to Exhibit 43.
- 15 A. Is that --
- Q. It should be in the same ballpark over
- 17 there.
- 18 A. All right.
- 19 Q. It's your notes.
- 20 A. This is the -- oh, okay. Yeah. What
- 21 I left Sally.
- 22 Q. Yes, ma'am. And I apologize if you
- 23 testified to this previously -- I missed it -- but
- 24 when exactly did you start creating the attachment
- 25 document in Exhibit 43, the notes?

## Sally Brevick

From:

Laura Hill

Sent:

Tuesday, February 10, 2009 8:24 AM Berry, Clint; Teresa Luna; Greg Zickau

To: Cc:

Schmit, Jim; Strickler, Joel

Subject:

RE: Recommended Amendment Language

Thanks for the information. We are reviewing this now. Laura

From: Berry, Clint [mailto:Clint.Berry@qwest.com]
Sent: Tuesday, February 10, 2009 8:06 AM
To: Teresa Luna; Laura Hill; Greg Zickau

Cc: Schmit, Jim; Strickler, Joel

Subject: Recommended Amendment Language

Teresa, Laura and Greg,

Thanks again for meeting with Jim and me yesterday afternoon on such short notice. I genuinely appreciate all of your input and willingness to work with us. As you can imagine, we arrived with a lot of questions and concerns from the team of folks that support us and I believe we clearly made some progress. We do understand the awkwardness of the situation, but rest assured we are going to do everything we can to make this a reality for our Idaho students and the education system in our state!

As we discussed yesterday, I have attached a document in Amendment format – as if it were an agreement between only Qwest and the State -- that you can use to amend the RFP award (Statewide Blanket Purchase Order). I also included the document with the points we discussed yesterday and the summary capability document we talked about last week.

I have a few items to finalize on the detailed circuit pricing spreadsheet that you'll need and maybe I can swing by later this morning and discuss it before our afternoon meeting.

Thanks again and we'll see you later today.

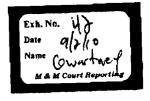
## Clint Berry

Senior Manager Government & Education Solutions 999 Main Street, Suite 800 Boise, Idaho 83702

208 364-3977 (work) 208 571-0195 (mobile) Clint.Berry@gwest.com

We create an exceptional customer experience through world-class communications solutions.

Qwest Q



## Sally Brevick

From: Sent:

Berry, Clint [Clint.Berry@qwest.com] Tuesday, February 10, 2009 8:06 AM Teresa Luna; Laura Hill; Greg Zickau

To: Cc:

Schmit, Jim; Strickler, Joel

Subject:

Recommended Amendment Language

Attachments:

Amendment NO 1 State of Idaho IEN RFP 02160 - 02 10 09.doc; Idaho Education Network 471 Concerns.doc; Qwest Idaho Education Network - Engagement Plan Components - 02 04

#### Teresa, Laura and Greg,

Thanks again for meeting with Jim and me yesterday afternoon on such short notice. I genuinely appreciate all of your input and willingness to work with us. As you can imagine, we arrived with a lot of questions and concerns from the team of folks that support us and I believe we clearly made some progress. We do understand the awkwardness of the situation, but rest assured we are going to do everything we can to make this a reality for our Idaho students and the education system in our state!

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I have a few items to finalize on the detailed circuit pricing spreadsheet that you'll need and maybe I can swing by later this morning and discuss it before our afternoon meeting.

Thanks again and we'll see you later today.

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QWEST

#### AMENDMENT TO STATE OF IDAHO CONTRACT FOR THE IDAHO EDUCATION NETWORK (IEN) RFP 1260

THIS AMENDMENT NO. 1 (this "Amendment") by and between Qwest Communications Company, LLC ("Qwest") and State of Idaho ("State"), hereby amends the contract for the Idaho Education Network ("IEN"), Qwest OMR Number: 137144 (the "Agreement").

Qwest and the State wish to amend the Agreement in order to clarify the roles and responsibilities of the parties to the Agreement.

- 1. Qwest will be the general contractor for all IEN network services. The Service Provider fleted on the State's Federal E-rate Form 471, Education Networks of America (ENA), is required to work through the dedicated Qwest Account Team named on the State Blanket Purchase Order (SBPO) dated January 28, 2009 for ordering, provisioning, on-going maintenance, operations and billing for all IEN sites.
- Qwest will deliver IEN services using its existing core MPLS network and backbone services, as well as future build outs of its network.
- 3. Qwest will procure and provision all local access connections and edge routing equipment making commercially reasonable efforts to ensure the most cost efficient and reliable network access throughout the State. Qwest will use existing and future agreements and partnerships to deliver the necessary bandwidth to each IEN site and to connect to its core MPLS platform.
- Qwest will provide all Internet services to IEN users per Qwest's response to the State's solicitation document RFP 02160.
- 5. Qwest will assign a project manager to work with the State of Idaho and ENA to define the project Scope of Work. The Qwest project manager will lead the development of a detailed Project Plan that will outline the project tasks, assign responsibility, identify risks, and define the schedule for project implementation.
- 6. Qwest will use a combination of Qwest Network Operations Center (NOC) assets for the Idaho Education Network including physical layer (transport) NOC and IP NOC for the IEN services. Both NOCs will be staffed 24 x 7 x 365. Qwest NOCs will monitor both the physical and logical layer for outages and Qwest's IP NOC will manage the MPLS services via existing management platforms.
- Qwest will work directly with the State of Idaho and ENA to supply the Information necessary for the State and ENA to file Federal E-rate forms accurately and in a timely manner.
- 8. The State considers Qwest and ENA equal partners in the IEN project as demonstrated in the Intent to Award Letter dated January 20, 2009 and the subsequent SBPO dated January 28, 2009.
- 9. The State may request copies of all itemized billing from the service provider associated with the delivery of IEN services on a monthly, annual or on-going basis at any time during the term of the agreement.

OMR# Q137144 [Might need a new OMR to keep separate from original matter . . . Debble?] Page 1

## Idaho Education Network - Concerns w/ ENA Listed on 471

#### Legal

- Qwest does not have a legal binding agreement with ENA for them to purchase network services. An contract addendum from the State would have no binding authority on ENA.
- Qwest would need to negotiate a contract with ENA, and there is no guarantee that ENA will agree to the same terms and conditions that we agreed to with the State of Idaho
- 3. Listing ENA on the 471 continues to cloud the role of the Alliance that ENA is a part of because ENA <u>does</u> have a contract with Syringa. According to ENA, they may face a lawsuit if they do not use them as the network service provider since they have a binding contract.
- 4. This would be avoided if Qwest was listed on the E-Rate form 471

#### Financial

- 1. ENA would become Qwest's customer, not the State. This presents significant financial risk to Qwest
- 2. Qwest will need to evaluate the risk of ENA to ensure that 100% of the network services bill can be paid according to our billing guidelines
- 3. Qwest would need to determine if the services we offered directly to the State can be offered to ENA at the same reduced price offered to the State, recognizing that the State is the end-user
- 4. These issues would be avoided if Qwest is listed on the form 471. In addition, if Qwest is the named service provider on Form 471, the State of Idaho will know the exact price of the service being delivered to the schools.

#### **Process**

- 1. If the State were to enter into an agreement with ENA, they (ENA) will be the Qwest customer of record. From a legal standpoint, the State of Idaho would lose legal oversight
- 2. Qwest has an existing process -- Professional Services Organization to contract with companies like ENA to add services such as those provided by ENA.
- 3. We do not have a process in place to do the reverse.

#### E-Rate

- Qwest is the listed Service Provider on E-Rate form 471 with the Utah Education Network, Washington K-20 Network and the Wyoming Equality Network and is preferred since the vast majority of the costs are related to delivering network services
- 2. We have experience in these states using partners to deliver additional e-rate eligible services as part of an end-to-end service
- 3. Our network services always prevail in audits since we are the provider



## Qwest Idaho Education Network - Principal Responsibilities

Qwest is prepared to be the network provider and connect Idaho schools, colleges, universities and communities to each other and the world through the Idaho Education Network (IEN). We have spent years laying the foundation – through legislative activities and building the core network – in preparation to deliver educational opportunities throughout the state.

We will leverage decades of network experience we have throughout our company including the leadership role we have with the Utah Education Network, Wyoming Equality Network and the State of Washington K-20 Network.

Qwest will provide a turn-key, robust and reliable network as highlighted in our RFP response and reinforced in the State's "draft" IEN Strategic Engagement Plan.

We will remove the obstacles of geography so that rural students and citizens have the same opportunities as our urban areas by the use of the following principal competencies:

#### Core Network Responsibilities/Capabilities

## Existing Layer 3 MPLS network

As highlighted in our RFP response, we have a unique combination of infrastructure assets, systems and experience that is inherent to our company to be the primary network contractor for IEN. We are industry leaders in the areas of network design, management and on-going maintenance, operations and billing. Our core MPLS network is operational in the state today currently serving Idabo customers and we have the relationships and processes in place to configure, test, implement and bill for the entire backbone and last mile connections. We can begin the process to order and provision circuits for both the Education locations as well as migration for existing IdaNet users when the State is prepared to move forward. The last mile connectivity will be acquired by Qwest and provisioned on Qwest's MPLS platform to deliver the necessary bandwidth to each site.

Local Access (existing relationship with Verizon and all of Idaho's carrier-class network providers)

Qwest will work with all the network providers to ensure the most cost efficient and reliable network access throughout the state and will be utilizing multiple partnerships. It is the cornerstone of our response to the State's IEN RFP. We understand that no one company can efficiently provide the services the State is requesting and Qwest ready to leverage the existing processes and agreements we have in place with other local exchange providers to test and turn-up the last-mile connections.

Important note: There are 143 IEN sites – including colleges and universities – and 88 sites are in the local Qwest territory and 31 sites are located in Verizon's local service area covering nearly 85% of the entire project.

## Strong Internet Platform

Our Internet Platform is among the most reliable and dedicated Internet access services in the Nation. Our experience is what separates Qwest from our competition. The states of Utah – including the Utah Education Network – Nebraska, Arizona, Wyoming, and Washington are all utilizing Qwest's Internet service. In the State of Idaho both Idaho State University and IRON are considered anchor tenants of our advanced Internet service. Our advanced Tier 1 - OC-192 Internet protocol (IP) network is one of the most sophisticated networks available. It offers an exceptional service level agreement (SLA) and some of the highest customer access speeds and peering in the industry today.

### Program / Project Management

>>> offered at no additional cost to the State and is part of Qwest network services <<<

Qwest Project Management will systematically facilitate a flawless implementation of the Idaho Education Network and IdaNet migration. Implementation of the project will include the following activities:

## Planning

Qwest will assign a project manager along with a project team to work with the State of Idaho and ENA to define the project Scope of Work. The Qwest project manager will lead the development of a detailed Project Plan that will outline the project tasks, assign responsibility, identify risks, and define the schedule for project implementation. Our project management approach relies heavily on detailed planning to ensure that the transition to new services is as transparent to end users as possible. The planning phase of the project includes the following items:

- Detailed design and technical review to ensure all segments of the Scope of Work have been identified.
- > Preparation of detailed Work Breakdown Structure (WBS).
- Assign responsibility to each project task. A detailed list of roles and responsibilities will be prepared to ensure each team member is accountable for their part of the project.

2 8/13/2009

- > Development of project schedule using a software tool to develop a detailed Gantt chart. The project schedule will become the baseline for measuring the progress of the project.
- > Establishment of Change Management Plan. This plan will outline the method of reviewing change requests and will include the team members who will be responsible for reviewing and approval of change requests.
- Creation of Communication Plan. This plan will include regular meeting schedules, agreement on project documentation preparation and storage, escalation procedures and project reporting structures.
- Development of Cutover Plan. This plan will detail the steps required and personnel needed to transition to the new Qwest services. Cutover for a large project may require several phases as the implementation progresses.
- > Risk assessment and risk mitigation procedures development.

#### Implementation

After the Project Plan is approved, the implementation will commence with the placement of network and equipment orders. The customer will assist in preparation of each site and coordination of circuit installation. Network and equipment testing will be conducted prior to cutover. The project manager will maintain an Outstanding Issues Log to ensure that team members are held accountable for items that need to be completed, and to ensure that open issues are followed through to completion.

#### Cutoyer/Transition

A detailed Cutover Plan will be developed during the planning phase of the project that will outline all the tasks required to transition to the new Qwest services. This plan will also identify each organization and individual necessary to make the transition. The Qwest project manager will coordinate cutover schedules with Qwest, vendors, other carriers if applicable, and customer personnel to schedule cutover during the maintenance window specified by the customer. Contingency plans will also be in place.

#### **Network Operations Center**

>>> offered at no additional cost to the State and is part of Qwest network services <<<

We will use a combination of Qwest Network Operations Center (NOC) assets for the Idaho Education Network. Physical layer (transport) NOC and our IP NOC. Both NOCs are staffed 24 x 7 x 365.

#### Physical Layer NOC

3

Qwest monitors both the physical and logical layer for outages. Upon receipt of a trouble alarm or report, Qwest initiates action to clear the trouble and will commit restore times. We maintain a proactive monitoring and notification objective of ten minutes of receipt of a customer circuit physical outage event for data services. Qwest employs platform-specific alarm thresholds to identify service impairments. Physical circuit outage events are generated as follows:

- SNMP traps are generated from Qwest edge routers and directed to Qwest's NerveCenter management servers
- The Nerve Center management server uses behavior models to filter out actual physical outage (includes bouncing circuits) events
- Outage events are generated into the NetCool application

The Alarm Rule Service and Ticket Rule Service then correlate the event to active events and routes valid events for notification to the Proactive Notification tool for automatic dispatch of notification. It is also important to note that closing tickets is advantageous for proactive notification. Not only does it ensure chronic circuits will be appropriately tagged for each occurrence in our ticketing system, but it also ensures that you will be contacted if an outage event occurs, as you will not have a ticket open for a current issue.

## IP NOC

Qwest's IP Network Operations Center (NOC) manages the MPLS services via redundant management platforms. Access to these management platforms is controlled strictly both logically and physically to only Qwest trained and authorized users. The management platforms create management VPNs to each of the devices in the network. And, the network elements have ongoing penetration scans done against them to ensure they continue to meet Qwest's strict internal security policies and service level agreements and is staffed 24 x 7.

## Cisco Partnership

>>> we have designed the Network using proven Cisco equipment and is included as part of the bundled end-to-end 100% E-rate Priority 1 eligible service <<<

Our network design leverages the partnership we have with technology leader Cisco Systems Inc, and will allow Idaho students to enhance their educational experience through the use of proven technologies as well as increase productivity and strengthen state government telecommunications.

4

Qwest and Cisco have a strong business partnership starting at the local level with account management, engineering and will work towards a successful design and implementation of the Idaho Education Network.

Qwest was Cisco's first Gold Partner – since the inception of the Program. The Cisco Gold Certified Partner designation offers the highest level of branding, economic incentives, and differentiation as a reward for loyalty to Cisco, for capabilities in providing value-added services, and for a commitment to customer success. Cisco Gold Certified Partners have attained the broadest range of expertise across multiple technologies by achieving all of the following four advanced specializations: Unified Communications, Routing and Switching, Security, and Wireless LAN. In addition, Gold Certified Partners have integrated Cisco Lifecycle Services into their offerings and demonstrated a high level of customer satisfaction. We will work closely with State of Idaho IT professionals on knowledge transfer and technology refresh activities.

## Billing optimization

Based on the Statewide Blanket Purchase Order (SBPO 1308), Qwest will work directly with the State of Idaho for the benefit of schools, agencies, institutions, and departments and eligible political subdivisions or public agencies as defined in Idaho Education Network (IEN) RFP 2160. We will use existing billing platforms as well as create custom and summary billing as required by the IEN Steering Committee or other State entities. The services will be billed directly to the State of Idaho at the reduced E-rate eligible amounts rather than seek reimbursement from the Federal E-Rate program. Qwest also recognizes the role that ENA will have and will closely work with them and the State to supply the needed information for the State to file accurately and in a timely manner.

5

# Education Networks of America - Principal Responsibilities

# Administration of E-Rate Funding

It is recognized that ENA brings a depth of knowledge and experience to the E-Rate funding process. The State of Idaho should leverage the expertise of ENA to not only maximize the annual funding of the IEN initiative but also to assist individual school districts on E-Rate program training.

#### Potential ENA Deliverables

Annual E-Rate Filing Assistance

E-Rate Training for state & school districts

# **NOC** Capabilities

It is recognized that ENA has experience and the ability to support applications such as video conferencing, student information and curriculum management. IEN can leverage ENA's abilities to support these and other similar types of applications for these key components of this project.

# Potential ENA Deliverables

VTC Scheduling

VTC Network Operations and monitoring

Additional support on student information applications

Video equipment installation and support

#### Site Readiness Evaluations

#### Potential ENA Deliverables

Work with schools and field engineers on site survey's and network assessments.

# EXHIBIT 17

# Debra Stephenson-Padilla

From:

Laura Hill

Sent:

Thursday, February 12, 2009 3:36 PM Mark Little; Teresa Luna; Greg Zickau

To: Cc:

Melissa Vandenberg; Sally Brevick

Subject:

RFP 02160 Amendment Revision 12 Feb 09

Attachments:

OCIO AMENDMENT to RFP 02160 ENA.docx; OCIO AMENDMENT to RFP 02160

Qwest.docx

Categories:

IEN

All, with assistance from Melissa, here is the latest IEN Amendment Draft for review and further revision if necessary. Laura

From: Laura Hill

Sent: Thursday, February 12, 2009 3:29 PM

To: Laura Hill

Subject: OCIO AMENDMENT to RFP 02160 Qwest



THIS AMENDMENT NO. 05 (this "Amendment") by and between the State of Idaho ("State") and Education Networks of America, Inc./ENA Services, LCC hereby amends the contract for the Idaho Education Network ("IEN"), ENA Statewide Blanket Purchase Order: SBPO1309 (the "Agreement").

It is the intent of the State of Idaho, to amend RFP #01260 in order to clarify the roles and responsibilities of the parties to the Agreement.

- ENA will be the Service Provider listed on the State's Federal E-rate Form 471. Qwest Communications Association is required to work with the ENA Account Team for ordering, and provisioning of, on-going maintenance, operations and billing for all IEN sites.
- 2. ENA will coordinate overall delivery of all IEN network services and support.
- 3. ENA, with Qwest, as the principal partner and prime supplier, will procure, provision, and provide all local access connections and routing equipment making reasonable efforts to ensure the most cost efficient and reliable network access throughout the State to include leveraging of public safety network assets where ever economically and technically feasible. ENA and Qwest will use existing and future agreements and partnerships to deliver the necessary bandwidth to each IEN site and to connect to the core IEN MPLS platform.
- 4. ENA, in coordination with Qwest, will provide all Video Teleconferencing (VTC) installation, Operations, Monitoring, and Scheduling support for the IEN network.
- 5. ENA will assign a project manager to work with the State of Idaho and Qwest to define the project Scope of Work. The ENA project manager, working with the Qwest project manager, will develop a detailed Joint Project Plan that will outline project tasks, assign responsibilities, identify risks, and define the schedule for project implementation. This Joint Project Plan will be presented to the State of Idaho IEN program manager for final review and approval. Implementation of this Joint Project Plan is subject to the review and approval from the State.
- 6. ENA and Qwest will use a combination of ENA and Qwest Network Operations Center (NOC) assets for the Idaho Education Network including:
  - Establishment of a customer facing Network Operations Center (NOC) by ENA
  - b. Establishment of a physical layer (transport) NOC (Qwest)
  - c. Establishment of an IP NOC (Qwest)

All three NOCs will be staffed twenty-four hours a day, seven days a week, three hundred sixty five days of the year. ENA's NOC will serve as the one-stop IEN customer facing service and support center; Qwest transport NOC will monitor both the physical and logical layer for outages and Qwest's IP NOC will manage the MPLS services via existing management platforms.

- 7. ENA will work directly with the State of Idaho and Qwest to supply the information necessary for the State to file Federal E-rate forms accurately and in a timely manner. ENA will also assist the State in providing E-Rate training for State Educational Support entities, Public School Districts and Libraries.
- 8. The State considers ENA and Qwest as equal partners in the IEN project as demonstrated in the Intent to Award Letter dated January 20, 2009 and the subsequent SBPO dated January 28, 2009.
- 9. The State may request copies of all itemized billing from ENA, as the service provider associated with the delivery of IEN services on a monthly, annual or on-going basis at any time during the term of the agreement. ENA must provide this information within 30 days of the State's request for itemized billing information.

THIS AMENDMENT NO. 05 (this "Amendment") by and between the State of Idaho ("State") and Qwest Communications Company, LLC ("Qwest") hereby amends the contract for the Idaho Education Network ("IEN"), Qwest Statewide Blanket Purchase Order: SBPO1308 (the "Agreement").

It is the intent of the State of Idaho, to amend RFP #01260 in order to clarify the roles and responsibilities of the parties to the Agreement.

- Qwest will be the general contractor for all IEN technical network services. The Service
  Provider listed on the State's Federal E-rate Form 471, Education Networks of America
  (ENA), is required to work with the dedicated Qwest Account Team for ordering, and
  provisioning of, on-going maintenance, operations and billing for all IEN sites.
- 2. Qwest, in partnership with ENA, will deliver IEN technical network services using its existing core MPLS network and backbone services.
- 3. Qwest, in partnership with ENA, will procure and provision all local access connections and routing equipment making reasonable efforts to ensure the most cost efficient and reliable network access throughout the State to include leveraging of public safety network assets where ever economically and technically feasible. Qwest and ENA will use existing and future agreements and partnerships to deliver the necessary bandwidth to each IEN site and to connect to the core IEN MPLS platform.
- 4. Qwest, in coordination with ENA, will provide all Internet services to IEN users.
- 5. Qwest will assign a project manager to work with the State of Idaho and ENA to define the project Scope of Work. The Qwest project manager, working with the ENA project manager, will develop a detailed Joint Project Plan that will outline project tasks, assign responsibilities, identify risks, and define the schedule for project implementation. This Joint Project Plan will be presented to the State of Idaho IEN program manager for final review and approval. Implementation of this Joint Project Plan is subject to the review and approval from the State.
- 6. Qwest and ENA will use a combination of Qwest and ENA Network Operations Center (NOC) assets for the Idaho Education Network including:
  - a. Establishment of a physical layer (transport) NOC by Qwest
  - b. Establishment of an IP NOC by Qwest
  - c. Establishment of a customer facing Network Operations Center (NOC) by ENA

All three NOCs will be staffed twenty-four hours a day, seven days a week, three hundred sixty five days of the year. ENA's NOC will serve as the one-stop IEN customer facing service and support center; Qwest transport NOC will monitor both the physical and logical layer for outages and Qwest's IP NOC will manage the MPLS services via existing management platforms.

- Qwest will work with ENA and with the State of Idaho to supply the information necessary for the State and ENA to file Federal E-rate forms accurately and in a timety manner.
- 8. The State considers Qwest and ENA equal partners in the IEN project as demonstrated in the Intent to Award Letter dated January 20, 2009 and the subsequent SBPO dated January 28, 2009.
- 9. The State may request copies of all itemized billing from Qwest, as the service provider associated with the delivery of IEN services on a monthly, annual, or on-going basis at any time during the term of the agreement. Qwest must provide this information within 30 days of the State's request for itemized billing information.

# EXHIBIT 18

Bill To: State of Idallo Various Assembles Various State Agencies located throughout Idaho

Address 2 Yarlous, ID 83701



State of Idaho

vids Ellenket Purchase CHANGE ORDER - 01

THE MEMORIA NEED APPEAR

Statewick Blacket Purchase Order SEP01308 - 01

DELIVER TO: State of Ideha Various Agencies Various State Agencies located throughout Ideho

Address 2 Varians, ID 83701 Mark Little (adm.)dsho.gov

Duty: Thu Feb 28 2009

F.O.B: Destination Terms: N30

YEMDOR:

CINESY COMMUNICATIONS CORPORATION

1801 Catifornia Streat Denver, CO 30202 cower, CU suces
Affin: Director-Business Development
Etnelled To: richard-ternandez@qwest.com
Phone: 800 839-7766
Fax: 343 672-8891

Account Number: P00000067078

Start of Service Date Wed Jan 25, 2000

End of Service Date: Mon Jen 27, 2014

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Buyer: MARK LITTLE 209-332-1611

Item No	Dee artiption	Quantity UOM	Unit Price	EXTENSION		
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	Total	Ţ		<b>500000</b>		
A MANAGEMENT	Contract for the Idaho Education Network (MEN) for the benefit of the State of Idaho ellipitale schools, as defined by Idaho Code, Section 67-2327. The Division of Perchasing or the requisitioning agency purchase orders) against this Contract on an as needed basis per the IEN Strategie implementation sommencing January 28, 2009 anding January 27, 2014, with the option to renew for three (3) addition	wi <b>s toque</b> i Plan for a p	erios of five (	ases (delivery : B) year		
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1	COMMUNICATIONS AND RELATED SERVICESIDANO Education Network related services (616-51) (st)	5 YEAR	1000000.00	5000000.00		
General comments						

Exh. No. Date 9/10/10 M & M Court Reporting

2/26/2009 10:56 AM

DOA006199

## State of Idaho Various Agencies Purchase Order

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Contract Administration: Gre gory Lindstrom		
	Phone Marchers	Phone Number:

Award #2009001305 has been scheduled for rylease on: Fri Feb 27 00:00:80 GRIT-0800 (PST) 2006.

Award Notifications are scheduled for release on: Fri Feb 27 00:00:00 GMT-08:00 (PST) 2909.

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#### IDAHO DIVISION OF PURCHASING AMENDMENT ONE (1) TO STATE OF IDAHO EDUCATION NETWORK (IEN) SBP001308 February 26, 2009

THIS AMENDMENT NO. 01 (this "Amendment") by and between the State of Idaho ("State") and Qwest Communications Company, LLC ("Qwest") hereby amends the contract for the Idaho Education Network ("IEN"), Qwest Statewide Blanket Purchase Order: SBPO1308 (the "Agreement").

It is the intent of the State of Idaho to amend SBPO01308 in order to clarify the roles and responsibilities of the parties to the Agreement.

- Qwest will be the general contractor for all IEN technical network services. The Service
  Provider listed on the State's Federal E-rate Form 471, Education Networks of America
  (ENA), is required to work with the dedicated Qwest Account Team for ordering, and
  provisioning of, on-going maintenance, operations and billing for all IEN sites.
- Qwest, in coordination with ENA, will deliver IEN technical network services using its existing core MPLS network and backbone services.
- 3. Qwest, in coordination with ENA, will procure and provision all local access connections and routing equipment making reasonable efforts to ensure the most cost efficient and reliable network access throughout the State to include leveraging of public safety network assets wherever economically and technically feasible. Qwest and ENA will use existing and future agreements and partnerships to deliver the necessary bandwidth to each IEN site and to connect to the core IEN MPLS platform.
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- 6. Qwest and ENA will use a combination of Qwest and ENA Network Operations Center (NOC) assets for the Idaho Education Network Including but not limited to:
  - a. Establishment of a physical layer (transport) NOC by Qwest;
  - b. Establishment of an IP NOC by Qwest; and
  - c. Establishment of a customer facing Network Operations Center (NOC) by ENA.

All three NOCs will be staffed twenty-four hours a day, seven days a week, three hundred sixty five days of the year. ENA's NOC will serve as the one-stop IEN customer facing service and support center; Qwest transport NOC will monitor both the physical and logical layer for outages and Qwest's IP NOC will manage the MPLS services via existing management platforms.

#### IDAHO DIVISION OF PURCHASING AMENDMENT ONE (1) TO STATE OF IDAHO EDUCATION NETWORK (IEN) SBP001308 February 26, 2009

- Qwest will work with ENA and with the State of Idaho to supply the information necessary for the State and ENA to file Federal E-rate forms accurately and in a timely manner.
- 8. The State considers Qwest and ENA equal partners in the IEN project as demonstrated in the Intent to Award Letter dated January 20, 2009 and the subsequent SBPO01308 dated January 28, 2009.
- 9. The State may request copies of all itemized billing from Qwest, as the service provider associated with the delivery of IEN services on a monthly, annual, or on-going basis at any time during the term of the agreement, Qwest must provide this information within 30 days of the State's request for itemized billing information.

# **EXHIBIT 19**

Bill To: State of Idato Various Agencies Various State Agencies located (broughout Idaho

Address 2 Various, ID 83791



State of Idaho THE PRIMER HIST APPEAR
ON ALL RECEMBERS

vide Blanket Purchess Order CHANGE ORDER - 01

Statewide Blanket Purchase Order EEPO1309 - 01

DRUMER TO: State of Idaho Various Agencies Various State Agencies lessed throughout Idaho

Address 2 Various, ID \$3701 Mark-Little@adm.idaho.gov

Date: Thu Fe b 25 2005

F.O.B: Destination Terme: N 30

VENDORI

EDUCATION NETWORKS OF AMERICA 1101 McGavoch St Mathville, TH 37203 Adne Vice President Emailed To: gnalsen@ena.com Phone: 763-727-8565 Pax: 615-712-6098 Account Number: P00800874671

Start of Service Date Wed Jen 28, 2009

End of Service Date: Mon Jan 27, 2014

RFQ#: RFP02106 DOC#: PREQ15758

File Attached

- O IEN\_Bidders\_Conference.doc
- C NEW\_REP\_26 Dec\_06\_Changes\_and\_or\_Updates.doox
- O IEM\_Bidders\_conf\_QA\_29 Dec\_08.docx
- G APPENDIX\_FandG\_to\_RFP02168.docx
- O RFP\_IEN\_Briefing\_ZI\_Dec\_08.pptx
- O AMENDMENT4\_RFP02160.dos
- PREPRIENCE WITH APPEN A doc O REPOSTSO APPEN C THRU E.doc

M & M Court Reporting

AMENDMENT 1 to SEPORTS ENA.dog

#### Buyer: MARK LITTLE 208-332-1611

Nem No	Description	CHRISTY	Unit . Price	ROBERTEE	
900	BLANKET PURCHASE AGREEMENT ( the item perticulars follow ).	1 lot	5	E900000.00	
	Totals			00.00000	
Bianket Commenter	Contract for the Make Education Network (IEN) for the benefit of the State of Make eligible schools, is defined by Make Code, Section 87-3327. The Division of Pursteeing or the requisitioning agency purchase orderal against this Contract on an eneeded basis in excorpance with EN strategic in (6) year commencing January 25, 2000 ending January 27, 2014, with the option to reasy for three (3)	will leave in aplemental	edividual rek Ion plan, for	esses (delivery or a period of five	
Item No	Description	Quantity. UQM	Unit Price	EXTENSION	
7	COMMUNICATIONS AND RELATED SERVICESIdada Education Network related services (916-51) (nt)	S	1000000.00	93.0003093	
. General Consenents:	"SBPO1309 IS MODIFIED PER THE ATTACHED DOCUMENT TITLED, "ARIENDMENT 1 to SBPO01309 ENA.doc", NO OTHER CHANDTED."  MOTICE OF STATEWIDE CONTRACT (S6PO) AWARD  Contract for the Ideho Education Network (IEN) per State of Ideho RFP 2180 for the benefit of State of Ideho schools, spencies, and departments and eligible publical suddivisions or public agencies as defined by Ideho Code, Section 67-2327. The Ohrtaco or the requisitioning agency will be use individual release (defivery or purchase orders) against the Contract on an as needed Contract accordance with the IEN stratagle implementation plan.  The Contract TERM is fer a period of five  6  years commencing January 23, 2009 ending January 27, 2014, with the eption to a  3  additional five  6  year periods.  Contract Title:				

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1. This Statewide Hisnket Purchase Order document.			
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Y DUR SIGNED OFFER (Including any electronic bid submission), WHICH SUBMISSION (\$ 1)\ FULL.	CORPORATED HEREIN	BY REFERENCE AS THOU	GH SET PORTH IN
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CONTRACTOR: Ship to the POS DESTINATION point and BILL DIREC			
E-Malt: ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,			
Toff Free:			
Phone Number:			
-City, State, Zigramma, Machiville, TN 17201			
-Admes			
Contractor's Primary Contact			
E-Meltprogory.lindetrom@adm.idahe.gov			

Award IF2000001 205 has been scheduled for related on: Fri Feb 27 06:00:00 (2017-0000 (FST) 2009.

Award Hoddications are scheduled for reisees on Fri Feb 27 08:08:00 GMT-0888 (PST) 2009.

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#### DEPARTMENT OF ADMINISTRATION, OFFICE OF THE OCIO, AMENDMENT ONE (1) TO STATE OF IDAHO EDUCATION NETWORK (IEN) SBP001309 February 26, 2009

THIS AMENDMENT NO. 01 (this "Amendment") by and between the State of Idaho ("State") and Education Networks of America, Inc./ENA Services, LLC hereby amends the contract for the Idaho Education Network ("IEN"), ENA Statewide Blanket Purchase Order: SBPO1309 (the "Agreement").

It is the intent of the State of Idaho to amend SBP001309 in order to clarify the roles and responsibilities of the parties to the Agreement.

- ENA will be the Service Provider listed on the State's Federal E-rate Form 471. Qwest Communications Company LLC ("Qwest") is required to work with the ENA Account Team for ordering, and provisioning of, on-going maintenance, operations and billing for all IEN sites.
- 2. ENA will coordinate overall delivery of all IEN network services and support.
- 3. ENA, In coordination with Qwest, will procure, provision, and provide all local access connections and routing equipment making reasonable efforts to ensure the most cost efficient and reliable network access throughout the State to include leveraging of public safety network assets wherever economically and technically feasible. ENA and Qwest will use existing and future agreements and partnerships to deliver the necessary bandwidth to each IEN site and to connect to the core IEN MPLS platform.
- 4. ENA, in coordination with Qwest, will provide all Video Teleconferencing (VTC) installation, Operations, Monitoring, and Scheduling support for the IEN network.
- 5. ENA will assign a project manager to work with the State of Idaho and Qwest to define the project Scope of Work. The ENA project manager, working with the Qwest project manager, will develop a detailed Joint Project Plan that will outline project tasks, assign responsibilities, identify risks, and define the schedule for project implementation. This Joint Project Plan will be presented to the State of Idaho IEN program manager for final review and approval. Implementation of this Joint Project Plan is subject to the review and approval from the State.
- ENA and Qwest will use a combination of ENA and Qwest Network Operations Center (NOC) assets for the Idaho Education Network including, but not limited to:
  - a. Establishment of a customer facing Network Operations Center (NOC) by ENA:
  - b. Establishment of a physical layer (transport) NOC by Qwest; and
  - c. Establishment of an IP NOC by Qwest.

All three NOCs will be staffed twenty-four hours a day, seven days a week, three hundred sixty five days of the year. ENA's NOC will serve as the one-stop IEN customer facing service and support center; Qwest transport NOC will monitor both the physical and logical layer for outages and Qwest's IP NOC will manage the MPLS services via existing management platforms.

Page 1

#### DEPARTMENT OF ADMINISTRATION, OFFICE OF THE OCIO, AMENDMENT ONE (1) TO STATE OF IDAHO EDUCATION NETWORK (IEN) SBP001309 February 26, 2009

- 7. ENA will work directly with the State of Idaho and Qwest to supply the Information necessary for the State to file Federai E-rate forms accurately and in a timely manner. ENA will also assist the State in providing E-Rate training for State Educational Support entities, Public School Districts and Libraries.
- The State considers ENA and Qwest as equal partners in the IEN project as demonstrated in the Intent to Award Letter dated January 20, 2009 and the subsequent SBPO01309 dated January 28, 2009.
- 9. The State may request copies of all itemized billing from ENA, as the service provider associated with the delivery of IEN services on a monthly, annual or on-going basis at any time during the term of the agreement. ENA must provide this information within 30 days of the State's request for itemized billing information.

#### OFFICE OF THE CIO – JOB DESCRIPTIONS

Those highlighted have played some part in the IEN.

#### Greg Zickau - Chief Technology Officer (332 1875)

- Greg provides technical direction for the state by recommending policies, guidelines and standards for action by ITRMC (IT Resource Management Council).
- Primary focus is the development and implementation of the State's IT Strategic long term information technology strategies necessary to carry out the council's plans and actions.
- Greg also serves as a a resource for state agency management in the planning and development of IT-related systems and services.

#### Sally Brevick - Administrative Assistant (332 1876)

- Organizes and provides direct support for regularly scheduled ITRMC and subcommittee meetings, manages ITRMC web site updates.
- Organizes and minutes the meetings of the IEN Program Resource Advisory Council (IPRAC) and its Technical Advisory Committee (IEN-TAC).
- Provided administrative support to Brady Kraft and Garry Lough before this role was taken on by Debra Stephenson-Padilla (see below).

#### **ENTERPRISE SECURITY SERVICES**

#### Term Robst-Martin - Chief Information Security Officer (#92 1634)

- Strategic security, privacy and disaster recovery efforts for the state.
- Leads the Office of the CIO's internal operational security services.

#### Dena Duncan – Sr. IT Network Analyst (332 1858)

- Administers the Statewide e-mail Spam and Virus filtering solution.
- Alerts agencies of new threats, vulnerabilities, and attacks against the State's enterprise network.
- Participates in incident response, contributes to IT disaster recovery efforts.
- Helps determine the most appropriate security products, software and services for security priorities.

#### Steve Poeppe – IT Systems Security Analyst (332 1808)

- Administers the Statewide Intrusion Detection and Protection Systems.
- Helps formulate security related policies, standards and guidelines.
- Alerts agencies of new threats, vulnerabilities, and attacks against the State's enterprise network.
- Participates in incident response, contributes to IT disaster recovery efforts.
- Implements and provides first- and second-tier technical support for virtual private networks for state agencies.

#### **ENTERPRISE APPLICATIONS & SUPPORT**

Bill Farnsworth - Enterprise Applications & Support Manager (332 1878)

- Provides technical direction for the state in the areas of internet applications, e-commerce and web portals.
- Primary focus is the state's portal provider, Access Idaho, and the management of the state's home page, <u>www.idaho.gov</u>.
- Also provides direction, research and input for policies, standards and guidelines related to desktop and server software.

#### Jon Eckerle - Webmaster (332 1855)

- Jon is responsible for planning, maintaining, and coordinating services and equipment that comprise Idaho State Government's wide area network (WAN). This WAN is the electronic foundation which supports state agencies' business systems and facilitates information sharing.
- Web design and development, web application development; state enterprise DNS and FTP administration.

#### Brigette Teets - Webmaster (332 1834)

- Configures and manages the State's enterprise-level web servers and file transfer protocol (FTP) servers.
- Oversees web operations for multiple agencies; to set up, host, and provide expert assistance and consultation to client agencies regarding their web presence.

#### Cheryl Marsh – Sr. IT Systems Integration Analyst (332 1857)

- MS SQL database administration, and systems integration.
- Consulting services to our customers related to web development, data bases and other ITrelated projects.
- Internally, the implementation of ITIL internal controls and the ServiceNow Services Desk software.

#### Sherree Merritt – IT Program System Specialist (332 1864)

- Administers the technical side of the department's financial management system (IFAS).
- Works with multiple agencies with their database management and data solutions.

Sam Lair – Sr. IT Information Systems Technician (332 1805)

Fred Woodbridge - Sr. IT Information Systems Technician (332 1804)

Scott Bailey – Sr. IT Information Systems Technician (332 1803)

- All three provide administrative and technical local-area-network support for the agencies, boards and commissions located in and around the Capitol Mall (about 30 organizations at this time).
- All three maintain complex IT environments consisting of switches, routers, personal computers, servers, Microsoft Exchange, and Microsoft Active Directory.

All three troubleshoot wide-area-networking issues.

**Duane Gaerte** – IT Information Systems Technician (332 1807)

Provides helpdesk support internally and for enterprise customers.

#### GEOSPATIAL OFFICE

Gall Ewart – Idaho Geospatial Officer (332 1879)

- Provides recommendations on geospatial technologies to the IT Resource Management Council.
- Acts as the contact person for statewide geospatial technology initiatives and issues.
- Primary focus is to encourage cooperation, standardizations, and data sharing across state and federal agencies and departments.

#### Bob Smith - Sr. GIS Analyst (392 1867)

- Conducts or oversees projects, with special emphasis on Integrated Property Records System.
- Provides functional guidance / leadership to professional and technical staff assigned to a specific GIS project.
- Researches and designs new or revised methodologies; Develops, modifies and maintains computer programs.
- Assists in statewide GIS planning and implementation.

#### ENTERPRISE INFRASTRUCTURE SERVICES

#### **Mithael Guryan — Enterprise (1 Infrastructura Manager (352 1877)**

- Provides strategic direction related to telecommunications and other technologies.
- Leads the operational team responsible for the State's internet and network connectivity.

#### Cheryl Dearborn - Sr. IT Network Analyst (332 1845)

- Responsible for managing, staffing, budgeting, and monitoring all activities of our enterprise Statewide Telephone Services Program.
- Also manages the in-house VTC program and State Language Interpretative Services.

Tom Nordberg - Sr. IT Network Analyst (332 1854)

Mike Mead - Sr. IT Network Analyst (332 1852)

Michael Schiers - Sr. IT Network Analyst (332 1856)

- All three are involved in the planning, maintaining, and coordinating services and equipment
  that comprise Idaho State Government's wide area network (WAN). This WAN is the electronic
  foundation which supports state agencies' business systems and facilitates information sharing
  between agencies and to Idaho citizens.
- Tom's particular area of emphasis is WAN design, documentation, reliability, and security.
- Mike's particular area of emphasis is WAN architecture and design, Firewall Administration, security, reliability, and documentation.

 Michael's particular areas of emphasis include firewall design and implementation, VPN connectivity, wireless networking, WAN design, documentation, reliability, and overall network security.

#### Wade Douglas - IT Network Analyst (332 1846)

- Responsible for the management and monitoring of local access, long distance, calling cards, wireless and small phone system contracts.
- Assists State agencies in resolving service or billing issues and in troubleshooting PBX and key system problems.
- Facilitates and coordinates installation or repair for voice lines, 800 services, long distance provisioning, calling cards, cellular services and equipment, and cabling.

#### **ENTERPRISE PLANS & PROGRAMS**

#### Carla Casper - Enterprise Plans & Programs Manager (382 1883)

- Provides strategic planning oversight of the State IT Strategic Plan and leads the development and maintenance of the Dept. of Administration's IT Strategic Plan.
- Leads the team providing project management oversight for the OCIO and the Dept. of Admin.
- Offers project management support to the project management community throughout the state.
- Additionally, provides budget forecasting, planning and oversight as well as IT contract management for the State.
- Carla's role in the IEN is largely to do with the writing of the RFI.

#### Scot Maring - Project Coordinator (332 1841)

- Provides project development, implementation, oversight, and consultation.
- Involved in agency customer relations services and Strategic and IT planning for the Office of the CIO.
- Serves as the Office of the CIO's P-card manager.

#### Janet Rogers — Technical Records Specialist (332 1843)

- Janet provides calling card coordination where she orders new cards, makes changes and cancellation of existing cards, updates internal Telesoft management system and sends orders to Qwest.
- Processes the telephone billings, sends out monthly invoices, and provides claims adjustments.

#### IDAHO EDUCATION NETWORK

#### Bistovkisti – EN Technical Director (332.1840).

- Oversees all aspects of technical implementation for the Idaho Education Network, from budget forecast and execution, to managing contract providers, to planning and implementation from both a statewide and individual school perspective.
- Responsible for coordinating funding from a variety of sources, including the Federal e-Rate subsidy for schools, grants through USDA/RUS program or the Broadband Technology Opportunities Program, grants from Title II D through the Department of Education, and other outside sources.
- Prepares and submits reports on expenditures of Federal Stimulus money.

- Establishes policies and procedures pertinent to implementing IEN, whether those be related to the network proper or the video-teleconferencing endpoints used for synchronous education.
- Prepares and coordinates certification training for teachers delivering content over the IEN.
- Coordinates relevant information through the IEN Technical Committee and the IEN Program
  Resource Advisory Committee, seeking approval from relevant committees where appropriate.
- Has a primary role in supporting adoption of IEN services and in coordinating education content from a wide variety of sources for consumption by IEN customers.

#### Debra Stephenson-Padilla - Clerical Support (temp) (332 1801)

Provides clerical support to Brady Kraft and Garry Lough. (Debra started working with the Office
of the CIO on August 3, 2009)

## RELEVANT OTHERS (WITHIN ADMIN BUT OUTSIDE THE OFFICE OF THE CIO)

#### Teresa Luna - Department Chief of Staff (382, 1827)

- Works directly with the Director to drive key initiatives and set the legislative, external affairs and government relations agenda.
- Develops and defines goals, plans, timelines and strategies for various projects and initiatives to improve the effectiveness and efficiency of the Department and the State of Idaho.
- Develops strategies to accomplish goals, identify issues, key stakeholders, potential partners, and evaluation methods to determine effectiveness.
- Identifies and coordinates with program committees and advisory groups.
- Directs research projects, analyzes research results, evaluates project impact and recommends modifications to stakeholders
- Represents department at hearings.
- Prepares regulations for promulgation.

#### Durry Lough — IEN Communications Director (332-1842)

- Directs communications to stakeholders and observers of the project.
- Reports to the IEN Program Resource Advisory Council.
- Serves as a Liaison between State Department of Education, Office of the State Board of Education, K-12, Higher Education, and the Legislature and the IEN.

# EXHIBIT 21

From: Sent:

Berry, Clint

Tuesday, November 24, 2009 10:18 AM

To:

Strickler, Joel

Subject: Attachments: FW: This was handed to Jerry Piper yesterday IEN Solution.doc; image002.gif; image003.gif

Clint Berry

Regional Sales Manager 999 Main Street, Suite 1100 Boise, Idaho 83702

208 364-3977 (work) 208 571-0195 (mobile) Clint.Berry@gwest.com

**Government and Education Solutions** 



From: Strickler, Joel

Sent: Wednesday, July 08, 2009 10:46 AM

To: Berry, Clint

Subject: FW: This was handed to Jerry Piper yesterday

Forwarding on as requested......

Joel Strickler Account Manager Qwest - Government & Education Solutions 999 Main Street, Suite 800 Boise, Idaho 83702

(office) 208 364-1192 (cellular) 208 571-1144 (e-mail) Joel.Strickler@qwest.com

From: Bob Collie [mailto:bcollie@ena.com] Sent: Wednesday, July 08, 2009 8:08 AM

To: Strickler, Joel

Subject: FW: This was handed to Jerry Piper yesterday

FYI. If you forward internally, do not forward this email, just send the attachment. I do not want my name associated with this.

-Bob

From: Greg Lowe [mailto:glowe@syringanetworks.net]

Sent: Wednesday, July 08, 2009 09:04

To: Bob Collie

Subject: This was handed to Jerry Piper yesterday

Brady also has a copy. So, I thought you might like it as well. This solution has fiber to all schools on the list.

**Greg Lowe** CEO

Syringa Networks, LLC 3795 S Development Ave

Boise, ID 83705 Office: 208-229-6136 Cell: 208-473-1661 Main: 208-229-6100 Fax: 208-229-6110

Email: glowe@syringanetworks.net

Assistant: Faye Baxter

Email: fbaxter@syringanetworks.net Desk: 208.229.6141



"Idaho's Premier Fiber Optic Network"

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# Syringa Networks / IEN

## 15Mb WAN Solution

Overview
Network Architecture
Pricing

www.syringanetworks.net



Syringa Networks received an email from the last IEN committee meeting concerning the initial deployment of twelve selected sites. Syringa Networks has reviewed the sites that were provided and has developed a network solution that will satisfy the initial requirements. The primary requirement is that each site will receive 15mb of bandwidth for the IEN application, and fiber connectivity to each site. This will be done at a very competitive price point.

Syringa Networks has assembled a consortium of telephone companies and cable companies that service the twelve initial locations. This consortium directly represents the telecommunications and cable companies that service these areas. In this regard, as a member of the consortium, and as companies providing service to the local communities, they are committed to furthering the goals of IEN and their local communities. This is a winning combination for all.

The Syringa Networks solution for these twelve sites delivers 15mb of bandwidth at each location. Each site will have fiber optic cable as the transport medium for the service. A 10/100 Ethernet handoff will be presented as a user interface at each site. This will be connected to an MPLS network that will have multiple core switching and access nodes within the borders of the state of Idaho. This network will be capable of Layer Two or Layer Three VPN's. It will be deployed with a robust set of Quality of Service (QoS) and Class of Service (CoS) options.

Two applications referred to relative to IEN have been Video Teleconferencing and Internet access. Either the Layer Two or Layer Three Virtual Private Network (VPN) options can deliver the required solution. If the Layer Three option is selected then Syringa Networks will work with the customer to develop the Type of Service (TOS) or Differentiated Services Code Point (DSCP) bits necessary to provide the QOS/COS necessary to fulfill the application requirements.

www.syringanetworks.net



If a Layer Two VPN solution is chosen then Syringa Networks will work with the customer to establish the same QoS/CoS capabilities for a Layer Two VPN. It also would use the Type of Service (TOS) or Differentiated Services Code Point (DSCP) bits necessary to provide the QOS/COS necessary to fulfill the application requirements. It differs in that with the Layer Two implementation there would be a discrete Virtual Circuit per application, and the IP routing would be at the edge device instead of being provided by the MPLS network.

It is conceivable that a combination of Layer Two VPN and Layer Three VPN's can be deployed. One advantage of this type of deployment would be that Internet would be on its own separate virtual circuit. This would provide a harder separation on Internet traffic and may alleviate security concerns by some districts. This is largely a perception issue, however perception can be reality. The important point to make here is that the technology is available to handle this requirement

It is envisioned that the Internet will be provided to the network as a whole. It will enter the network at a specified location. It will then be drained by the appropriate VPN mechanism to each location.

Video will be most likely be delivered from a central location. Syringa Networks will provide the Centralized Multipoint Control Unit (MCU). We will also provide a software tool for user scheduling to the classes. End System Video units will be provided as well.

Project management is a strength of Syringa Networks. Syringa Networks employs a project manager today that will be assigned to this project. This individual will set schedules, interface with Sales, Syringa Networks technical staff, and IEN personnel responsible for making the network a success. In this regard IEN will have a specific customer advocate dedicated to the success of the project



Operationally the project will be assigned a project ID. The significance is that the project can be tracked by a single mechanism within the Syringa Networks provisioning system. The provisioning system is used by Syringa Networks personnel to track progress of orders. It is visible by not only the project manager, but all levels of management. It provides preset intervals for automatic escalation so that specific steps in the project are not overlooked.

An additional feature is that customers can participate in the system and track their orders as well. This allows the customer ready access to the administrative vehicle that will monitor the progress of the project and its components. Additionally, it provides direct access to the project manager, and the technician's task with working on the project

Syringa Networks will provide 24 hour a day monitoring and trouble reporting for the network. Our Network Surveillance Center (NSC) in Rexburg, and soon to be Idaho Falls, provides this capability today. This capability is backed up today in Boise. This provides a fault tolerant capability that does not existing within the State of Idaho today. All trouble activity is directed from these locations today.

The customer will have the ability to enter troubles via the Web and monitor their activity. Historical trouble handling is a standard feature of this system. This allows the customer to track their troubles in time to review historical performance of the network, and Syringa Networks.

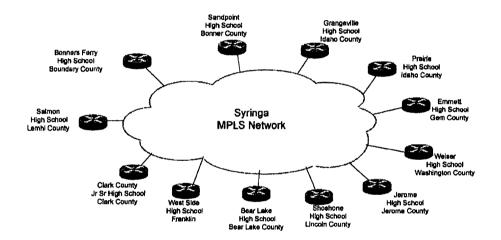
Additionally, Syringa Networks will set up graphical monitoring for each interface in the network. This will allow the customer to determine utilization of each interface on a 24 hours rolling basis. In this regard, it will be easier to review those sites that have adequate bandwidth, or are bandwidth starved because of usage. Syringa Networks current Enterprise and Carrier customer base has the ability to use these services and many do.

www.syringanetworks.net



A couple of drawings have been attached for your review. Additionally, estimated cost has been added for analysis. I hope this is helpful to you in your endeavors.

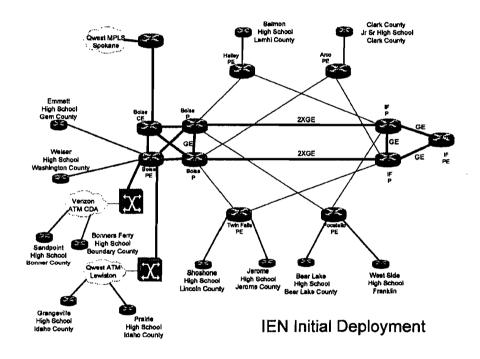
#### Conceptual view of the first twelve sites of the IEN Network.



www.syringanetworks.net



## Detailed view of the initial IEN deployment.





Quote #IEN001: All inclusive Price Quote: Flat-Rate Pricing for ALL Schools
Syringa Networks - Pricing Quote: IEN High School Teleconference Connectivity

District	School Name	County	Speed/F eed	Circuit MRC	Circuit NRC	Term (Months)
Dist. 101	Bonners	Boundary	15Mb	\$2,850.00	\$1,500.00	60
	Ferry High	County				
	School					
Dist. 84	Sandpoint	<b>Bonne County</b>	15Mb	\$2,850.00	\$1,500.00	60
	High School					
Dist. 244	Grangeville	Idaho County	15Mb	\$2,850.00	\$1,500.00	60
	High School					
Dist. 242	Prairie High	Idaho County	15Mb	\$2,850.00	\$1,500.00	60
	School					
Dist. 221	Emmett	Gem County	15Mb	\$2,850.00	\$1,500.00	60
	High School					
Dist. 431	Weiser High	Washington	15Mb	\$2,850.00	\$1,500.00	60
	School	County		<b>4</b>	4	
Dist. 261	Jerome High	Jerome County	15Mb	\$2,850.00	\$1,500.00	60
	School		a ma al	4	44	
Dist. 312	Shoshone	Lincoln County	15Mb	\$2,850.00	\$1,500.00	60
	High School		4554	42.052.00	44 500 00	
Dist. 33	Bear Lake	Bear Lake	15Mb	\$2,850.00	\$1,500.00	60
Dist. 202	High School	County	15846	¢2.950.00	¢1 500 00	60
Dist. 202	West Side	Franklin	15Mb	\$2,850.00	\$1,500.00	60
	Senior High School	County				
Dist. 161	Clark	Clark County	15Mb	\$2,850.00	\$1,500.00	60
DISC. 101	County Jr-Sr	Clark County	TOMIN	\$2,650.00	\$1,500.00	00
	High School					
Dist. 291	Salmon High	Lemhi County	15Mb	\$2,850.00	\$1,500.00	60
J.J., 232	School			<del>+-1000.00</del>	<i>42,300.00</i>	

MRC \$34,200.00

NRC \$18,000.00

#### NOTES:

www.syringanetworks.net

<sup>&</sup>gt;All Quotes Valid for 30-days.

<sup>&</sup>gt;Quote does not include costs for any DMARC extension.

<sup>&</sup>gt;Flat-Rate Pricing, contingent upon contract signing for ALL Schools on the Price Quote

<sup>&</sup>gt;These locations will be served 15Mb Bandwidth delivered via fiber optics - All sites will have CPE installed as part of the solution/quoted service.



Quote # IEN002: Individual (Site by Site) Price Quote

Syringa Networks - Pricing Quote: IEN High School Teleconference Connectivity

	School		Speed/F	Circuit	Circuit	Term
District	Name	County	eed	MRC	NRC	(Months)
Dist. 101	Bonners	Boundary	15Mb	\$7,400.00	\$1,500.00	60
	Ferry High	County				
	School					
Dist. 84	Sandpoint	Bonne County	15Mb	\$7,400.00	\$1,500.00	60
	High School					
Dist. 244	Grangeville	Idaho County	15Mb	\$3,750.00	\$1,500.00	60
51 / 5 55	High School		a w s a l	^2 750 CO	44 500 00	50
Dist. 242	Prairie High Schooi	Idaho County	15Mb	\$3,750.00	\$1,500.00	60
Dist. 221	Emmett	Gem County	15Mb	\$2,850.00	\$1,500.00	60
DIST. 221	High School	Gem County	TOIVID	\$2,630.00	\$1,300.00	00
Dist. 431	Weiser High	Washington	15Mb	\$1,750.00	\$1,500.00	60
0.51. 451	School	County	151415	<b>\$1,750.00</b>	71,500.00	00
Dist. 261	Jerome High	Jerome County	15Mb	\$2,850.00	\$1,500.00	60
	School	,		<b>,</b> , , , , , , , , , , , , , , , , , ,	7-7-0-0	
Dist. 312	Shoshone	Lincoln County	15Mb	\$3,750.00	\$1,500.00	60
	High School	•		•		
Dist. 33	Bear Lake	Bear Lake	15Mb	\$1,750.00	\$1,500.00	60
	High School	County				
Dist. 202	West Side	Franklin	15Mb	\$1,750.00	\$1,500.00	60
	Senior High	County				
	School					
Dist. 161	Clark	Clark County	15Mb	\$4,500.00	\$1,500.00	60
	County Jr-Sr					
	High School			40	4	
Dist. 291	Salmon High	Lemhi County	15Mb	\$2,500.00	\$1,500.00	60
	School					

MRC \$44,000.00 NRC \$18,000.00

#### **NOTES:**

www.syringanetworks.net

<sup>&</sup>gt;All Quotes Valid for 30-days.

<sup>&</sup>gt;Quote does not include costs for any DMARC extension.

<sup>&</sup>gt;Price Quote - individual pricing for each site, does NOT require contract for all schools

<sup>&</sup>gt;These locations will be served 15Mb Bandwidth delivered via fiber optics - All sites will have CPE installed as part of the solution/quoted service.



C.L. "BUTCH" OTTER Governor MIKE GWARTNEY

## State of Idaho

Department of Administration

650 West State Street, Room 100 P.O. Box 83720 BOISE, ID 83720-0003 Telephone (208) 332-1824 or FAX (208) 334-2307 http://www.ndm.ideho.gov

July 24, 2009

Greg Lowe Syringa Networks, LLC 3795 So. Development Ave., Ste. 100 Boise, ID 83715

#### Dear Greg:

As you recall, you and I met last Thursday, July 16<sup>th</sup>, to discuss various concerns that you had regarding the Idaho Education Network ("IEN") contract awards. At the conclusion of our meeting, I committed that I would respond to your concerns by the end of the week.

In general, you requested an explanation of why the contract was awarded to both ENA and Qwest; and in the end, you requested that ENA be awarded the technical services (i.e., the backbone) work under the contract. In the alternative, you asked that Administration require that ENA and Qwest be required to seek bids or pricing from the market for each of the schools (or the local loops). During our conversation, you also asserted that Administration has told ENA not to use Syringa Networks, LLC ("Syringa").

This correspondence addresses your requests and allegations. However, before I do address your requests and allegations, I think it's important for you to understand that Administration does not recognize Syringa as a proposer or a contractor. Administration contracted with ENA and Qwest, not Syringa. Syringa is a subcontractor of ENA; it is not the contracting entity, nor the responsible party on the contract itself. While many of your allegations center around your belief that Administration has a contract with Syringa, the State does not have nor does it recognize that it has a contract or any contractual relationship with Syringa related to IEN.

In other words, in the interest of reaching some closure regarding your complaints and concerns, and in the interest of open government, I am providing you an explanation of the Administration's decision to award the IEN contract to multiple vendors. However, it should in no way be construed as an admission or acknowledgement that Syringa has standing to challenge the multi-vendor award. Contrary to Syringa's position, it is Administration's position that only

ENA, Qwest, and Verizon (the three responsive proposers) had statutory rights to protest the awards.

That being said, as Greg Zickau, Chief Technology Officer, and I explained during our meeting last week, Administration's decision to award the contract to multiple vendors was based on the evaluators' recommendations and the subsequent determination that a multi-vendor award was in the State's best interest. Awarding the contract to more than one vendor was contemplated as early as November 2008, when Purchasing and the Office of Chief Information Officer ("OCIO") met to discuss general concerns that one single vendor may not be able to reasonably complete all of the work contemplated in the RFP within the time constraints. The RFP clearly set out that the State was contemplating awarding the IEN contract to more than one vendor. For example, in Section 2.0, the State then "reserve[d] the right ... to award to multiple bidders in whole or in part." Further, Section 5.3, as amended, stated "Any resulting contract from this solicitation may be awarded to up to four providers." Further examples in the RFP demonstrating Administration's intent to award the contract to more than one vendor are found in Amendment 3, Question and Answer 5, as well as the attached MS PowerPoint presentation; and in Amendment 4, Question and Answer 1 and 25.

After the initial award, Administration then unilaterally determined how best to divide the work between the two awardees/contractors. Administration's determination was based upon the individual strengths of each awardees/contractors' proposals. For example, ENA had expertise, in providing B-rate services and providing video teleconferencing operations. Qwest had expertise in providing the technical operations (i.e., the backbone). Before Amendment 1 to SBPO 01308 and SBPO 01309 were issued, Administration contemplated various ways to divide the responsibilities between Qwest and ENA, including but not limited to dividing the services to be provided by Qwest and ENA regionally. However, the division of responsibilities reflected in the Amendment 1s is a reflection of what Administration believed would best serve the State of Idaho and the schools.

I would note here that in our meeting, you made some insimuation that Administration conspired with either ENA or Qwest to avoid the teaming agreement that Syringa and ENA had signed. I asked Administration's Deputy Attorney General to look into that allegation specifically. Since our meeting, she has spoken to Administration staff and ENA, and I am now confident that there was no such conspiracy to avoid your teaming agreement with ENA. ENA confirmed that it had not been consulted about the division of responsibilities until it received a draft of Amendment 1 in February. ENA also confirmed that it had not provided a copy of or the information in the teaming agreement to the State prior to the Deputy Attorney General's request for the same on July 17, 2009.

While I understand Syringa's frustration, the fact is that Qwest was awarded the technical services portion of IEN (i.e., the backbone). ENA was not. Just as both Syringa and IRON, the other backbone partner in ENA's proposal, are not directly benefitting from the IEN contract, because of the division of responsibilities, some of Qwest's listed partners are not directly benefitting from its IEN contract (e.g., Cisco Systems, Inc.). Ref. Qwest's Technical Proposal,

pg. 4-6. This is not the result of some conspiracy to "shut out" Syringa, IRON, or even Cisco; it is simply the natural consequence of the division of work under the contracts.

Based upon this information and my review of the multi-vendor award decision, Administration will not alter its original decision nor will it alter the division of responsibilities set out in the Amendment 1s.

As an alternative, you asked that Syringa and other vendors be allowed to bid on the local loops. After careful consideration of this request, and multiple conversations with Purchasing, the OCIO and IEN staff, and Administration's Deputy Attorney General, I find that I cannot agree to require ENA or Qwest to seek bids to provide local access (also known as the "last mile" or the "local loop"). If I agreed to this requirement, Administration would be violating its contracts with Qwest and ENA. Requiring Administration's two (2) contractors to seek bids for every school would allow vendors who have not and did not participate in the competitive bidding process when the RFP was issued, to now come in and undercut the two (2) contractors who did participate in the process, particularly since the proposers' costs are now known. Administration would not allow this type of price undercutting in any other procurement, and we will not require it here.

It is, however, not only in the State's best interest, but also in Qwest and ENA's interests to keep the costs of providing services to the schools low. If costs are too high, fewer schools will be served by Qwest, ENA, their respective partners, and the local providers. As a part of ongoing contract monitoring, the State will continue to monitor the cost of providing services to individual schools, and when a cost anomaly is identified the State may, at its discretion, ask Qwest or ENA to seek alternatives. However, Administration will not direct Qwest or ENA to seek competitive bids for each school nor will it direct ENA or Qwest to use a specific provider.

As a backbone provider, if Syringa believes that it can provide services to a specific school district cheaper, I would encourage you to contact Clint Berry at Qwest, at (208) 364-3977. I note that according to Qwest's proposal, "Qwest Wholesale has fully negotiated Interconnection Agreements with Syringa Network companies that include: ..." indicating that you have an existing agreement with Qwest. Ref. Qwest Technical Proposal, pg. 4.

Finally, you allege that either I or one of my staff have directed ENA and/or Qwest to <u>not</u> use Syringa. I take this allegation very seriously, and I asked Administration's Deputy Attorney General to look into this allegation as well. As I stated in our meeting last week, I have never directed either ENA or Qwest to not use Syringa. I have not directed my staff to tell or infer to ENA or Qwest to not use Syringa either.

Additionally, I have learned that no Administration staff have directed or inferred to either ENA or Qwest not to use Syringa. In fact, Administration's staff confirm that they have not been told by me, Greg Zickau, or any other member of management to use or not to use any specific provider; and they have not told ENA or Qwest to use or not to use any specific provider. I have also learned that both ENA and Qwest confirm that they have not been directed by

Administration to not use Syringa, and both confirm that Administration has not directed either of them to use or not to use any specific provider.

I would like to thank you for sharing your concerns with me. While I recognize that these are not the answers you were seeking, it is nonetheless my hope that Syringa will continue to be a partner with the State of Idaho in providing network and telecommunication services to the State.

Sincerely,

J. MICHAEL GWARTNEY

Director

Cc Greg Zickau, Chief Technology Officer Teresa Luna, Chief of Staff

Melissa Vandenberg, Deputy Attorney General

MOV 0 2 2010

Case No. CV-OC-0923757

MEMORANDUM DECISION

AND ORDER RE: SYRINGA NETWORKS, LLC'S

MOTION TO RECONSIDER

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#### IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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SYRINGA NETWORKS, LLC, an Idaho

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VS.

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motion.

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limited liability company,

Plaintiff,

IDAHO DEPARTMENT OF, ADMINISTRATION; J. MICHAEL

"MIKE" GWARTNEY, in his personal and official capacity as Director and Chief Information Officer of the Idaho

Department of Administration; JACK G.

"GREG" ZICKAU, in his personal and official capacity as Chief Technology

Officer and Administrator of the Office of

the CIO; EDUCATION NETWORKS OF AMERICA, Inc., a Delaware corporation;

**QWEST COMMUNICATIONS** 

COMPANY, LLC, a Delaware limited liability company;

Defendants.

This matter is before the Court for determination of a Motion for Reconsideration filed by

Plaintiff Syringa Networks, LLC (Syringa). For the reasons set forth below, the Court will deny the

**Background and Proceedings** 

On July 23, 2010 the Court issued a Substitute Memorandum Decision and Order in which it

found that Syringa "did not seek any form of administrative relief from the IEN RFP [Idaho

Education Network Request for Proposals] specifications, the awards to ENA and Qwest, or the

MEMORANDUM DECISION AND ORDER RE: MOTION TO RECONSIDER – PAGE 1 001655

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amendments to the awards." (Substitute Memorandum Decision and Order 6, July 23, 2010 6.)

The Court concluded that Syringa had failed to exhaust its administrative remedies pursuant to Idaho Code § 67-5733(1)(a) (for specifications) and/or Idaho Code § 67-5733(c) (for awards).

(Substitute Decision and Order at 16-17.) The Court therefore granted partial summary judgment to the Defendants Idaho Department of Administration, J. Michael Gwartney and Jack G. Zickau (collectively, the "State Defendants") on Counts Two and Three of the Complaint, which alleged violations of state procurement statutes.

Syringa subsequently filed a Motion for Reconsideration on August 17, 2010 and a Memorandum in Support on August 20, 2010. The State Defendants filed a Memorandum in Opposition on August 31, 2010 and Syringa filed a Reply Brief on September 2, 2010. The Court heard oral argument on the matter on September 7, 2010. David R. Lombardi, Givens Pursley, LLP, appeared and argued on behalf of Syringa. Steven Schossberger, Hawley, Troxell, Ennis & Hawley, LLP appeared and argued on behalf of the State Defendants.

#### Standard of Review

Idaho Rule of Civil Procedure 11(a)(2)(B) permits a party to move the Court to reconsider an interlocutory order, so long as final judgment has not yet been ordered. I.R.C.P. 11(a)(2)(B); see also Telford v. Neibaur, 130 Idaho 932, 950 P.2d 1271 (1998). Specifically, the rule states:

A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment. A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of such order; provided, there shall be no motion for reconsideration of an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b).

I.R.C.P. 11(a)(2)(B).

The Idaho Supreme Court has recognized that "[a] rehearing or reconsideration in the trial court usually involves new or additional facts, and a more comprehensive presentation of both law and fact." *Coeur d'Alene Mining Co. v. First Nat'l Bank of N. Idaho*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990) (quoting *J.I. Case Co. v. McDonald*, 76 Idaho 223, 229, 280 P.2d 1070, 1073 (1955)). However, a party requesting reconsideration is not required to submit new or additional evidence. *Johnson v. Lambros*, 143 Idaho 468, 472, 147 P.3d 100, 104 (Ct. App. 2006)

The burden is on the moving party to bring the trial court's attention to the new facts. The trial court is not required to search the record to determine if there is any new information that might change the specification of facts deemed to be established. *Id.* The district court "should take into account any new facts presented by the moving party that bear on the correctness of the interlocutory order." *Spur Products Corp. v. Stoel Rives LLP*, 143 Idaho 812, 817, 153 P.3d 1158, 1163 (2007) (citing *Coeur d'Alene Mining Co.*, 118 Idaho at 823). Additionally, the trial court may reconsider its orders for legal errors. *See Johnson*, 143 Idaho at 472. The decision to grant or deny a request for reconsideration of an interlocutory order rests in the sound discretion of the trial court. *Spur Products Corp*, 143 Idaho at 815.

Discussion

Syringa states that it "[s]eeks reconsideration of the dismissal of Count Two and that part of Count Three that relates to the February 26, 2009 Amended Statewide Blanket Purchase Orders ("Amended SBPOs") because, as a matter of law, there was no administrative remedy for Syringa to exhaust associated with the Amended SBPOs." (Pl.'s Mem. 2.) Specifically, Syringa asserts that:

1) Idaho law provides <u>no</u> administrative remedy following the amendment of a state contract or Purchase Order; 2) Idaho law imposes <u>no</u> requirement for the exhaustion of administrative remedies before suit may be brought by proper party injured by the amendment of a state procurement contract or Purchase Order in violation of Idaho Code §§ 67-5718A and/or 67-5726; and 3) Even if Idaho law provided an administrative remedy following the amendment of a state contract or Purchase Order, <u>no</u> notice of the Amended SBPOs was given to Syringa.

(Pl.'s Mem. 3.) (emphasis in original). Syringa also states that the exhaustion doctrine does not apply: "(a) when the interest of justice so require; and (b) when the agency acts outside its authority." (Pl.'s Mem. 14.) (emphasis in original). Syringa argues that both exceptions are satisfied here.

The State Defendants counter that Idaho Code § 67-5733 expressly contains applicable administrative remedies but "Syringa admittedly never even *attempted* to pursue any administrative remedy in connection with the allegations raised in its Complaint." (Defs.' Mem. 3.) (emphasis in original). Moreover, the State Defendants assert that Syringa's interpretation of § 67-5733 is "unnecessarily narrow." (Defs.' Mem. 8.) Additionally, as to notice, the State Defendants state that "Syringa was indisputably aware of both the specifications for the IEN RFP, which indicated that a multiple award was possible, and the actual multiple award to both Qwest and ENA." (Defs.' Mem. 2.) Regarding the two exceptions to the exhaustion doctrine, the State Defendants argue that these are rare exceptions that are inapplicable here. (Defs.' Mem. 9-12.)

At summary judgment, Syringa argued that the exhaustion provisions of Title 67 do not apply here because this is a multiple contract award and § 67-5733 only applies to single contract awards. This Court did not read the statute so narrowly and concluded that Syringa should have sought administrative relief. In the present motion, Syringa argues that § 67-5733 does not "apply to contracts and/or Purchase Orders or amended contracts and/or Purchase Orders which are issued

after the bidding process is complete and the 5 day time period for appeal under Idaho Code § 67-5733 has expired." (Pl.'s Mem. 10-11.) The Court still does not read the statute so narrowly.

As noted in the Substitute Memorandum Decision and Order, the Department of Administration (DOA) made two identical awards, one Statewide Blanket Purchase Order (SBPO) to ENA and one to Qwest. However, the awards do not contain any information concerning the scope of the work intended for either ENA or Qwest. The scope of work was not addressed until the DOA issued Amendment 1 to the ENA SBPO and Amendment 1 to the Qwest SBPO. Both amendments were dated the same date. The language in each amendment clarified what work was assigned to ENA and what work was assigned to Qwest. The work assigned to Qwest apparently included all of the work that ENA and Syringa had proposed for Syringa. These amendments precluded Syringa from participating in the work. These amendments were effectively the awards. Syringa did not exhaust its administrative remedies in challenging these awards and cannot now resort to the court to challenge the awards. See, e.g., Lochsa Falls, L.L.C. v. State, 147 Idaho 232, 207 P.3d 963 (2009).

With respect to notice, Syringa states that "[t]here is no evidence that either of the Amended SBOs were sent to Syringa until they were forwarded, with 10,000 other documents, in response to Syringa's public records request of August, 6, 2009." (Pl.'s Mem. 8.) However, in its proposal Syringa represented that it was the "principal partner" with ENA (IEN Alliance RFP Proposal at p. 1) and acknowledged that ENA would be the contracting entity. (IEN Alliance RFP Proposal at p. 1.) Moreover, the Teaming Agreement demonstrated that the bid process was a joint undertaking between Syringa and Qwest. Given the relationship between Syringa and ENA, the Court is satisfied the notice of the amendment(s) to ENA was sufficient as notice to Syringa.

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Syringa argues that the exhaustion requirements do not apply here because the interests of justice so require and because the DOA acted outside its authority. The State Defendants oppose this proposition on essentially three grounds. First, the general rule requires administrative exhaustion and should only be deviated from in "extreme situations' involving 'compelling circumstances." (Defs.' Mem. 10.) (quoting Williams v. State, 95 Idaho 5, 7, 501 P.2d 203, 205 (1972). Second, the exception for an agency acting outside its authority does not simply apply when an agency employee has acted outside the scope of his authority, but rather when the available administrative remedy itself would be outside the scope of the agency's authority. (Defs.' Mem. 10-11.) (citing *Peterson v. City of Pocatello*, 117 Idaho 234, 236, 786 P.2d 1136, 1138 (Ct. App. 1990) and Bohemian Breweries, 80 Idaho 438, 332 P.2d 875 (1958)). Third, the "interests of justice" exception "should be limited to those situations where requiring the exhaustion of administrative remedies would occasion delay which would cause irreparable injury regardless of the outcome of the proceedings." (Defs.' Mem. 12.) (quoting Williams, 95 Idaho at 8) (emphasis added by State Defendants). The Court concludes that the circumstances present here do not warrant application of either of the two exceptions to the exhaustion requirements.

#### Conclusion

For the foregoing reasons, Syringa's Motion for Reconsideration will be denied.

IT IS SO ORDERED.

Dated this \_\_\_\_ day of November 2010.

Patrick H. Owen

H. Owen

District Judge

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#### **CERTIFICATE OF MAILING**

1 I, J. David Navarro, the undersigned authority, do hereby certify that I have mailed, by United States Mail, a true and correct copy of the within instrument as notice pursuant to Rule 77(d) I.R.C.P. to each of the attorneys of record in this cause in envelopes addressed as follows: 3 DAVID R. LOMBARDI AMBER N. DINA **GIVENS PURSLEY LLP** 601 W BANNOCK ST PO BOX 2720 BOISE, ID 83701-2720 7 STEVEN F. SCHOSSBERGER HAWLEY TROXELL ENNIS & HAWLEY, LLP 877 MAIN ST, STE 1000 PO BOX 1617 BOISE, ID 83701-1617 STEPHEN R. THOMAS 10 MOFFATT THOMAS BARRETT ROCK & FIELDS, CHARTERED 11 101 S CAPITOL BLVD, 10TH FLOOR **PO BOX 829** 12 BOISE, ID 83701-0829 13 **B. LAWRENCE THEIS** STEVEN J. PERFREMENT 14 HOLME ROBERTS & OWEN LLP 1700 LINCOLN STREET, STE 4100 **DENVER, COLORADO 80203** 15 PHILLIP S. OBERRECHT 16 LESLIE M.G. HAYES HALL FARLEY OBERRECHT & BLANTON, PA 17 702 W IDAHO, STE 700 PO BOX 1271 18 BOISE, ID 83701 19 **ROBERT S. PATTERSON** BRADLEY ARANT BOULT CUMMINGS LLP 20 1600 DIVISION STREET, STE 700 NASHVILLE, TN 37203 21

> J. DAVID NAVARRO Cierk of the District Court Ada County, Idaho

Date: 101. 2, 2010

By Martha Depty Clerk

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J. DAVID NAVARRO, Clerk By A. GARDEN

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Attorneys for Defendants Idaho Department of Administration; J. Michael "Mike" Gwartney and Jack G. "Greg" Zickau

# IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,	) Case No. CV OC 0923757
Plaintiff, vs.  IDAHO DEPARTMENT OF ADMINISTRATION; J. MICHAEL "MIKE" GWARTNEY, in his personal and official capacity as Director and Chief Information Officer of the Idaho Department of Administration; JACK G. "GREG" ZICKAU, in his personal and official capacity as Chief Technology Officer and Administrator of the Office of the CIO; ENA SERVICES, LLC, a Division of EDUCATION NETWORKS OF AMERICA, Inc., a Delaware corporation; QWEST COMMUNICATIONS COMPANY, LLC, a Delaware limited liability company,	MEMORANDUM IN SUPPORT OF THE STATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE COUNT FOUR OF PLAINTIFF'S COMPLAINT  ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) )
Defendants.	) )

MEMORANDUM IN SUPPORT OF THE STATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE COUNT FOUR OF PLAINTIFF'S COMPLAINT

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Idaho Tort Claims Act	nassim

COME NOW Defendants the Idaho Department of Administration ("IDA"), Michael ("Mike") Gwartney ("Gwartney") and Jack G. ("Greg") Zickau ("Zickau"), collectively referred to herein as the "State Defendants," pursuant to I.R.C.P. Rules 7(b)(3) and 56(c), and submit this Memorandum in Support of their Motion for Summary Judgment on Count Four of the Complaint.

### I. INTRODUCTION

In Count Four of the Verified Complaint (the "Complaint"), Syringa Networks LLC ("Syringa") asserts a claim for tortious interference with contract against the State Defendants. Under the Idaho Tort Claims Act, however, government employees such as Gwartney and Zickau can be held liable for tortious interference with contract only if they act (1) outside the course and scope of employment; (2) with malice; or (3) with criminal intent. But if a government employee so acts, the employee alone is potentially liable. Liability under those circumstances cannot extend to the employing government *agency*. As a matter of law, therefore, IDA is immune from a claim for tortious interference with contract.

Moreover, because the Complaint fails to allege that Gwartney or Zickau acted with malice or criminal intent or outside the scope of employment, Syringa cannot overcome the statutory presumption against such conduct, and Count Four must be dismissed as against all of the State Defendants. The State Defendants submit that even if the Court chooses to look beyond the pleadings to the evidence in the record, Syringa will have failed to submit *any* evidence that *any* of the State Defendants acted other than within the course and scope of employment, let alone sufficient evidence to overcome the statutory presumption. The record will reflect that there is no triable issue of material fact and that the Court should enter summary judgment on Count Four as a matter of law.

## II. STATEMENT OF UNDISPUTED FACTS

On December 15, 2008, the State of Idaho, Department of Administration, Division of Purchasing ("Purchasing") issued Request for Proposals ("RFP 02160") for the Idaho Education Network ("IEN"). See I.C. § 67-5745D (Idaho Education Network). See Aff. of Mark Little filed March 19, 2010 ("Little Aff."), ¶ 3, Exh. A.

On January 20, 2009, Purchasing issued a Letter of Intent to award the IEN contract to both ENA and Qwest for being awarded the most points. See Little Aff. at ¶ 15.

On January 28, 2009, the State of Idaho issued Statewide Blanket Purchase Order ("SBP0 01308") to Qwest. *Id.* at ¶ 16.

On January 28, 2009, the State of Idaho issued Statewide Blanket Purchase Order ("SBP0 01309") to ENA. *Id.* at ¶ 17.

On February 26, 2009, the State of Idaho issued Amendment 1 to SBP0 01308, which further defined Qwest's scope of work under the multiple award. *Id.* at ¶ 18. On February 26, 2009, the State of Idaho issued Amendment 1 to SBP0 01309, which further defined ENA's scope of work under the multiple award. *Id.* at ¶ 19.

On December 15, 2009, Syringa filed the Complaint in which it alleged, in Count Four, that the State Defendants interfered with a Teaming Agreement entered into between Syringa and ENA by instructing ENA to work with Qwest during the implementation of the IEN. Complaint, ¶¶ 99, 101.

#### III. LEGAL ANALYSIS

### A. Legal Standard

Summary judgment is appropriate if the affidavits, depositions, admissions, and other evidence in the record demonstrate that there are no genuine issues of material fact and that the

moving party is entitled to judgment as a matter of law. Rule 56(c); *Heinz v. Heinz*, 129 Idaho 847, 934 P.2d 20 (1997). When considering a motion for summary judgment, the court "construes the record in a light most favorable to the party opposing the motion and draws all reasonable inferences and conclusions in that party's favor." *Brooks v. Logan*, 130 Idaho 574, 576, 944 P.2d 709, 711 (1997).

Affidavits submitted in support of and in opposition to motions for summary judgment must be made on personal knowledge, set forth facts that would be admissible at trial on the issue addressed, and demonstrate that the affiant is competent to testify to the matters stated therein. Rule 56(e). When a motion for summary judgment is supported by affidavits or deposition testimony, the non-moving party cannot rest on the allegations and/or denials in the pleadings, but must set forth specific facts demonstrating a genuine issue of material fact for trial. *Arnold v. Diet Center, Inc.*, 113 Idaho 581, 746 P.2d 1040 (Ct. App. 1987). While the moving party generally bears the burden of demonstrating the absence of material facts, a failure of proof on an essential element of the opposing party's case makes all other facts immaterial. *Badell v. Beeks*, 115 Idaho 101, 765 P.2d 126 (1988) (citing *Celotex v. Catrett*, 117 U.S. 317 (1986)). Creating only slight doubt or presenting only a scintilla of evidence is insufficient to withstand a motion for summary judgment. *West v. Sonke*, 243 Idaho 133, 968 P.2d 228 (1998).

Consideration of a motion for summary judgment against a governmental entity and its employees under the Idaho Tort Claims Act involves a "three step analysis." *Rees v. State, Dep't of Health and Welfare*, 143 Idaho 10, 14, 137 P.3d 397, 401 (2006). After first determining whether tort recovery is allowed under the laws of Idaho, the next step is to determine whether "an exception to tort liability under the ITCA shields the alleged misconduct from liability." *Id.* at 15. Only if no such exception applies does the court reach the third step, an examination of

whether the merits of the claim entitle the moving party to dismissal. *Id.* A plaintiff's claim must be dismissed if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Shelton v. Shelton*, 225 P.3d 693, 698 (2009).

# B. Idaho Law Does Not Permit A Claim For Tortious Interference With Contract Against IDA

Count Four must be dismissed as against IDA because IDA cannot be sued for tortious interference with contract as a matter of law. In brief, a government employee can be liable for tortious interference with contract *only* if he or she acted with malice, criminal intent, or outside the course and scope of his employment. But a government entity cannot be held liable for such conduct by its employee. As a result, a government entity is immune from liability for tortious interference with contract.

Idaho Code § 6-904 (exceptions to governmental liability) establishes that government employees can only be held liable for interference with contract where they act with malice, with criminal intent, or outside the course and scope of their government employment. Section 6-904 provides, in relevant part, that:

A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent shall not be liable for any claim which: ...

3. Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, *or interference with contract rights*.

(emphasis added).

If a government employee acts with malice, criminal intent, or outside the course and scope of their employment, however, any resulting liability attaches *only* to the employee

himself; it does not flow to the governmental entity that employs him. Idaho Code § 6-903(c) provides:

The defense of its employee by the governmental entity shall be undertaken whether the claim and civil lawsuit is brought in Idaho district court under Idaho law or is brought in a United States court under federal law. The governmental entity may refuse a defense or disavow and refuse to pay any judgment for its employee if it is determined that the act or omission of the employee was not within the course and scope of his employment or included malice or criminal intent.

The Idaho Supreme Court has interpreted § 6-903(c) to preclude liability for government entities whose employees act with malice or criminal intent. *Sprague v. City of Burley*, 109 Idaho 656, 669-70, 710 P.2d 566, 579-80 (1985) (holding that because "the Idaho Tort Claims Act specifically exempts governmental entities from liability where the employees act with malice," plaintiff who had alleged that city officers had acted with malice could not, "as a matter of law" recover from the defendant city). *See Limbert v. Twin Falls County*, 131 Idaho 344, 346 (Ct. App. 1998) ("Idaho Code Section 6-903(c) negates entity liability if the employee acts with malice or criminal intent."); *Herrera v. Conner* 111 Idaho 1012, 1021-1022, 729 P.2d 1075, 1084 - 1085 (Ct. App. 1986) ("Because the amended complaint alleged that the officers acted with malice, and because the Idaho Tort Claims Act exempts entities from liability where the employees act with malice, as a matter of law Herrera could not recover from the city, the county, or the state."). In other words, under § 6-903(c), "[1]iability attaches *only* to the employee when the act is committed maliciously or with criminal intent." *Limbert*, 131 Idaho at 346.

This same logic forecloses any claim against a governmental entity for interference with contract based upon employee conduct outside the course and scope of employment. The *Sprague, Limbert*, and *Herrera* decisions did not expressly address whether a government entity

would be liable for an employee's conduct outside the course and scope of employment

- - because the plaintiff in each case did not allege such conduct. But *Sprague's* conclusion that
the Idaho Tort Claims Act precludes governmental entity liability for malicious conduct is based
upon the provision in Idaho Code § 6-903(c) that a governmental entity "may refuse a defense or
disavow and refuse to pay any judgment for its employee if it is determined that the act or
omission of the employee was not within the course and scope of his employment or included
malice or criminal intent." *Sprague*, 109 Idaho at 656.

The *Limbert* court recognized that because Idaho Code § 6-903(c) applies equally to actions involving criminal intent, Idaho Code § 6-903(c) also precludes entity liability where an employee acts with criminal intent. *Limbert*, 131 Idaho at 346. The same logic holds true for employee actions outside the course and scope of employment: Idaho Code § 6-903(c) makes no distinction between acting with malice or criminal intent, on the one hand, and acting outside the course and scope of employment, on the other. As a result, the holding of *Sprague* applies with equal force to allegations concerning the latter, and, just as IDA cannot be held liable for employee actions motivated by malice or criminal intent, neither can it be liable for employee conduct outside the course and scope of employment.

Put simply, by application of Idaho Code § 6-903(c) and § 6-904(3), "a governmental entity is *absolutely immune*" from suits arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. *Sprague*, 109 Idaho at 656 (addressing suits arising out of battery) (emphasis added).

There is no dispute that Count Four of the Complaint, which alleges tortious interference with contract, is a claim that arises out of interference with contract rights. Therefore, Idaho

Code § 6-904(3) applies, and an action for tortious interference of contract against IDA's employees - including Gwartney and Zickau - lies *only* if such employees acted with malice or criminal intent or acted outside the course and scope of their employment. As a result, even if the Complaint made such allegations - - and it does not, see discussion *infra* - - and even if Gwartney and Zickau were individually liable under such theory, no action can lie against IDA. IDA is "absolutely immune" for a claim for tortious interference with contract. *Limbert*, 131 Idaho at 346, 955 P.2d at 1125. Thus, Count Four must be dismissed as against IDA.

C. Count Four Fails As A Matter Of Law Because Syringa Does Not Even Allege Conduct By The State Defendants That Would Warrant The Application Of The Exceptions To Idaho Code § 6-903(3)

Count Four should be dismissed as to each of the State Defendants because the Complaint fails to allege actions by Gwartney, Zickau, or the IDA that would invoke the exception to Idaho Code § 6-904(3). In particular, the Complaint makes no allegation sufficient to overcome the statutory presumption that government employees act within the course and scope of their employment and without malice or criminal intent.

"There is a 'rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment and without malice or criminal intent." *Anderson v. Spalding*, 137 Idaho 509, 519 (2002) (quoting I.C. § 6-903(e)). In light of this presumption, a plaintiff's burden of showing malice, criminal intent, or action outside the course and scope of employment is "particularly high." *Boise Tower Associates, LLC v. Hogland*, 147 Idaho 774, 784, 215 P.3d 494, 504 (2009).

The term "criminal intent," as used in § 6-904(3), means "the intentional commission of a wrongful or unlawful act without legal justification or excuse, whether or not the injury was intended." *Anderson v. City of Pocatello*, 112 Idaho 176, 187-188, 731 P.2d 171, 182-183

(1986). "Malice" means "actual malice," which is defined as "the intentional commission of a wrongful or unlawful act, without legal justification or excuse and with ill will, whether or not injury was intended." *Id.* Malice is thus criminal intent plus ill will: both malice and criminal intent require an "intentional commission of a wrongful or unlawful act without legal justification or excuse"; malice adds to that the element of ill will.

An employee's conduct is within the scope of employment if "it is of the kind which he is employed to perform, occurs substantially within the authorized limits of time and space, and is actuated, at least in part, by a purpose to serve the master." Id. (emphasis in original). If the employee's conduct "may be regarded as methods ... of carrying out the objectives of employment," it is within the course and scope of employment, even if the methods are "quite improper." Id. (quoting The Richard J. and Esther E. Wooley Trust v. DeBest Plumbing, Inc., 133 Idaho 180, 184, 983 P.2d 834, 838 (2000)). In other words, establishing that an employee's acts were outside the course and scope of employment requires more than showing that the acts "were carried out improperly." Id. (holding that the evidence showed that alleged acts of defamation by state employee were within the scope and course of employment, "even though the record indicates they were carried out improperly"). It is only where the employee acts for "purely personal motives ... in no way connected with the employer's interest" that he acts outside the course and scope of his employment. Boise Tower Associates, 147 Idaho at 784, 215 P.3d at 504 (emphasis added).

The Complaint, however, makes no such allegation. Nowhere in the Complaint is there any allegation that any of the complained-of conduct occurred outside the course and scope of employment. Nowhere in the Complaint is there any allegation of malice or criminal intent on the part of any of the State Defendants. Indeed, Count Four alleges acts of Gwartney and Zickau

that were committed "within the time and at the place of [their] employment" with IDA, thus triggering the statutory presumption against malice, criminal intent, or conduct outside the course and scope of employment. See Compl., ¶¶ 97 - 104.

In particular, the Complaint alleges that the following actions by Gwartney and Zickau constituted interference with the Teaming Agreement between ENA and Syringa:

- 1) Gwartney and Zickau "knew of the existence of the Teaming Agreement between ENA and Syringa."
- 2) Gwartney and Zickau "knew that should the IEN Alliance be awarded the IEN Purchase Order, Syringa would implement the IEN technical network services, local access connections, and backbone services."
- 3) Gwartney and Zickau "instructed ENA to work only with Qwest during the IEN implementation despite knowledge of the Teaming Agreement between ENA and Syringa."

Compl. ¶¶ 97-99, 101.

Paragraph 100 of the Complaint also alleges certain other conduct of Gwartney and Zickau, but such alleged conduct is wholly irrelevant to Syringa's claim under Count Four. In Paragraph 100, Syringa alleges that IDA, Gwartney, and/or Zickau "have intentionally capriciously, and without authority, informed and directed agencies and political subdivisions such as the Idaho Department of Fish and Game, the Idaho Department of Labor, and various school districts not to use or contract with Syringa for telecommunications services." Even if such allegations were true, however, they have nothing to do with the claim asserted in Count Four, tortious interference with the alleged agreement *between Syringa and ENA*. Whether IDA, Gwartney, or Zickau interfered with contracts between Syringa and "agencies and political

subdivisions such as the Idaho Department of Fish and Game, the Idaho Department of Labor, and various school districts" is simply not at all relevant to the inquiry as to whether they interfered with the Teaming Agreement between Syringa and a private company, ENA, that is indisputably not an agency or political subdivision. The allegations in Paragraph 100 are, therefore, irrelevant to the underlying claim and should be disregarded in assessing whether Syringa has alleged conduct upon which it could prevail on such claim. <sup>1</sup>

The allegations upon which Count Four is based are, therefore, that despite their knowledge of the Teaming Agreement, Gwartney and Zickau instructed ENA to work only with Qwest during the implementation of the IEN. Because each of these allegations concerns conduct at the time and place of Gwartney and Zickau's employment, the statutory presumption against malice and criminal intent -- and in favor of conduct being within the scope of employment -- applies. There is nothing in the Complaint averring -- or even suggesting -- that any instruction to ENA occurred outside the course and scope of employment or was made with malice or criminal intent. This is fatal to Count Four. See Myers v. Pocatello, 98 Idaho 168, 169-170 (1977) (holding that claim of malicious prosecution was not sufficiently set forth by the language of the complaint because complaint failed to allege that defendant acted with malice; rejecting appellant's argument that malice could be inferred from the language of the complaint). Syringa has simply "failed to plead clear facts in the [Complaint] to overcome the statutory presumption that a government employee acts within the scope and course of his employment while employed by the government and at the place of his employment." Johnson v. N. Idaho

Even if the allegations in Paragraph 100 were considered as part of the claim for tortious interference with contract, the result is the same: the Complaint alleges neither acts outside the course and scope of employment nor acts of malice or criminal intent.

College, 350 Fed. Appx. 110, 112 (9th Cir. 2009) (applying Idaho law). Count Four must therefore be dismissed against the State Defendants.

# D. The State Defendants Are Entitled To Summary Judgment Because Syringa is Unable to Put Forth Evidence Of Conduct Implicating The Exceptions To Idaho Code § 6-904(3)

Should this Court feel inclined to look beyond the pleadings to determine whether the State Defendants are entitled to judgment as a matter of law, the State Defendants are entitled to summary judgment on Count Four because Syringa cannot put forth evidence that they acted outside the course and scope of employment, with malice, or with criminal intent. *See, e.g.*, *Murray v. Idaho*, 315 Fed. Appx. 639, 642 (9th Cir. 2009) (affirming grant of summary judgment for State on malicious prosecution claim based upon Idaho Code § 6-904(3), "because [plaintiff] failed to put forth evidence of malice"). The "three step" summary judgment analysis under the Idaho Tort Claims Act thus stops at step two because the exception to tort liability in § 6-904(3) shields Gwartney and Zickau from liability for tortious interference with contract. *Rees v. State, Dept. of Health and Welfare*, 143 Idaho 10, 14, 137 P.3d 397, 401 (2006).<sup>2</sup>

#### 1. Under Idaho Law, the State Defendants Are Presumed Immune

As discussed previously, there is a presumption under Idaho law that "any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment and without malice or criminal intent." *Anderson v. Spalding*, 137 Idaho 509, 519 (2002). Under Idaho law, therefore, each of the State Defendants is presumed immune from a claim for tortious interference with contract. Syringa's burden of overcoming

MEMORANDUM IN SUPPORT OF THE STATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE COUNT FOUR OF PLAINTIFF'S COMPLAINT - 11

As set forth above, IDA is immune as a matter of law. As a result, the argument about summary judgment refers to Gwartney and Zickau. If this Court concludes that IDA is not immune as a matter of law, however, the argument in this section is equally applicable to IDA, and IDA, too, is entitled to summary judgment.

that presumption is "particularly high." *Boise Tower Associates*, 147 Idaho at 784, 215 P.3d at 504.

To rebut the statutory presumption, Syringa must put forth evidence that Gwartney and Zickau acted outside the course and scope of employment, acted with criminal intent, or acted with malice. In other words, Syringa has the "particularly high" burden of producing evidence demonstrating that Gwartney and Zickau (1) acted for "purely personal motives" that were "in no way connected with the employer's interest," *Boise Tower Associates, LLC v. Hogland*, 147 Idaho 774, 784, 215 P.3d 494, 504 (2009); (2) "intentionally committed a wrongful or unlawful act, without legal justification or excuse," *Anderson v. City of Pocatello*, 112 Idaho 176, 187-188, 731 P.2d 171, 182 - 183 (1986) (defining criminal intent); or (3) "intentionally committed a wrongful or unlawful act, without legal justification or excuse and with ill will." *Id.* (defining malice).

# 2. Syringa Has No Evidence To Overcome The Statutory Presumption Of Immunity

Syringa lacks evidence that Gwartney or Zickau acted with malice, with criminal intent, or outside the course and scope of their employment. In its response to the State Defendants discovery requests, Syringa has pointed to the following documents in support of its allegations in Paragraphs 97-99 and 101 of its Complaint, true and accurate copies of which are attached to the Affidavit of Steven F. Schossberger, filed contemporaneously herewith ("SFS Aff."):

1) An e-mail from Zickau referring to a Teaming Agreement between ENA and Syringa. *See* Response to Interrogatory No. 3, referencing Lowe Dep. at 269:19-270:6 and document produced by Syringa with Bates stamp Lowe30(b)(6)-000112. (SFS Aff., Exhibits A-C.)

- 2) Correspondence discussing Qwest's suggested amendment to SBPOs 01308 and 01309. *See* document produced by Syringa with Bates stamp Lowe30(b)(6)-000187-000195. (SFS Aff., Exhibit C.)
- A statement by Greg Lowe indicating that, just before a scheduled meeting in Gwartney's office on Monday, December 8, 2008 (prior to the issuance of the RFP), Gwartney privately communicated to Lowe that if Lowe shared his criticisms of the IEN project with others, Gwartney would ensure that Syringa would get no IEN business. *See* Response to Interrogatory No. 4, referencing Amended Third Affidavit of Greg Lowe dated July 27, 2010 ("Third Lowe Aff.") ¶ 5 and document produced by Syringa with Bates stamp Lowe30(b)(6)-000018. (SFS Aff. Exhibits A and C.)
- 4) Correspondence from a representative of ENA to Lowe indicating that unnamed individuals at the State were, pursuant to the amendment to SBPOs 01308 and 01309, directing ENA to use Qwest rather than Syringa for certain services under the IEN. *See* Response to Interrogatory No. 4, referencing Third Lowe Aff. ¶ 13 and document produced by Syringa with Bates stamp Lowe30(b)(6) 000075. (SFS Aff. Exhibits A and C.)

Syringa also points to communications indicating that certain Idaho government agencies may have been instructed that they could not contract with Syringa, and alleged statements by Gwartney in July, 2009, as support for the allegations in Paragraph 100 of its Complaint. As discussed above, however, the allegations in Paragraph 100 do not relate to Syringa's complaint for tortious interference of its alleged contract with ENA. And the evidence identified in support of such allegations is similarly not relevant to that claim. For this reason, although Syringa also indirectly references such evidence in support of its allegations in Paragraphs 101 and 102 of its Complaint, the evidence is not material to Syringa's claims under Count Four. Even if such evidence was considered, the result would not change, because it is far from sufficient to rebut the statutory presumption.

Even accepting the foregoing alleged facts as true, Syringa has presented no evidence that Gwartney or Zickau acted outside the course and scope of their employment, acted for purely personal motives, or committed a wrongful act without legal justification. Indeed, the only evidence of specific conduct by Gwartney or Zickau refers to an alleged statement from Gwartney to Lowe that occurred, according to Lowe, in connection with a Monday morning meeting at Gwartney's office at IDA, and which transpired in the hallway outside of Gwartney's office. Being thus "within the time and place of [Gwartney's] employment" (on a Monday morning, in the hallway near his office), the law presumes that such action was "without malice or criminal intent." *Boise Tower Associates*, 147 Idaho at 784, 215 P.3d at 504. Syringa has provided no evidence to rebut such presumption.

Notably, the Idaho Supreme Court has concluded that very similar allegations did not constitute malice. In *Beco Const. Co. Inc. v. City of Idaho Falls*, 124 Idaho 859, 865 P.2d 950 (1993), the plaintiff company's allegation of malice rested on evidence that a city councilman had informed one of plaintiff's employees that "as long as I am on the City Council, Doyle [the president of Beco] won't do no more work for the City." *Id.*, 124 Idaho at 864, 865 P.2d at 955. The Court concluded that, even if the city councilman had made such a statement, it would be insufficient to demonstrate malice on his part absent any evidence that he had directed the city attorney to preclude work from flowing to Beco. *Id.* Likewise is the case herein. Even if Gwartney had, as Syringa alleges, warned Mr. Lowe that, if Mr. Lowe did not keep his criticisms to himself, he would "make sure Syringa would never get any of the IEN business," the record reflects no evidence that Gwartney followed through with his alleged threat. Indeed, the statement allegedly uttered by Gwartney was conditional, unlike the unconditional promise – that no work would flow to Doyle while he remained on the City Council – made by the city

councilman in *Beco*. Syringa's case is, therefore, significantly weaker than Beco's: beyond having no evidence that Gwartney followed through on his alleged threat by preventing Syringa from getting any work on the IEN, Syringa also lacks evidence that any of the conditions precedent to Gwartney acting on his alleged threat actually occurred - - i.e., that Mr. Lowe failed to keep his criticism to himself or that Gwartney was made aware of any subsequent criticisms of IEN by Mr. Lowe.

As to the general allegations of conduct, even if, as Sryinga has alleged, Gwartney and Zickau had instructed ENA to work only with Owest during the IEN implementation, such instruction would have necessarily occurred within the course and scope of their employment with IDA. It would also have lacked criminal intent or malice. Amendment One to SBPO 01308 provides, among other things, (1) that Qwest will be "the general contractor for all IEN technical network services"; (2) that Owest, "in coordination with ENA" will "deliver IEN technical network services," "procure and provision all local access connections and routing equipment," and "provide all Internet services to IEN users"; (3) that "Qwest and ENA will use a combination of Qwest and ENA Network Operations Center (NOC) assets for the [IEN]"; and (4) that "[t]he State considers Owest and ENA equal partners in the IEN project." (SFS Aff. Exhibit D.) Amendment One to SBPO 01309 provides, among other things, (1) that ENA "will coordinate delivery of all IEN network services and support"; (2) that ENA "in coordination with Qwest," will "procure, provision, and provide all local access connections and routing equipment"; (3) that "Qwest and ENA will use a combination of Qwest and ENA Network Operations Center (NOC) assets for the [IEN]"; and (4) that "[t]he State considers ENA and Owest as equal partners in the IEN project." (SFS Aff. Exhibit E.) Any such instruction from Gwartney or Zickau would have therefore been consistent with the amendments, not "wrongful

or unlawful and without legal justification or excuse." *Anderson v. City of Pocatello*, 112 Idaho at 187-188. In other words, any such instruction would have lacked criminal intent and malice.

Even accepting each of Syringa's allegations as true, therefore, it is apparent that the complained-of conduct was within the course and scope of employment and without criminal intent and malice. As a matter of law, Gwartney and Zickau cannot be held liable for tortious interference with contract - - in either their official or individual capacities. *See Pounds v. Denison*, 120 Idaho 425, 427-428, 816 P.2d 982, 984-985 (1991) (supervisor and president of state university could not be sued in their individual capacities because plaintiff failed to rebut the statutory presumption that defendants acted in the course and scope of their employment); *Evans v. Twin Falls County*, 118 Idaho 210, 216 (1990) (affirming grant of summary judgment for defendant because record contained "no evidence that the defendants acted with the requisite malice or criminal intent to circumvent the exceptions to liability contained in Idaho Code § 6-904(3)"); *Morton v. Lunde*, 2007 U.S. Dist. LEXIS 44523 (D. Idaho June 19, 2007) (dismissing all claims because the record "is void of any evidence that the Defendants were acting with malice or criminal intent").

Because the record here is similarly void of evidence that Gwartney or Zickau acted outside the course and scope of their employment, acted with malice, or acted with criminal intent, Syringa cannot "make a showing sufficient to establish the existence of an element essential to [its] case on which [it] bore the burden of proof." *Pounds*, 120 Idaho at 428, 816 P.2d at 985. Consequently, Count Four fails as a matter of law, and should be dismissed on summary judgment by the Court.

## IV. CONCLUSION

IDA is immune as a matter of law from claims for tortious interference with contract. Moreover, Syringa has failed to make allegations, let alone present evidence, sufficient to overcome the statutory presumption of governmental immunity for claims arising out of interference with contract. Count Four should, therefore, be dismissed as against each of the State Defendants - - IDA, Gwartney, and Zickau.

RESPECTFULLY SUBMITTED THIS 2nd day of November, 2010.

HAWLEY TROXELL ENNIS & HAWLEY LLP

Βv

Merlyn W. Clark, ISB No. 1026

Steven F. Schossberger, ISB No. 5358

Attorneys for Defendants Idaho Department of Administration; J. Michael "Mike" Gwartney

and Jack G. "Greg" Zickau

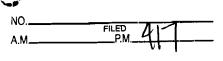
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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2nd day of November, 2010, I caused to be served a true copy of the foregoing MEMORANDUM IN SUPPORT OF THE STATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE COUNT FOUR OF PLAINTIFF'S COMPLAINT by the method indicated below, and addressed to each of the following:

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Steven F. Schossberger



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J. DAVID NAVARRO, Clerk By A. GARDEN

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#### IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,

Plaintiff,

VS.

IDAHO DEPARTMENT OF ADMINISTRATION; J. MICHAEL "MIKE" GWARTNEY, in his personal and official capacity as Director and Chief Information Officer of the Idaho Department of Administration; JACK G. "GREG" ZICKAU, in his personal and official capacity as Chief Technology Officer and Administrator of the Office of the CIO; ENA SERVICES, LLC, a Division of EDUCATION NETWORKS OF AMERICA, Inc., a Delaware corporation; QWEST COMMUNICATIONS COMPANY, LLC, a Delaware limited liability company,

Defendants.

Case No. CV OC 0923757

AFFIDAVIT OF STEVEN F. SCHOSSBERGER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNT FOUR OF THE COMPLAINT

AFFIDAVIT OF STEVEN F. SCHOSSBERGER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNT FOUR OF THE COMPLAINT - 1

STEVEN F. SCHOSSBERGER, being first duly sworn upon oath, deposes and states as follows:

- 1. I make this affidavit based upon my own personal knowledge, and I am competent to testify to the matters stated herein if called upon to do so.
- 2. I am a partner of the law firm Hawley Troxell Ennis & Hawley LLP, counsel of record for Defendants Idaho Department of Administration, J. Michael "Mike" Gwartney, and Jack G. "Greg" Zickau (collectively, the "State Defendants.")
- 3. Attached hereto as Exhibit A is a true and correct copy of Plaintiff Syringa Network LLC's ("Syringa") Answers and Responses to the State Defendants' First Set of Interrogatories and Requests for Production of Documents.
- 4. Attached hereto as Exhibit B is a true and correct copy of pages 269 and 270 of the Rule 30(b)(6) Deposition of Syringa, Testimony of Greg Lowe.
- 5. Attached hereto as Exhibit C is a true and correct copy of the documents produced by Syringa, in connection with the Rule 30(b)(6) Deposition of Syringa, as Bates Nos. Lowe30(b)(6) 000018, 000075, 000112, and 000187 through 000195.
- 6. Attached hereto as Exhibit D is a true and correct copy of Amendment One to SBPO 01308. This document was previously entered into the record as Exhibit K to the affidavit of Mark Little filed with this Court on March 19, 2010. Because this document was submitted on a CD at that time, however, it is provided here in hard copy for the convenience of the Court.
- 7. Attached hereto as Exhibit E is a true and correct copy of Amendment One to SBPO 01309. This document was previously entered into the record as Exhibit L to the affidavit of Mark Little filed with this Court on March 19, 2010. Because this document was submitted on a CD at that time, however, it is provided here in hard copy for the convenience of the Court.

AFFIDAVIT OF STEVEN F. SCHOSSBERGER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNT FOUR OF THE COMPLAINT - 2 Further your affiant sayeth naught.

Steven F. Schossberger

STATE OF IDAHO ) ss. County of Ada )

SUBSCRIBED AND SWORN before me this 2nd day of November, 2010.

PUBL OF THE OF T

Name: Karen Foruria

Residing at Boise, Idaho
My commission expires 6

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2nd day of November, 2010, I caused to be served a true copy of the foregoing AFFIDAVIT OF STEVEN F. SCHOSSBERGER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, by the method indicated below, and addressed to each of the following:

David R. Lombardi Amber N. Dina GIVENS PURSLEY, LLP 601 W. Bannock P.O. Box 2720 Boise, ID 83701 [Attorneys for Plaintiff]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 208.388.1300
B. Lawrence Theis Meredith Johnston Steven J. Perfrement HOLME ROBERTS & OWEN LLP 1700 Lincoln Street, Suite 4100 Denver, CO 80203 [Attorneys for Qwest Communications Company, LLC]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 303.866.0200
Phillip S. Oberrecht Leslie M.G. Hayes HALL FARLEY OBERRECHT & BLANTON, P.A. 702 W Idaho, Suite 700 P.O. Box 1271 Boise, ID 83701 [Attorneys for ENA Services, LLC]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 208.395.8585
Robert S. Patterson BRADLEY ARANT BOULT CUMMINGS LLP 1600 Division Street, Suite 700 Nashville, TN 37203 [Attorneys for ENA Services, LLC]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 615.252.6335

AFFIDAVIT OF STEVEN F. SCHOSSBERGER IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNT FOUR OF THE COMPLAINT - 4

Stephen R. Thomas

MOFFATT, THOMAS, BARRETT, ROCK
& FIELDS, CHARTERED

101 S. Capitol Boulevard, 10th Floor
P.O. Box 829

Boise, ID 83701

[Attorneys for Qwest Communications Company, LLC]

U.S. Mail, Postage Prepaid
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E-mail
Telecopy: 208.385.5384

Steven F. Schossberger

David R. Lombardi, ISB #1965 Amber N. Dina, ISB #7708 GIVENS PURSLEY LLP 601 W. Bannock P.O. Box 2720 Boise, Idaho 83701

Telephone Number: (208) 388-1200

Facsimile: (208) 388-1300

954723\_3

Attorneys for Plaintiff Syringa Networks, LLC

# IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,

Plaintiff,

VS.

IDAHO DEPARTMENT OF
ADMINISTRATION; J. MICHAEL
"MIKE" GWARTNEY, in his personal and
official capacity as Director and Chief
Information Officer of the Idaho
Department of Administration; JACK G.
"GREG" ZICKAU, in his personal and
official capacity as Chief Technology
Officer and Administrator of the Office of
the CIO; EDUCATION NETWORKS OF
AMERICA, Inc., a Delaware corporation;
QWEST COMMUNICATIONS
COMPANY, LLC, a Delaware limited
liability company;

Case No. CV OC 0923757

PLAINTIFF'S ANSWERS AND RESPONSES TO THE STATE DEFENDANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Defendants.

The following are Plaintiff's Answers and Responses to the State Defendants' First Set of Interrogatories and Requests for Production of Documents. The following Answers and Responses are based upon such discovery and investigation as has been completed by Plaintiff to

date after reasonable inquiry of all available sources. The following responses are given without prejudice to Plaintiff's right to produce at trial evidence of any subsequently discovered information or facts, facts which Plaintiff may later recall, or information and/or facts omitted as a result of good faith oversight. Plaintiff reserves the right to supplement or amend any and all answers herein as additional facts are ascertained and analyses are made. The responses contained herein are made in a good faith effort to supply as much information as is presently known, but shall in no way prejudice the right of Plaintiff in relation to further discovery, research and analyses.

#### INTERROGATORIES

INTERROGATORY NO. 1: Please state the name, address, and telephone number of each and every person known to you or your attorneys who has any knowledge of, or who purports to have any knowledge of, any of the material facts of this case, and set forth what personal knowledge each said person has which is pertinent to any material fact alleged in the Amended Complaint.

ANSWER TO INTERROGATORY NO. 1: Plaintiff objects to this Interrogatory on the grounds that it is vague, overly broad and unduly burdensome. Subject to, and without waiving the foregoing objections, Plaintiff responds as follows:

In addition to the persons listed below, *see*: Qwest's Answer to Interrogatory No. 1 served March 18, 2010; ENA's Answer to Interrogatory No. 1 served April 5, 2010; DOA's Supplemental Answer to Interrogatory No. 1 served August 3, 2010; and the individuals indentified in the parties' responses to requests for production.

- 1. Greg Lowe, Chief Executive Officer, Syringa, c/o Givens Pursley LLP, 601 W. Bannock Street, Boise ID 83701
- Steve Maloney, Former Chief Executive Officer, Syringa, c/o Givens Pursley LLP, 601 W. Bannock Street, Boise ID 83701

- 4. Kevin Johnsen, Sales Engineer, Syringa, c/o Givens Pursley LLP, 601 W. Bannock Street, Boise ID 83701
- 5. Bill Johnson, Equipment Sales, Syringa, c/o Givens Pursley LLP, 601 W. Bannock Street, Boise ID 83701
- 6. Jeff Morris, Enterprise Sales, Syringa, c/o Givens Pursley LLP, 601 W. Bannock Street, Boise ID 83701
- 7. Ken McClure, c/o Givens Pursley LLP, 601 W. Bannock Street, Boise ID 83701
- 8. Jerry Piper, Cambridge Telephone Co.
- 9. Jason Kreizenbeck, Chief of Staff for Governor Otter's office
- 10. David Hensley, Deputy Chief of Staff for Governor Otter's office
- 11. Melissa Vandenberg, Deputy Attorney General

INTERROGATORY NO. 2: Have you engaged any experts whom you expect to testify at the trial in any field with respect to any of the issues in this case, and if so, state:

- (a) The names, addresses, employers, and fields of expertise of each such expert;
- (b) His or her qualifications as an expert;
- (c) The date(s) of your consultation(s) with him/her;
- (d) Whether any written or oral report has been or will be rendered by him/her, and if so, the date thereof;
  - (e) The subject matter upon which the expert witness is expected to testify;
- (f) The substance of the opinions to which the expert witness is expected to testify; and
- (g) The underlying facts and data upon which the expert opinions are based, in conforming with rule 705, Idaho Rule of Evidence.

ANSWER TO INTERROGATORY NO. 2: Plaintiff objects to this Interrogatory as premature at this stage. Plaintiff has not designated which experts may or may not testify in this proceeding. Plaintiff will comply with the timeframe governed by the Court's Order Governing Proceedings and Setting Trial. Subject to, and without waiving the foregoing objection, Plaintiff responds as follows:

See Plaintiff's Expert Witness Disclosure dated September 13, 2010, in response to (a), (b), (e) and (f) and (g).

- (c) Counsel for Plaintiff first consulted with Christopher Yukins in January, 2010.Counsel for Plaintiff first consulted with Dennis Reinstein and Timothy Pecaro in August, 2010.
- (d) On March 17, 2010, Christopher Yukins prepared a written report entitled "Summary Report Regarding Procurement Strategy for the Idaho Educational Network." To date, Plaintiff's experts have prepared no other written reports.

<u>INTERROGATORY NO. 3</u>: Please describe and identify in detail all material facts and documents which support the allegations in paragraph 97 of the Complaint.

ANSWER TO INTERROGATORY NO. 3: Plaintiff objects to this Interrogatory because it is overbroad and unduly burdensome. Plaintiff also objects to this Interrogatory as being a premature "contention" interrogatory to which Plaintiff's response may be deferred until additional discovery has been completed. Subject to, and without waiving the foregoing objections, and without waiving the right to more completely and accurately respond based upon the further development of evidence in discovery, Plaintiff responds as follows:

See transcript dated August 5, 2010 of the Rule 30(b)(6) Deposition of Syringa Networks, LLC (Testimony of Greg Lowe) ("Lowe Depo.") at 269:19-270:6 and the documents previously produced as Bates Nos. Lowe30(b)(6) - 000112 and Lowe30(b)(6) - 000187 through 000195.

INTERROGATORY NO. 4: Please describe and identify in detail all material facts and documents which support the allegations in paragraph 99 of the Complaint.

ANSWER TO INTERROGATORY NO. 4: Plaintiff objects to this Interrogatory because it is overbroad and unduly burdensome. Plaintiff also objects to this Interrogatory as being a premature "contention" interrogatory to which Plaintiff's response may be deferred until additional discovery has been completed. Subject to, and without waiving the foregoing objections, and without waiving the right to more completely and accurately respond based upon the further development of evidence in discovery, Plaintiff responds as follows:

See Amended Third Affidavit of Greg Lowe dated July 27, 2010 ("Third Lowe Aff.") at ¶¶ 5 and 13 and the documents previously produced as Bates Nos. Lowe30(b)(6) - 000018 and Lowe30(b)(6) - 000075.

INTERROGATORY NO. 5: Please describe and identify in detail all material facts and documents which support the allegations in paragraph 100 of the Complaint.

ANSWER TO INTERROGATORY NO. 5: Plaintiff objects to this Interrogatory because it is overbroad and unduly burdensome. Plaintiff also objects to this Interrogatory as being a premature "contention" interrogatory to which Plaintiff's response may be deferred until additional discovery has been completed. Subject to, and without waiving the foregoing objections, and without waiving the right to more completely and accurately respond based upon the further development of evidence in discovery, Plaintiff responds as follows:

See Third Lowe Aff. at ¶¶ 15 through 17; Lowe Depo. at 256:6 - 257:21; and the documents previously produced as Bates Nos. Lowe30(b)(6) - 000037, Lowe30(b)(6) - 000044 and Lowe30(b)(6) - 000055 through 000056.

<u>INTERROGATORY NO. 6</u>: Please describe and identify in detail all material facts and documents which support the allegations in paragraph 101 of the Complaint.

ANSWER TO INTERROGATORY NO. 6: Plaintiff objects to this Interrogatory because it is overbroad and unduly burdensome. Plaintiff also objects to this Interrogatory as being a premature "contention" interrogatory to which Plaintiff's response may be deferred until additional discovery has been completed. Subject to, and without waiving the foregoing objections, and without waiving the right to more completely and accurately respond based upon the further development of evidence in discovery, Plaintiff responds as follows:

See Answers to Interrogatory Nos. 3 through 5.

<u>INTERROGATORY NO. 7</u>: Please describe and identify in detail all material facts and documents which support the allegations in paragraph 102 of the Complaint.

ANSWER TO INTERROGATORY NO. 7: Plaintiff objects to this Interrogatory because it is overbroad and unduly burdensome. Plaintiff also objects to this Interrogatory as being a premature "contention" interrogatory to which Plaintiff's response may be deferred until additional discovery has been completed. Subject to, and without waiving the foregoing objections, and without waiving the right to more completely and accurately respond based upon the further development of evidence in discovery, Plaintiff responds as follows:

See Answers to Interrogatory Nos. 3 through 5.

INTERROGATORY NO. 8: Please describe and identify in detail all material facts and documents which support the allegations in paragraph 104 of the Complaint.

ANSWER TO INTERROGATORY NO. 8: Plaintiff objects to this Interrogatory because it is overbroad and unduly burdensome. Plaintiff also objects to this Interrogatory as

being a premature "contention" interrogatory to which Plaintiff's response may be deferred until additional discovery and expert reports have been completed.

#### REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Please produce any and all documents, writings, or other physical evidence you intend to offer as an exhibit (including rebuttal or impeachment) and rely upon as evidence at trial, including, but not limited to, all writings, memoranda, correspondence, reports, photographs, and diagrams.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Plaintiff objects to this Request on the grounds that it is premature given that discovery is ongoing. Plaintiff objects that this Request is vague and overly broad. Plaintiff also objects to this Request to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any other privilege or immunity. Subject to, and without waiving the foregoing objections, Plaintiff responds as follows:

Such documents/exhibits will be produced according to the Court's Order Governing Proceedings and Setting Trial.

REQUEST FOR PRODUCTION NO. 2: Please produce the raw data, handwritten notes, answers, or any other documents and any other information directly or indirectly relied upon or provided to any expert who is expected to testify in this matter to conduct any and all tests, analysis, and/or examinations; each report of the expert's objective findings; each report of the expert's opinions or conclusions; and each and every other document referenced in any interrogatory answer made by you herein as to said expert.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: See Response to Request for Production No. 1. Subject to, and without waiving the foregoing objections, Plaintiff responds as follows:

See Christopher Yukins' report entitled "Summary Report Regarding Procurement Strategy for the Idaho Educational Network", produced herein as Bates Nos. SYRINGA000001 - 000003.

REQUEST FOR PRODUCTION NO. 3: Please produce copies of all of your (including any agent or representative of Plaintiff) handwritten notes, emails, memorandums, letters, calendars, diaries, and call logs which include reference to or discuss the State Defendants in connection with any of the subject matter or issues alleged in your Complaint, not including information which is attorney client privileged.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Plaintiff objects to this Request as overbroad, vague and unduly burdensome and also objects to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any other privilege or immunity. Subject to, and without waiving the foregoing objection, Plaintiff responds as follows:

Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 4: Please produce all documents identified and supporting in any way or manner your Answer to Interrogatory No. 3.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Plaintiff objects that this Request is vague and overly broad. Plaintiff also objects to this Request to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the

attorney-client privilege, attorney-work product doctrine or any other privilege or immunity.

Subject to, and without waiving the foregoing objections, Plaintiff responds as follows:

See Answer to Interrogatory No. 3. Plaintiff will produce documents responsive to this Request.

<u>REQUEST FOR PRODUCTION NO. 5</u>: Please produce all documents identified and supporting in any way or manner your Answer to Interrogatory No. 4.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Plaintiff objects that this Request is vague and overly broad. Plaintiff also objects to this Request to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any other privilege or immunity. Subject to, and without waiving the foregoing objections, Plaintiff responds as follows:

See Answer to Interrogatory No. 4. Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 6: Please produce all documents identified and supporting in any way or manner your Answer to Interrogatory No. 5.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Plaintiff objects that this Request is vague and overly broad. Plaintiff also objects to this Request to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any other privilege or immunity. Subject to, and without waiving the foregoing objections, Plaintiff responds as follows:

See Answer to Interrogatory No. 5. Plaintiff will produce documents responsive to this Request.



<u>REQUEST FOR PRODUCTION NO. 7</u>: Please produce all documents identified and supporting in any way or manner your Answer to Interrogatory No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Plaintiff objects that this Request is vague and overly broad. Plaintiff also objects to this Request to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any other privilege or immunity. Subject to, and without waiving the foregoing objections, Plaintiff responds as follows:

See Answer to Interrogatory No. 6. Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 8: Please produce all documents identified and supporting in any way or manner your Answer to Interrogatory No. 7.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Plaintiff objects that this Request is vague and overly broad. Plaintiff also objects to this Request to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any other privilege or immunity. Subject to, and without waiving the foregoing objections, Plaintiff responds as follows:

See Answer to Interrogatory No. 7. Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 9: Please produce all documents identified and supporting in any way or manner your Answer to Interrogatory No. 8.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Plaintiff objects that this Request is vague and overly broad. Plaintiff also objects to this Request to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the



attorney-client privilege, attorney-work product doctrine or any other privilege or immunity.

Subject to, and without waiving the foregoing objections, Plaintiff responds as follows:

. .

See Answer to Interrogatory No. 8. Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 10: Please produce all of your documents relating to the Proposal submitted by ENA in response to RFP02160.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: Plaintiff objects to this

Request to the extent that it requests documents that are confidential, proprietary and/or

protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any
other privilege or immunity. Subject to, and without waiving the foregoing objection, Plaintiff
responds as follows:

Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 11: Please produce all of your documents relating to SBPO 1308.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: Plaintiff objects to this Request to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any other privilege or immunity. Subject to, and without waiving the foregoing objection, Plaintiff responds as follows:

Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 12: Please produce all of your documents relating to SBPO 1309.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Plaintiff objects to this

Request to the extent that it requests documents that are confidential, proprietary and/or

protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any
other privilege or immunity. Subject to, and without waiving the foregoing objection, Plaintiff
responds as follows:

Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 13: Please produce all of your documents relating to Amendment No. 1 to SBPO 1308.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: Plaintiff objects to this

Request to the extent that it requests documents that are confidential, proprietary and/or

protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any
other privilege or immunity. Subject to, and without waiving the foregoing objection, Plaintiff
responds as follows:

Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 14: Please produce all of your documents relating to Amendment No. 1 to SBPO 1309.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: Plaintiff objects to this

Request to the extent that it requests documents that are confidential, proprietary and/or

protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any
other privilege or immunity. Subject to, and without waiving the foregoing objection, Plaintiff
responds as follows:

Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 15: Please produce all of your documents relating to the January 20, 2009 Letter of Intent from Mark Little to ENA.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15: Plaintiff objects to this

Request to the extent that it requests documents that are confidential, proprietary and/or

protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any
other privilege or immunity. Subject to, and without waiving the foregoing objection, Plaintiff
responds as follows:

Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 16: Please produce all of your documents relating to any communications with ENA, including its officers, directors, agents, and employees, for the time period November 1, 2008 through the current date regarding the IEN RFI, IEN RFP 02160, SBPO 1308, SBPO 1309, the Teaming Agreement, Amendment No. 1 to SBPO 1308, Amendment No. 1 to SBPO 1309, and the allegations in the Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16: Plaintiff objects to this

Request to the extent that it requests documents that are confidential, proprietary and/or

protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any
other privilege or immunity. Subject to, and without waiving the foregoing objection, Plaintiff
responds as follows:

Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 17: Please produce all of your documents relating to any communications with Qwest, including its officers, directors, agents, and employees, for the time period November 1, 2008 through the current date regarding the IEN RFI, IEN RFP

02160, SBPO 1308, SBPO 1309, the Teaming Agreement, Amendment No. 1 to SBPO 1308, Amendment No. 1 to SBPO 1309, and the allegations in the Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17: Plaintiff objects to this Request to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any other privilege or immunity. Subject to, and without waiving the foregoing objection, Plaintiff responds as follows:

Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 18: Please produce all of your documents relating to any communications with the Department of Administration, including its officers, directors, agents, and employees, for the time period November 1, 2008 through the current date regarding the IFN RFI, IEN RFP 02160, SBPO 1308, SBPO 1309, the Teaming Agreement, Amendment No. 1 to SBPO 1308, Amendment No. 1 to SBPO 1309, and the allegations in the Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18: Plaintiff objects to this Request to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any other privilege or immunity. Subject to, and without waiving the foregoing objection, Plaintiff responds as follows:

Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 19: Please produce all of your documents relating to any communications internally within Syringa, including is officers, directors, agents, and employees, for the time period November 1, 2008 through the current date regarding the IEN

PLAINTIFF'S ANSWERS AND RESPONSES TO THE STATE DEFENDANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 14

RFI, IEN RFP 02160, SBPO 1308, SBPO 1309, the Teaming Agreement, Amendment No. 1 to SBPO 1308, Amendment No. 1 to SBPO 1309, and the allegations in the Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19: Plaintiff objects to this Request because it is overbroad and unduly burdensome. Subject to, and without waiving the foregoing objection, Plaintiff responds as follows:

Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 20: Please produce all of your documents relating to any communications with Ken McClure acting as Plaintiff's retained lobbyist, and not acting as Syringa's attorney rendering legal advice, for the time period November 1, 2008 through the current date regarding the IEN RFI, IEN RFP 02160, SBPO 1308, SBPO 1309, the Teaming Agreement, Amendment No. 1 to SBPO 1308, Amendment No. 1 to SBPO 1309, and the allegations in the Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20: Plaintiff objects to this Request as not reasonably calculated to lead to the discovery of admissible and/or relevant evidence. Plaintiff also objects to this Request to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any other privilege or immunity. Subject to, and without waiving the foregoing objections, Plaintiff responds as follows:

Plaintiff will produce documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 21: Please produce all of your documents relating to any communications with Jeremy Chu acting as Plaintiff's retained lobbyist, and not acting as Syringa's attorney rendering legal advice, for the time period November 1, 2008 through the current date regarding the IEN RFI, IEN RFP 02160, SBPO 1308, SBPO 1309, the Teaming

PLAINTIFF'S ANSWERS AND RESPONSES TO THE STATE DEFENDANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 15

**3** 

Agreement, Amendment No. 1 to SBPO 1308, Amendment No. 1 to SBPO 1309, and the allegations in the Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21: Plaintiff objects to this Request as not reasonably calculated to lead to the discovery of admissible and/or relevant evidence. Plaintiff also objects to this Request to the extent that it requests documents that are confidential, proprietary and/or protected from disclosure by the attorney-client privilege, attorney-work product doctrine or any other privilege or immunity. Subject to, and without waiving the foregoing objections, Plaintiff responds as follows:

Plaintiff will produce documents responsive to this Request.

DATED this 29th day of September, 2010.

GIVENS PURSLEY LLP

Ву

Amber N. Dina

Attorneys for Plaintiff

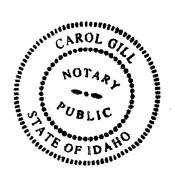
#### **VERIFICATION**

State of Idaho	)
	) ss
County of Ada	)

Greg Lowe, being first duly sworn, deposes and says that he is the Chief Executive
Officer of Syringa Networks, LLC, he has read the foregoing instrument, knows the contents
thereof, and believes the contents thereof to be true and correct to the best of his knowledge.

Greg Lowe

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 29 th day of September 2010.



Notary Public for: State of Idaho
Residing at: Monday 14 83642
Commission expires: 4/20/20/6





#### CERTIFICATE OF SERVICE

I hereby certify that on this 29<sup>th</sup> day of September, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Merlyn W. Clark	X U.S. Mail
Steven F. Schossberger	Overnight Mail
HAWLEY TROXELL ENNIS & HAWLEY LLP	Hand Delivery
877 W. Main Street, Suite 1000	<b>X</b> Fax (954-5210)
P.O. Box 1617	
Boise, ID 83701	
Attorneys for Idaho Dept. of Administration; J. Michael	
"Mike" Gwartney and Jack G. "Greg" Zickau	
Phillip S. Oberrecht	U.S. Mail
HALL FARLEY OBERRECHT & BLANTON, P.A.	Overnight Mail
702 W. Idaho, Ste. 700	Hand Delivery
P.O. Box 1271	Fax (395-8585)
Boise, ID 83701	
Attorneys for ENA Services, LLC	
Robert S. Patterson	U.S. Mail
BRADLEY ARANT BOULT CUMMINGS LLP	Overnight Mail
1600 Division Street, Suite 700	Hand Delivery
Nashville, TN 37203	Fax (615-252-6335)
Attorneys for ENA Services, LLC	
Stephen R. Thomas	U.S. Mail
MOFFATT THOMAS BARRETT ROCK & FIELDS	Overnight Mail
101 S. Capitol Blvd., 10 <sup>th</sup> Floor	Hand Delivery
P.O. Box 829	Fax (385-5384)
Boise, ID 83701	
Attorneys for Qwest Communications Company	
B. Lawrence Theis	U.S. Mail
Steven Perfrement	Overnight Mail
Meredith Johnston	Hand Delivery
HOLME ROBERTS & OWEN LLP	Fax (303-866-0200)
1700 Lincoln Street, Suite 4100	
Denver, CO 80203	
Attorneys for Owest Communications Company	

Amber N. Dina

PLAINTIFF'S ANSWERS AND RESPONSES TO THE STATE DEFENDANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 18

### SUMMARY REPORT REGARDING PROCUREMENT STRATEGY FOR THE IDAHO EDUCATIONAL NETWORK

Christopher R. Yukins
Associate Professor of Government Contract Law
Co-Director, Government Procurement Law Program
The George Washington University Law School
2000 H Street NW
Washington, D.C. 20052
Tel. +1 202 994 9992
cyukins@law.gwu.edu

March 17, 2010





### SUMMARY REPORT REGARDING PROCUREMENT STRATEGY FOR THE IDAHO EDUCATION NETWORK

The Idaho Department of Administration's handling of the contracts for the Idaho Education Network violated accepted procurement best practices used in Idaho and around the nation, practices which are reflected in Idaho law and administrative guidance. Instead of allowing the two master contract holders (ENA and Qwest) to compete to provide high-speed access to local school districts, the Department of Administration revised the master contracts to split the work between the two contractors, and to force the contractors to *cooperate* rather than *compete* on orders from individual school districts. While this may have benefited the contractors, as a result of this startling failure in procurement strategy, Idaho taxpayers will probably pay much more for Idaho schools' online access in the years to come.

Idaho law and policy recognize the benefits of awarding long-term master contracts to multiple vendors, so that those vendors will continue to compete against each other for orders. This contracting strategy is used across the country -- indeed, around the world. See, e.g., Federal Acquisition Regulation 16.504(c), 48 C.F.R. § 16.504(c) (multiple award preference for indefinite delivery/indefinite quantity (IDIQ) contracts). In Idaho, these open IDIQ contracts are called "Blanket Purchase Agreements," and by law state employees are to use these open contracts first, to ensure that the State gains the maximum benefit from its substantial buying power.

In this case, multiple awards of master contracts should have ensured that multiple vendors competed for future opportunities to provide high-speed access to Idaho schools. Since the master contracts were projected to last at least five years (and probably longer), and to cover million of dollars in installations, the taxpayers could have saved substantially with even modest competition between two awardees.

The competitive strategy failed here, however, when the Department of Administration amended the master contracts that had been awarded to ENA and Qwest. As originally awarded, by the terms of the agreements the two contractors would have provided complete, competing solutions, including online educational materials and broad-band connectivity. When the Department of Administration amended the master contracts, however, the Department dictated that Qwest and ENA should be "equal partners," not competitors, and the Department assigned specific parts of the contract work to each. Rather than encouraging continuing competition between the two contractors, the Department of Administration in essence split the requirement between the two contractors, so that they would cooperate and not compete.

Splitting the requirement to divide the business among the vendors was directly contrary to established best practices regarding multiple awards. To implement the statewide multiple-award procurement strategy, the Idaho *Purchasing Reference Guide* (in a version since updated on other grounds, but still available at

http://adm.idaho.gov/purchasing/ManualsForms/purguiderev11 1.pdf) specifically provided,

SYRINGA00000

<sup>&</sup>lt;sup>1</sup> See Idaho Division of Purchasing website, http://adm.idaho.gov/purchasing/contract\_excerpts.html.

6

regarding multiple awards, that they "shall not be made for the purpose of dividing the business." Id. at 119. Other governments implementing the multiple-award strategy used by the federal government, such as the state of Illinois and Utah County, Utah, similarly emphasize that multiple awards should not be made simply so as to split available business among the awardee contractors. See Illinois Administrative Code § 1.2036(b)(1)(B) ("Awards shall not be made for the purpose of simply dividing the business"); Utah County Procurement Rules and Regulations § 3-708 (same). Splitting the requirement is also contrary to the clear intent behind the multiple-award statute, Idaho Code § 67-5718A: to encourage continuous competition between standing contractors, to maximize choice and efficiency for Idaho's agencies and to minimize costs for Idaho's taxpayers.

By amending the two master contracts in a radical way, to fuse the two contracts (as amended) into a monopolistic joint venture, the Department of Administration undertook a very material change to those contracts. A radical contractual change of this scope (often termed a "cardinal" change) normally means that the new requirement should be solicited again, in a new competition. Where a public contract has been radically changed to depart from its original intent -- here, to reduce the work for each contractor, and to compel them to *cooperate* rather than *compete* -- the contract should be reopened for competition, so that other vendors can compete for the altered requirement, or the radical contractual change should be rescinded.

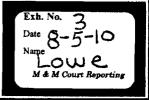
Respectfully submitted.

Christopher R. Yukins

<sup>&</sup>lt;sup>2</sup> http://www.utahcountyonline.org/apps/WebLink/Dept/CLERKAUD/Part3Sub3-7.pdf.

### LOWE 30(b)(6) Documents

Givens Pursley LLP 601 West Bannock Street Boise, Idaho 83702 (208) 388-1200



#### **Greg Lowe**

bject: cation:

**IEN Discussion** 

Mike Gwartney's Office

Start: End:

Mon 12/8/2008 7:30 AM Mon 12/8/2008 10:00 AM

Recurrence:

(none)

Meeting Status:

Accepted

Organizer:

Adam Johnston

Required Attendees:

Kevin Johnsen; Jeff Morris; Steve Wagner; Greg Lowe; Adam Johnston

When: Monday, December 08, 2008 7:30 AM-10:00 AM (GMT-07:00) Mountain Time (US & Canada).

Where: Mike Gwartney's Office

\*~\*~\*~\*~\*~\*~\*~

Mike Gwartney and Greg Zickau have requested a meeting with Syringa Networks ENA and IRON. Attending from the IEN Alliance will be Greg Lowe, Steve Wagner, Jeff Morris, Adam Johnston and Kevin Johnsen. ENA will have Bob Collie, Gayle Nelson and IRON will have Dave O'Niell.

Purpose: This is an impromptu meeting where the OCIO group wants to ask us questions regarding implementation and pricing of our RFI.



Adam Johnston
Sales Vice President
Syringa Networks
3795 South Development Ave, Suite 100

Boise, Idaho 83705 Office: 208-229-6114 Cell: 208-890-9644 Fax:208-229-6110

email: ajohnston@syringanetworks.net

<<ATT83317>>

Syringa

"Idaho's Prem

ier Fiber Optic Network"



#### **Greg Lowe**

Bob Collie [bcollie@ena.com]

To:

Monday, July 27, 2009 9:16 PM Greg Lowe

Cc: Subject:

Gayle Nelson IEN update

Greg--

We have received an order from the State for the installation of IEN services to the 12 school sites in Phase 1a. Since the State rejected the IEN Alliance proposal, ENA has continued its conversations with the State and shared those developments with you; and, as you know, they have directed through their statewide purchase orders that we must use Qwest to provide the local loop, backbone and core equipment.

ENA has requested multiple times that the State use any local loop provider who can deliver to the quality, price and time requirements, similar to what we contemplated in the proposal. To date, the State has rejected these requests. At your suggestion we approached the State about using one of your members to serve Salmon High School and the State granted permission to proceed with Custer for that site. We then asked the State to consider others to serve the additional sites in this order and the State refused that request.

For the benefit of this project and to maintain any opportunity to be continued as a contractor, these orders (including the one in Salmon) must be placed immediately in order to meet the State's timelines. You have consistently told us that you do not wish us to withdraw even though the State has made it impossible for us to use Syringa (or anyone other than Qwest for that matter) to provide 100% of the local loop, backbone and core equipment, but we wanted you to be aware of these next steps. Failure to move forward with this order would effectively be a withdrawal since we believe the State would cancel our purchase order.

Le completely understand the need to protect Syringa's interests, but your action last week does focus our attention on exactly how ENA might proceed with its limited portion of this project since Syringa has never formally declared the teaming agreement to have been terminated. Given the importance of the IEN to the State and your continued support for ENA's continued preparations to implement its assigned portion of this project, we assume that everyone acknowledges that Syringa agrees with ENA moving forward in accordance with its purchase order. As with the Salmon School District, ENA intends to continue to press the State to use the backbone offered by Syringa and its members' local loop options despite the rejection of those portions of the RFP. We believe over time we will prevail.

-Bob

**Bob Collie** Education Networks of America, Inc. (ENA) p: +1 615 312-6004 f: +1 615 250-0535





#### **Brad Alvaro - Idanet Transition**

From: Greg Zickau < Greg. Zickau@cio.idaho.gov>

To: "Brad Alvaro (balvaro@idoc.idaho.gov)" <balvaro@idoc.idaho.gov>

Date: 01/29/2009 08:19 Subject: Idanet Transition

CC: Laura Hill <Laura.Hill@cio.idaho.gov>

#### Good morning Brad,

We have contracts (BPOs) with ENA and Qwest now. Syringa has a teaming agreement with ENA and, so their service is accessible through the BPO.

Laura can help you out in getting things in place, or she can work with Mike Griffin. I know Mike has been involved with Smartnet maintenance we're trying to improve.

Regards, Greg





#### Sally Brevick



From: Sent: Berry, Clint [Clint.Berry@qwest.com] Tuesday, February 10, 2009 8:06 AM Teresa Luna; Laura Hill; Greg Zickau

To:

Schmit, Jim; Strickler, Joel

Subject: Attachments: Recommended Amendment Language
Amendment NO 1 State of Idaho IEN RFP 02160 - 02 10 09.doc; Idaho Education Network

471 Concerns.doc; Qwest Idaho Education Network - Engagement Plan Components - 02 04

09.doc

Teresa, Laura and Greg,

Thanks again for meeting with Jim and me yesterday afternoon on such short notice. I genuinely appreciate all of your input and willingness to work with us. As you can imagine, we arrived with a lot of questions and concerns from the team of folks that support us and I believe we clearly made some progress. We do understand the awkwardness of the situation, but rest assured we are going to do everything we can to make this a reality for our Idaho students and the education system in our state!

As we discussed yesterday, I have attached a document in Amendment format – as if it were an agreement between only Qwest and the State -- that you can use to amend the RFP award (Statewide Blanket Purchase Order). I also included the document with the points we discussed yesterday and the summary capability document we talked about last week.

I have a few items to finalize on the detailed circuit pricing spreadsheet that you'll need and maybe I can swing by later this morning and discuss it before our afternoon meeting.



Thanks again and we'll see you later today.

Clint Berry
Senior Manager
Government & Education Solutions
999 Main Street, Suite 800
Boise, Idaho 83702

208 364-3977 (work) 208 571-0195 (mobile) Clint.Berry@qwest.com

We create an exceptional customer experience through world-class communications solutions.





#### AMENDMENT TO STATE OF IDAHO CONTRACT FOR THE IDAHO EDUCATION NETWORK (IEN) RFP 1260



THIS AMENDMENT NO. 1 (this "Amendment") by and between Qwest Communications Company, LLC ("Qwest") and State of Idaho ("State"), hereby amends the contract for the Idaho Education Network ("IEN"), Qwest OMR Number: 137144 (the "Agreement").

Qwest and the State wish to amend the Agreement in order to clarify the roles and responsibilities of the parties to the Agreement.

- 1. Qwest will be the general contractor for all IEN network services. The Service Provider listed on the State's Federal E-rate Form 471, Education Networks of America (ENA), is required to work through the dedicated Qwest Account Team named on the State Blanket Purchase Order (SBPO) dated January 28, 2009 for ordering, provisioning, on-going maintenance, operations and billing for all IEN sites.
- Qwest will deliver IEN services using its existing core MPLS network and backbone services, as well as future build outs of its network.
- 3. Qwest will procure and provision all local access connections and edge routing equipment making commercially reasonable efforts to ensure the most cost efficient and reliable network access throughout the State. Qwest will use existing and future agreements and partnerships to deliver the necessary bandwidth to each IEN site and to connect to its core MPLS platform.
- Qwest will provide all Internet services to IEN users per Qwest's response to the State's solicitation document RFP 02160.
- 5. Qwest will assign a project manager to work with the State of Idaho and ENA to define the project Scope of Work. The Qwest project manager will lead the development of a detailed Project Plan that will outline the project tasks, assign responsibility, identify risks, and define the schedule for project implementation.
- 6. Qwest will use a combination of Qwest Network Operations Center (NOC) assets for the Idaho Education Network including physical layer (transport) NOC and IP NOC for the IEN services. Both NOCs will be staffed 24 x 7 x 365. Qwest NOCs will monitor both the physical and logical layer for outages and Qwest's IP NOC will manage the MPLS services via existing management platforms.
- Qwest will work directly with the State of Idaho and ENA to supply the information necessary for the State and ENA to file Federal E-rate forms accurately and in a timely manner.
- 8. The State considers Qwest and ENA equal partners in the IEN project as demonstrated in the Intent to Award Letter dated January 20, 2009 and the subsequent SBPO dated January 28, 2009.
- 9.The State may request copies of all itemized billing from the service provider associated with the delivery of IEN services on a monthly, annual or on-going basis at any time during the term of the agreement.







#### Idaho Education Network - Concerns w/ ENA Listed on 471

#### Legal

- Qwest does not have a legal binding agreement with ENA for them to purchase network services. An contract addendum from the State would have no binding authority on ENA.
- 2. Qwest would need to negotiate a contract with ENA, and there is no guarantee that ENA will agree to the same terms and conditions that we agreed to with the State of Idaho
- 3. Listing ENA on the 471 continues to cloud the role of the Alliance that ENA is a part of because ENA does have a contract with Syringa. According to ENA, they may face a lawsuit if they do not use them as the network service provider since they have a binding contract.
- 4. This would be avoided if Qwest was listed on the E-Rate form 471

#### Financial

- 1. ENA would become Qwest's customer, not the State. This presents significant financial risk to Qwest
- 2. Qwest will need to evaluate the risk of ENA to ensure that 100% of the network services bill can be paid according to our billing guidelines
- Qwest would need to determine if the services we offered directly to the State can be
  offered to ENA at the same reduced price offered to the State, recognizing that the
  State is the end-user
- 4. These issues would be avoided if Qwest is listed on the form 471. In addition, if Qwest is the named service provider on Form 471, the State of Idaho will know the exact price of the service being delivered to the schools.

#### Process

- If the State were to enter into an agreement with ENA, they (ENA) will be the Qwest customer of record. From a legal standpoint, the State of Idaho would lose legal oversight
- 2. Qwest has an existing process Professional Services Organization to contract with companies like ENA to add services such as those provided by ENA.
- 3. We do not have a process in place to do the reverse.

#### E-Rate

- Qwest is the listed Service Provider on E-Rate form 471 with the Utah Education Network, Washington K-20 Network and the Wyoming Equality Network and is preferred since the vast majority of the costs are related to delivering network services
- 2. We have experience in these states using partners to deliver additional e-rate eligible services as part of an end-to-end service
- 3. Our network services always prevail in audits since we are the provider







#### Owest Idaho Education Network - Principal Responsibilities

Owest is prepared to be the network provider and connect Idaho schools, colleges, universities and communities to each other and the world through the Idaho Education Network (IEN). We have spent years laying the foundation - through legislative activities and building the core network - in preparation to deliver educational opportunities throughout the state.

We will leverage decades of network experience we have throughout our company including the leadership role we have with the Utah Education Network, Wyoming Equality Network and the State of Washington K-20 Network.

Owest will provide a turn-key, robust and reliable network as highlighted in our RFP response and reinforced in the State's "draft" IEN Strategic Engagement Plan.

We will remove the obstacles of geography so that rural students and citizens have the same opportunities as our urban areas by the use of the following principal competencies:

#### Core Network Responsibilities/Capabilities



#### Existing Layer 3 MPLS network

As highlighted in our RFP response, we have a unique combination of infrastructure assets, systems and experience that is inherent to our company to be the primary network contractor for IEN. We are industry leaders in the areas of network design, management and on-going maintenance, operations and billing. Our core MPLS network is operational in the state today currently serving Idaho customers and we have the relationships and processes in place to configure, test, implement and bill for the entire backbone and last mile connections. We can begin the process to order and provision circuits for both the Education locations as well as migration for existing IdaNet users when the State is prepared to move forward. The last mile connectivity will be acquired by Owest and provisioned on Owest's MPLS platform to deliver the necessary bandwidth to each site.

Local Access (existing relationship with Verizon and all of Idaho's carrier-class network providers)

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Qwest will work with all the network providers to ensure the most cost efficient and reliable network access throughout the state and will be utilizing multiple partnerships. It is the cornerstone of our response to the State's IEN RFP. We understand that no one company can efficiently provide the services the State is requesting and Owest ready to leverage the existing processes and agreements we have in place with other local exchange providers to test and turn-up the last-mile connections,





Important note: There are 143 IEN sites – including colleges and universities – and 88 sites are in the local Qwest territory and 31 sites are located in Verizon's local service area covering nearly 85% of the entire project.

#### Strong Internet Platform

Our Internet Platform is among the most reliable and dedicated Internet access services in the Nation. Our experience is what separates Qwest from our competition. The states of Utah – including the Utah Education Network -- Nebraska, Arizona, Wyoming, and Washington are all utilizing Qwest's Internet service. In the State of Idaho both Idaho State University and IRON are considered anchor tenants of our advanced Internet service. Our advanced Tier 1 - OC-192 Internet protocol (IP) network is one of the most sophisticated networks available. It offers an exceptional service level agreement (SLA) and some of the highest customer access speeds and peering in the industry today.

#### Program / Project Management



>>> offered at no additional cost to the State and is part of Owest network services <<<

Qwest Project Management will systematically facilitate a flawless implementation of the Idaho Education Network and IdaNet migration. Implementation of the project will include the following activities:

#### Planning

Qwest will assign a project manager along with a project team to work with the State of Idaho and ENA to define the project Scope of Work. The Qwest project manager will lead the development of a detailed Project Plan that will outline the project tasks, assign responsibility, identify risks, and define the schedule for project implementation. Our project management approach relies heavily on detailed planning to ensure that the transition to new services is as transparent to end users as possible. The planning phase of the project includes the following items:

- Detailed design and technical review to ensure all segments of the Scope of Work have been identified.
- Preparation of detailed Work Breakdown Structure (WBS).
- Assign responsibility to each project task. A detailed list of roles and responsibilities will be prepared to ensure each team member is accountable for their part of the project.

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- > Development of project schedule using a software tool to develop a detailed Gantt chart. The project schedule will become the baseline for measuring the progress of the project.
- > Establishment of Change Management Plan. This plan will outline the method of reviewing change requests and will include the team members who will be responsible for reviewing and approval of change requests.
- Creation of Communication Plan. This plan will include regular meeting schedules, agreement on project documentation preparation and storage, escalation procedures and project reporting structures.
- > Development of Cutover Plan. This plan will detail the steps required and personnel needed to transition to the new Qwest services. Cutover for a large project may require several phases as the implementation progresses.
- > Risk assessment and risk mitigation procedures development.

#### Implementation

After the Project Plan is approved, the implementation will commence with the placement of network and equipment orders. The customer will assist in preparation of each site and coordination of circuit installation. Network and equipment testing will be conducted prior to cutover. The project manager will maintain an Outstanding Issues Log to ensure that team members are held accountable for items that need to be completed, and to ensure that open issues are followed through to completion.

#### Cutover/Transition

A detailed Cutover Plan will be developed during the planning phase of the project that will outline all the tasks required to transition to the new Qwest services. This plan will also identify each organization and individual necessary to make the transition. The Qwest project manager will coordinate cutover schedules with Qwest, vendors, other carriers if applicable, and customer personnel to schedule cutover during the maintenance window specified by the customer. Contingency plans will also be in place.

#### **Network Operations Center**

>>> offered at no additional cost to the State and is part of Qwest network services <<<

We will use a combination of Qwest Network Operations Center (NOC) assets for the Idaho Education Network. Physical layer (transport) NOC and our IP NOC. Both NOCs are staffed 24 x 7 x 365.

#### Physical Layer NOC







Qwest monitors both the physical and logical layer for outages. Upon receipt of a trouble alarm or report, Qwest initiates action to clear the trouble and will commit restore times. We maintain a proactive monitoring and notification objective of ten minutes of receipt of a customer circuit physical outage event for data services. Qwest employs platform-specific alarm thresholds to identify service impairments. Physical circuit outage events are generated as follows:

- SNMP traps are generated from Qwest edge routers and directed to Qwest's NerveCenter management servers
- The Nerve Center management server uses behavior models to filter out actual physical outage (includes bouncing circuits) events
- Outage events are generated into the NetCool application

The Alarm Rule Service and Ticket Rule Service then correlate the event to active events and routes valid events for notification to the Proactive Notification tool for automatic dispatch of notification. It is also important to note that closing tickets is advantageous for proactive notification. Not only does it ensure chronic circuits will be appropriately tagged for each occurrence in our ticketing system, but it also ensures that you will be contacted if an outage event occurs, as you will not have a ticket open for a current issue.



#### IP NOC

Qwest's IP Network Operations Center (NOC) manages the MPLS services via redundant management platforms. Access to these management platforms is controlled strictly both logically and physically to only Qwest trained and authorized users. The management platforms create management VPNs to each of the devices in the network. And, the network elements have ongoing penetration scans done against them to ensure they continue to meet Qwest's strict internal security policies and service level agreements and is staffed 24 x 7.

#### Cisco Partnership

>>> we have designed the Network using proven Cisco equipment and is included as part of the bundled end-to-end 100% E-rate Priority 1 eligible service <<<

Our network design leverages the partnership we have with technology leader Cisco Systems Inc, and will allow Idaho students to enhance their educational experience through the use of proven technologies as well as increase productivity and strengthen state government telecommunications.





Qwest and Cisco have a strong business partnership starting at the local level with account management, engineering and will work towards a successful design and implementation of the Idaho Education Network.

Qwest was Cisco's first Gold Partner - since the inception of the Program. The Cisco Gold Certified Partner designation offers the highest level of branding, economic incentives, and differentiation as a reward for loyalty to Cisco, for capabilities in providing value-added services, and for a commitment to customer success. Cisco Gold Certified Partners have attained the broadest range of expertise across multiple technologies by achieving all of the following four advanced specializations: Unified Communications, Routing and Switching, Security, and Wireless LAN. In addition, Gold Certified Partners have integrated Cisco Lifecycle Services into their offerings and demonstrated a high level of customer satisfaction. We will work closely with State of Idaho IT professionals on knowledge transfer and technology refresh activities.

#### Billing optimization



Based on the Statewide Blanket Purchase Order (SBPO 1308), Qwest will work directly with the State of Idaho for the benefit of schools, agencies, institutions, and departments and eligible political subdivisions or public agencies as defined in Idaho Education Network (IEN) RFP 2160. We will use existing billing platforms as well as create custom and summary billing as required by the IEN Steering Committee or other State entities. The services will be billed directly to the State of Idaho at the reduced E-rate eligible amounts rather than seek reimbursement from the Federal E-Rate program. Qwest also recognizes the role that ENA will have and will closely work with them and the State to supply the needed information for the State to file accurately and in a timely manner.





#### Education Networks of America - Principal Responsibilities

#### Administration of E-Rate Funding

It is recognized that ENA brings a depth of knowledge and experience to the E-Rate funding process. The State of Idaho should leverage the expertise of ENA to not only maximize the annual funding of the IEN initiative but also to assist individual school districts on E-Rate program training.

#### Potential ENA Deliverables

Annual E-Rate Filing Assistance

E-Rate Training for state & school districts

#### **NOC Capabilities**

It is recognized that ENA has experience and the ability to support applications such as video conferencing, student information and curriculum management. IEN can leverage ENA's abilities to support these and other similar types of applications for these key components of this project.



VTC Scheduling

VTC Network Operations and monitoring

Additional support on student information applications

Video equipment installation and support

#### Site Readiness Evaluations

#### Potential ENA Deliverables

Work with schools and field engineers on site survey's and network assessments.

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# IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an	)	
Idaho limited liability	)	
company,	)	
Plaintiff,	)	
vs.	)	Case No.
IDAHO DEPARTMENT OF	)	OC 0923757
ADMINISTRATION, et al.,	)	
Defendants.	)	VOLUME II
	)	(Pages 235-307)

RULE 30(B)(6) DEPOSITION OF SYRINGA NETWORKS, LLC

TESTIMONY OF GREG LOWE

AUGUST 6, 2010

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

Page 269

- 1 Q. (BY MR. PERFREMENT): And do you know
- 2 whether Qwest in any way influenced the
- 3 Administration to conclude that the division of
- 4 responsibilities reflected in the Amendment 1s
- 5 best serve the State of Idaho and the schools?
- 6 MR. LOMBARDI: Object to the form.
- 7 THE WITNESS: I do not.
- 8 Q. (BY MR. PERFREMENT): The next
- 9 paragraph -- and I'll take you to the last half of
- 10 it. And it begins "ENA confirmed."
- 11 A. I see it.
- 12 Q. It says, "ENA confirmed that it had
- 13 not been consulted about the division of
- 14 responsibilities until it received a draft of
- 15 Amendment 1 in February."
- 16 Do you know whether that is a true
- 17 statement or not?
- 18 A. I do not.
- 19 Q. The next sentence says, "ENA also
- 20 confirmed that it had not provided a copy of or
- 21 the information in the Teaming Agreement to the
- 22 State prior to the Deputy Attorney General's
- 23 request for the same on July 17th, 2009."
- 24 Do you know whether that is a true
- 25 statement or not?

Page 270

- 1 A. That is a false statement.
- Q. And on what basis do you say that?
- 3 A. Based upon the e-mail of Greg Zickau
- 4 on I think it was January 29th, 2009, to Brad
- 5 Alvaro stating that ENA and Syringa had a Teaming
- 6 Agreement.
- 7 Q. Do you know whether Mr. Zickau at that
- 8 time had a copy of the Teaming Agreement?
- 9 A. I do not.
- 10 Q. Do you know whether Mr. Zickau had at
- 11 that time information regarding the terms of the
- 12 Teaming Agreement?
- MR. LOMBARDI: Object to the form.
- 14 THE WITNESS: Well, the sentence doesn't
- 15 say "terms of the Teaming Agreement." The
- 16 sentence says "information in the Teaming
- 17 Agreement."
- 18 Q. (BY MR. PERFREMENT): That wasn't my
- 19 question.
- Do you know whether Mr. Zickau had as
- 21 of January 29, 2009, a knowledge of the terms of
- 22 the Teaming Agreement?
- MR. LOMBARDI: Object to the form.
- 24 THE WITNESS: I can't speculate on that.
- Q. (BY MR. PERFREMENT): And do you know

#### 1 REPORTER'S CERTIFICATE 2 I, JEFF LaMAR, CSR No. 640, Certified 3 Shorthand Reporter, certify: That the foregoing proceedings were taken 4 5 before me at the time and place therein set forth, at which time the witness was put under oath by 6 7 me. That the testimony and all objections made 8 9 were recorded stenographically by me and 10 transcribed by me or under my direction. 11 That the foregoing is a true and correct 12 record of all testimony given, to the best of my 1.3 ability. 14 I further certify that I am not a relative 15 or employee of any attorney or party, nor am I 16 financially interested in the action. 17 IN WITNESS WHEREOF, I set my hand and seal 18 day of 19 20 21 22 JEFF LaMAR, CSR NO. 640 23 Notary Public 24 Eagle, Idaho 83616

My commission expires December 30, 2011

25





Bill To: State of Idaho Various Agencies Various State Agencies located throughout Idaho

Address 2 Various, iD 83701



State of Idaho

Statewide Blanket Purchase Order CHANGE ORDER - 01

THIS NUMBER MUST APPEAR ON ALL DOCUMENTS

Statewida Blanket Purchase Order SBPO1308 - 01

DELIVER TO: State of Idaho Various Agencies

Various State Agencies located throughout Idaho

Address 2 Verioue, ID 83701 Mark.Little@adm.idaho.gov Date: Thu Feb 28 2009

F.O.B: Deetination

Terms: N30

VENDOR:

QWEST COMMUNICATIONS CORPORATION 1801 Californie Street Denver, CO 80202

Attn: Director-Business Development Emailed To: richard.fernandez@qweet.com Phone: 800 899-7780

Fax: 303 672-5901

Account Number: P00000067075

Start of Service Date Wed Jan 28, 2009

End of Service Date: Mon Jan 27, 2014

RFQ#: RFP02160 DOC#: PREQ15608

#### File Attached:

- O IEN\_Bdders\_Conference.doc
- O IEN\_RFP\_29 Dec\_08\_Changee\_and\_or\_Updatee.docx
- Q IEN\_Bidders\_conf\_QA\_29 Dec\_08.docx
- O APPENDIX\_FandG\_to\_RFP02160.docx
- RFP\_IEN\_Briefing\_29\_Dec\_08.pptx
- AMENDMENT4\_RFP02160.doc
- RFP02160\_WITH\_APPEN\_A.doc
- O RFP02160 APPEN C THRU E.doc
- O AMENDMENT1 to SBPO01308 Qwest.dog

#### Buyer: MARK LITTLE 208-332-1611

Item No	Deacription	Quantity UOM	Unit Price	EXTENSION
000	BLANKET PURCHASE AGREEMENT ( line item particulars follow )	1 lot	<u>i                                     </u>	5000000.00
	Total:			6000000.00
Blanket	Contract for the Idaho Education Network (IEN) for the benefit of the State of Idaho eligible schools, as defined by Idaho Code, Section 67-2327. The Division of Purchasing or the requisitioning agency purchase orders) against this Contract on an as needed basis per the IEN Strategic implementation is commencing January 28, 2009 ending January 27, 2014, with the option to renew for three (3) addition	will Issue in Plan for a p	ndividual rele eriod of five (	ases (delivery or 5) year
Item No	Description	Quantity UOM	Unit Price	EXTENSION
1	COMMUNICATIONS AND RELATED SERVICESIdaho Education Network related eervices ( 915-51 ) ( nt )	5 YEAR	1000000.00	6000000.00
General Comments:	Topografiance with the IEN attribute implementation plan			

Public Agency Clause: .....Yes Contract Administration: .... Gregory Lindstrom -Phone Number:.....208-332-1609 -E-Mail:....@regory.lindstrom@edm.idsho.gov Contractor's Primary Contact -Attn:.....Clint Berry -Address: ......999 Main Street, Suite 800 -City, State, Zip:.....Boise, ID 83702 Phone Number: ...... 208-364-3977 Faceimile:...... 208-364-3954 E-Mail: ......@clint.berry@qwest.com CONTRACTOR: Ship to the FOB DESTINATION point and BILL DIRECTLY to the ORDERING AGENCY. DO NOT MAIL INVOICES TO THE DIVISION OF PURCHASING. Notating the Contract Award Number on any invoices/statement will facilitate the efficient processing of payment. The dollar amount listed in the contract extension pricing is an estimate and cannot be guaranteed. The actual dollar amount of the contract may be more or leas depending on the actual orders, requirements, or tasks given to the Contractor by the State or may be dependent upon the specific terms of the Contract. THIS STATEWIDE BLANKET PURCHASE ORDER, (Including any files attached), CONSTITUTES THE STATE OF IDAHO'S ACCEPTANCE OF YOUR SIGNED OFFER (including any siectronic bid submission), WHICH SUBMISSION IS INCORPORATED HEREIN BY REFERENCE AS THOUGH SET FORTH IN in the event of any inconsistency, unless otherwise provided herein, auch inconsistency shall be resolved by giving precedence in the following order: 1. This Statewide Blanket Purchase Order document. 2. The state of idaho's original solicitation document RFP02160. 3. The Qwest's signed offer. Instructions: Freight / Handling Included in Price By: MARK LITTLE PO Options Print Award Document No Approval Route Found

Award iF2009001308 has been scheduled for release on: Fri Feb 27 00:00:00 GMT-0800 (PST) 2009.

Award Notifications are acheduled for release on: Fri Feb 27 00:00:00 GMT-0800 (PST) 2009,

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## IDAHO DIVISION OF PURCHASING AMENDMENT ONE (1) TO STATE OF IDAHO EDUCATION NETWORK (IEN) SBP001308 February 26, 2009

THIS AMENDMENT NO. 01 (this "Amendment") by and between the State of Idaho ("State") and Qwest Communications Company, LLC ("Qwest") hereby amends the contract for the Idaho Education Network ("IEN"), Qwest Statewide Blanket Purchase Order: SBPO1308 (the "Agreement").

It is the intent of the State of Idaho to amend SBPO01308 in order to clarify the roles and responsibilities of the parties to the Agreement.

- 1. Qwest will be the general contractor for all IEN technical network services. The Service Provider listed on the State's Federal E-rate Form 471, Education Networks of America (ENA), is required to work with the dedicated Qwest Account Team for ordering, and provisioning of, on-going maintenance, operations and billing for all IEN sites.
- 2. Qwest, in coordination with ENA, will deliver IEN technical network services using its existing core MPLS network and backbone services.
- 3. Qwest, in coordination with ENA, will procure and provision all local access connections and routing equipment making reasonable efforts to ensure the most cost efficient and reliable network access throughout the State to include leveraging of public safety network assets wherever economically and technically feasible. Qwest and ENA will use existing and future agreements and partnerships to deliver the necessary bandwidth to each IEN site and to connect to the core IEN MPLS platform.
- 4. Qwest, in coordination with ENA, will provide all Internet services to IEN users.
- 5. Qwest will assign a project manager to work with the State of Idaho and ENA to define the project Scope of Work. The Qwest project manager, working with the ENA project manager, will develop a detailed Joint Project Plan that will outline project tasks, assign responsibilities, identify risks, and define the schedule for project implementation. This Joint Project Plan will be presented to the State of Idaho IEN program manager for final review and approval. Implementation of this Joint Project Plan is subject to the review and approval from the State.
- 6. Qwest and ENA will use a combination of Qwest and ENA Network Operations Center (NOC) assets for the Idaho Education Network including but not limited to:
  - a. Establishment of a physical layer (transport) NOC by Qwest;
  - b. Establishment of an IP NOC by Qwest; and
  - c. Establishment of a customer facing Network Operations Center (NOC) by ENA.

All three NOCs will be staffed twenty-four hours a day, seven days a week, three hundred sixty five days of the year. ENA's NOC will serve as the one-stop IEN customer facing service and support center; Qwest transport NOC will monitor both the physical and logical layer for outages and Qwest's IP NOC will manage the MPLS services via existing management platforms.

## IDAHO DIVISION OF PURCHASING AMENDMENT ONE (1) TO STATE OF IDAHO EDUCATION NETWORK (IEN) SBP001308 February 26, 2009

- 7. Qwest will work with ENA and with the State of Idaho to supply the information necessary for the State and ENA to file Federal E-rate forms accurately and in a timely manner.
- 8. The State considers Qwest and ENA equal partners in the IEN project as demonstrated in the Intent to Award Letter dated January 20, 2009 and the subsequent SBPO01308 dated January 28, 2009.
- 9. The State may request copies of all itemized billing from Qwest, as the service provider associated with the delivery of IEN services on a monthly, annual, or on-going basis at any time during the term of the agreement. Qwest must provide this information within 30 days of the State's request for itemized billing information.



State of Idaho Various Agencies





State of Idaho THIS NUMBER MUST APPEAR

Address 2 Various, ID 83701

Various State Agencies located throughout Idaho

Bill To:

Statewide Blanket Purchase Order CHANGE ORDER - 01

Statewide Blanket Purchase Order SBP01309 - 01

**DELIVER TO: State of Idaho Various Agencies** 

Various State Agencies located throughout Idaho

Address 2 Various, ID 83701 Mark.Little@adm.idaho.gov Date: Thu Feb 28 2009

F.O.B: Destination Terme: N 30

VENDOR:

**EDUCATION NETWORKS OF AMERICA** 

1101 McGavock St Naehville, TN 37203 Attn: Vice President Emailed To: gnelson@ena.com Phone: 703-727-0868 Fax: 818-312-6099 Account Number: P00000074671 n . . . . . . Mon lan

End of Service Date: Mon Jan 27, 2014

Start of Service Date Wed Jan 28, 2009

RFQ#: RFP02166 DOC#: PREQ15758

File Attached:

O IEN\_Bdders\_Conference.doc

C IEN\_RFP\_29 Dec\_06\_Changee\_and\_or\_Updates.docx

O IEN\_Bidders\_conf\_QA\_29 Dec\_08.docx

O APPENDIX\_FandG\_to\_RFP02160.docx

O RFP\_IEN\_Briefing\_29\_Dec\_08.pptx

O: AMENDMENT4\_RFP02160.doc

O RFP02160\_WITH\_APPEN\_A.doc

9 RFP02160 APPEN C THRU E.doc

O AMENDMENT 1 to SBPO01309 ENA.doc

Buyer: MARK LITTLE 208-332-1611

Item No	Description	Quantity UOM	Unit Price	EXTENSION	
000	BLANKET PURCHASE AGREEMENT ( line item particulars follow )	1 lot		5000000.00	
	Totul:			5000000.00	
	Contract for the Idaho Education Network (IEN) for the benefit of the State of Idaho eligible echoole, political subdivisions, or public agencies t as defined by Idaho Code, Section 87-2327. The Division of Purchasing or the requisitioning agency will issue Individual releases (delivery or purchase orders) against this Contract on an ee needed basis in accordance with the IEN stratagic implementation plan, for a period of five (5) year commencing January 28, 2009 ending January 27, 2014, with the option to renew for three (3) additional five (5) year periods.				
Item No	Description	Quantity UOM	Unit Price	EXTENSION	
1	COMMUNICATIONS AND RELATED SERVICESIdaho Education Network related sarvices ( 915-51 ) (nt)	5 YEAR	1000000.00	5000000.00	
Comments:	""SBPO1309 IS MODIFIED PER THE ATTACHED DOCUMENT TITLED, "AMENDMENT 1 to SBPO01309 ENA.doc". NO OTHER CHANGES NOTED."				

	Phone Number:208-332-1609	
	E-Mail:gregory, iindstrom@adm.idaho.gov	
Ì	Contractor's Primary Contact	
	Attn:David M. Pierce	
)	Address:1101 McGsvock Street	
1	City, State, Zip:Nashville, TN 37203	
į	Phone Number: 615-312-6009	
1	Toll Free:868-615-1101	
1	Facsimile:	
	E-Mail:dplerce@ens.com	
	CONTRACTOR: Ship to the FOB DESTINATION point and BILL DIRECTLY to the ORDERIN- DIVISION OF PURCHASING, Notating the Contract Award Number on any invoices/statem payment.	
	The dollar smount listed in the contract extension pricing is an estimate and cannot be gumsy be more or less depending on the actual orders, requirements, or tasks given to the the specific terms of the Contract.	
	THIS STATEWIDE BLANKET PURCHASE ORDER, (including any files attached), CONSTITUTION SIGNED OFFER	ITES THE STATE OF IDAHO'S ACCEPTANCE OF
	(including any electronic bid aubmission), WHICH SUBMISSION IS INCORPORATED HERE FULL	IN BY REFERENCE AS THOUGH SET FORTH IN
	in the event of any inconsistency, unless otherwise provided herein, such inconsistency following order:	shall be resolved by giving precedence in the
1	1. This Statewide Blanket Purchase Order document.	
[	2. The state of idaho's original edicitation document RFP02160.	
Ì	3. The Education Networks of America's signed offer.	
Instruction	ons:	Mod
Freight /	Handling Included in Price	Har Soll
		BY: MARKLITTLE

No Approval Route Found

PO Options

Print Award Document

Award IF2009001309 has been echeduled for release on: Fri Feb 27 00:00:00 GMT-0800 (PST) 2009.

Award Notifications are scheduled for release on: Fri Feb 27 00:00:00 GMT-0800 (PST) 2009.

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#### DEPARTMENT OF ADMINISTRATION, OFFICE OF THE OCIO, AMENDMENT ONE (1) TO STATE OF IDAHO EDUCATION NETWORK (IEN) SBP001309 February 26, 2009

THIS AMENDMENT NO. 01 (this "Amendment") by and between the State of Idaho ("State") and Education Networks of America, Inc./ENA Services, LLC hereby amends the contract for the Idaho Education Network ("IEN"), ENA Statewide Blanket Purchase Order: SBPO1309 (the "Agreement").

It is the intent of the State of Idaho to amend SBPO01309 in order to clarify the roles and responsibilities of the parties to the Agreement.

- 1. ENA will be the Service Provider listed on the State's Federal E-rate Form 471. Qwest Communications Company LLC ("Qwest") is required to work with the ENA Account Team for ordering, and provisioning of, on-going maintenance, operations and billing for all IEN sites.
- 2. ENA will coordinate overall delivery of all IEN network services and support.
- 3. ENA, in coordination with Qwest, will procure, provision, and provide all local access connections and routing equipment making reasonable efforts to ensure the most cost efficient and reliable network access throughout the State to include leveraging of public safety network assets wherever economically and technically feasible. ENA and Qwest will use existing and future agreements and partnerships to deliver the necessary bandwidth to each IEN site and to connect to the core IEN MPLS platform.
- 4. ENA, in coordination with Qwest, will provide all Video Teleconferencing (VTC) Installation, Operations, Monitoring, and Scheduling support for the IEN network.
- 5. ENA will assign a project manager to work with the State of Idaho and Qwest to define the project Scope of Work. The ENA project manager, working with the Qwest project manager, will develop a detailed Joint Project Plan that will outline project tasks, assign responsibilities, identify risks, and define the schedule for project implementation. This Joint Project Plan will be presented to the State of Idaho IEN program manager for final review and approval. Implementation of this Joint Project Plan is subject to the review and approval from the State.
- ENA and Qwest will use a combination of ENA and Qwest Network Operations Center (NOC) assets for the Idaho Education Network including, but not limited to:
  - a. Establishment of a customer facing Network Operations Center (NOC) by ENA;
  - b. Establishment of a physical layer (transport) NOC by Qwest; and
  - c. Establishment of an IP NOC by Qwest.

All three NOCs will be staffed twenty-four hours a day, seven days a week, three hundred sixty five days of the year. ENA's NOC will serve as the one-stop IEN customer facing service and support center; Qwest transport NOC will monitor both the physical and logical layer for outages and Qwest's IP NOC will manage the MPLS services via existing management platforms.

## DEPARTMENT OF ADMINISTRATION, OFFICE OF THE OCIO, AMENDMENT ONE (1) TO STATE OF IDAHO EDUCATION NETWORK (IEN) SBP001309 February 26, 2009

- 7. ENA will work directly with the State of Idaho and Qwest to supply the information necessary for the State to file Federal E-rate forms accurately and in a timely manner. ENA will also assist the State in providing E-Rate training for State Educational Support entities, Public School Districts and Libraries.
- 8. The State considers ENA and Qwest as equal partners in the IEN project as demonstrated in the Intent to Award Letter dated January 20, 2009 and the subsequent SBPO01309 dated January 28, 2009.
- 9. The State may request copies of all itemized billing from ENA, as the service provider associated with the delivery of IEN services on a monthly, annual or on-going basis at any time during the term of the agreement. ENA must provide this information within 30 days of the State's request for itemized billing information.

David R. Lombardi, ISB #1965 Amber N. Dina, ISB #7708 GIVENS PURSLEY LLP 601 W. Bannock P.O. Box 2720 Boise, Idaho 83701 Telephone Number: (208) 388-1200

Facsimile: (208) 388-1300

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Attorneys for Plaintiff Syringa Networks, LLC

NO. FILED LISTAL AM NEW 16 (SEE)

J. DAVID HAVARRO, Clerk by R. HOLMES ODDITY

### IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,

Plaintiff,

VS.

IDAHO DEPARTMENT OF
ADMINISTRATION; J. MICHAEL
"MIKE" GWARTNEY, in his personal and
official capacity as Director and Chief
Information Officer of the Idaho
Department of Administration; JACK G.
"GREG" ZICKAU, in his personal and
official capacity as Chief Technology
Officer and Administrator of the Office of
the CIO; EDUCATION NETWORKS OF
AMERICA, Inc., a Delaware corporation;
QWEST COMMUNICATIONS
COMPANY, LLC, a Delaware limited
liability company;

Defendants.

Case No. CV OC 0923757

MOTION FOR CONTINUANCE OF SUMMARY JUDGMENT PROCEEDINGS UNDER IRCP 56(f)

Plaintiff Syringa Networks, LLC ("Syringa") hereby moves this Court for an Order pursuant to Idaho Rule of Civil Procedure 56(f) continuing the November 30, 2010 hearing on



the Motion for Summary Judgment filed by Defendants Idaho Department of Administration, J.

Michael "Mike" Gwartney and Jack G. "Greg" Zickau (collectively "State Defendants") and

Qwest Communication Company's ("Qwest") Motion for Partial Summary Judgment until after

Syringa has had a fair opportunity to complete discovery and the development of its factual

record.

As the discovery deadline is not until December 13, 2010, the Defendants' motions are

premature. Syringa has yet to depose Melissa Vandenberg, Jim Schmit, Clint Berry and ENA

CFO Rex Miller, and to complete the deposition of J. Michael "Mike" Gwartney. Additionally,

Syringa has sent Interrogatories and Requests for Production to Qwest and the State Defendants,

which are outstanding, and was recently advised that electronic evidence requested by Plaintiffs

was destroyed by Defendants three months ago. All but one of the above depositions are already

scheduled and agreed upon by the parties. Additionally, the State Defendants have yet to

completely respond to Syringa's requests for production of documents, including production of

the destroyed electronic records.

This Motion is supported by the Affidavit of David R. Lombardi and the Memorandum in

Support of Motion for Continuance of Summary Judgment Proceedings under IRCP 56(f) filed

contemporaneously herewith.

In light of the Court's congested calendar, Syringa does not request oral argument.

DATED this 6 day of November, 2010.

GIVENS PURSLEY LL

By:

DAVID R. LOMBARDI

Attorneys for Plaintiff

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this  $\frac{\int Q}{\int Q}$  day of November, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

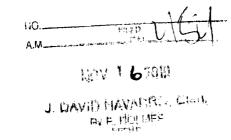
Merlyn W. Clark	✓U.S. Mail
Steven F. Schossberger	Overnight Mail
HAWLEY TROXELL ENNIS & HAWLEY LLP	Hand Delivery
877 W. Main Street, Suite 1000	Fax (954-5210)
P.O. Box 1617	
Boise, ID 83701	
Attorneys for Idaho Dept. of Administration; J.	
Michael "Mike" Gwartney and Jack G. "Greg	,,
Zickau	
71.111. 0.01. 1	
Phillip S. Oberrecht	U.S. Mail
HALL FARLEY OBERRECHT & BLANTON, P.	<del></del> _
702 W. Idaho, Ste. 700	Hand Delivery
P.O. Box 1271	Fax (395-8585)
Boise, ID 83701	
Attorneys for ENA Services, LLC	
Robert S. Patterson	<b>∪</b> U.S. Mail
BRADLEY ARANT BOULT CUMMINGS LLP	Overnight Mail
1600 Division Street, Suite 700	Hand Delivery
Nashville, TN 37203	Fax (615-252-6335)
Attorneys for ENA Services, LLC	1 ax (013-232-0333)
morneys for Erva Bervices, EEC	
Stephen R. Thomas	U.S. Mail
MOFFATT THOMAS BARRETT ROCK & FIEL	DS Overnight Mail
101 S. Capitol Blvd., 10 <sup>th</sup> Floor	Hand Delivery
P.O. Box 829	Fax (385-5384)
Boise, ID 83701	
Attorneys for Qwest Communications Company	
B. Lawrence Theis	∠U.S. Mail
Steven Perfrement	Overnight Mail
HOLME ROBERTS & OWEN LLP	Hand Delivery
700 Lincoln Street, Suite 4100	Fax (303-866-0200)
Denver, CO 80203	1 24 (303-800-0200)
Attorneys for Qwest Communications Company	
Into neys for Qwest Communications Company	
Da	vid R. Lombardi

David R. Lombardi, ISB #1965 Amber N. Dina, ISB #7708 GIVENS PURSLEY LLP 601 W. Bannock P.O. Box 2720 Boise, Idaho 83701 Telephone Number: (208) 388-1200

Facsimile: (208) 388-1300

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Attorneys for Plaintiff Syringa Networks, LLC



# IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,

Plaintiff,

VS.

IDAHO DEPARTMENT OF ADMINISTRATION; J. MICHAEL "MIKE" GWARTNEY, in his personal and official capacity as Director and Chief Information Officer of the Idaho Department of Administration; JACK G. "GREG" ZICKAU, in his personal and official capacity as Chief Technology Officer and Administrator of the Office of the CIO: EDUCATION NETWORKS OF AMERICA, Inc., a Delaware corporation; **QWEST COMMUNICATIONS** COMPANY, LLC, a Delaware limited liability company;

Defendants.

Case No. CV OC 0923757

AFFIDAVIT OF DAVID R. LOMBARDI IN SUPPORT OF MOTION FOR CONTINUANCE OF SUMMARY JUDGMENT HEARING UNDER IRCP 56(f)



STATE OF IDAHO,	)	
	)	SS
County of Ada.	)	

DAVID R. LOMBARDI, being first duly sworn, deposes and says:

- 1. I am an attorney licensed to practice in the State of Idaho and am one of the counsel of record for Plaintiff Syringa Networks, LLC ("Syringa"). I am primarily responsible for managing and conducting the above-captioned litigation.
- 2. The Verified Complaint in this matter was filed on December 15, 2009.

  Defendants Idaho Department of Administration ("DOA"), J. Michael "Mike" Gwartney and Jack G. "Greg" Zickau (collectively "State Defendants"), Education Networks of America ("ENA"), and Qwest Communications Company, LLC ("Qwest") each answered on January 25, 2010.
- 3. Syringa has been diligently pursuing discovery in this matter. That discovery includes:

No.	Date	Document Description
1.	2/2/10	Plaintiff's First Interrogatories to Defendant Qwest
2.	2/2/10	Plaintiff's First Interrogatories to Defendant ENA
3.	2/2/10	Plaintiff's First Interrogatories to Defendant DOA
4.	2/2/10	Plaintiff's First Requests for Production of Documents to Qwest
5.	2/2/10	Plaintiff's First Requests for Production of Documents to ENA
6.	2/2/10	Plaintiff's First Requests for Production of Documents to DOA
7.	4/20/10	Notice of Taking Depo of Andy Hung
8.	4/20/10	Notice of Taking Depo of Bob Hough
9.	4/20/10	Notice of Taking Depo of Bill Finke
10.	4/20/10	Notice of Taking Depo of Ryan Gravette

No.	Date	Document Description
11.	4/29/10	Notice Vacating Depositions
12.	8/4/10	Notice of Taking Deposition of Clint Berry
13.	8/4/10	Notice of Taking Deposition of Jim Schmit
14.	8/4/10	Notice of Taking Deposition of Bob Collie
15.	8/4/10	Notice of Taking Deposition of Gayle Nelson
16.	8/4/10	Notice of Taking Deposition of J. Michael "Mike" Gwartney
17.	8/4/10	Notice of Taking Deposition of Teresa Luna
18.	8/4/10	Notice of Taking Deposition of Mark Little
19.	8/4/10	Notice of Taking Deposition of Jack G. "Greg" Zickau
20.	8/4/10	Notice of Taking Deposition of Laura Hill
21.	8/10/10	Plaintiff's Second Set of Requests for Production of Documents and Interrogatories to Defendant Idaho Department of Administration
22.	8/11/10	Plaintiff's Second Set of Requests for Production of Documents to Defendant Education Networks of America
23.	8/11/10	Plaintiff's Second Set of Requests for Production of Documents to Defendant Qwest Communications Company
24.	8/11/10	Notice of Service of Discovery Requests
25.	8/23/10	Amended Notice of Taking videotaped Deposition of Laura Hill
26.	8/23/10	Amended Notice of Taking Videotaped Deposition of Jack G. "Greg" Zickau
27.	8/23/10	Amended Notice of Taking Videotaped Deposition of Mark Little
28.	8/23/10	Amended Notice of Taking Videotaped Deposition of Teresa Luna
29.	8/23/10	Amended Notice of Taking Videotaped Deposition of J. Michael "Mike" Gwartney
30.	8/23/10	Amended Notice of Taking Videotaped Deposition of Jim Schmit
31.	8/23/10	Amended Notice of Taking Videotaped Deposition of Clint Berry
32.	8/27/10	Notice of Postponement of Videotaped Depos of Clint Berry and Jim Schmit

No.	Date	Document Description
33.	8/27/10	Plaintiff's Third Requests for Production of Documents to Defendant Idaho Department of Administration
34.	9/1/10	Amended Notice of Taking Videotaped Deposition of Gayle Nelson
35.	9/1/10	Amended Notice of Taking Videotaped Deposition of Bob Collie
36.	9/27/10	Notice of Taking Deposition of Randy Gaines (10-6-10)
37.	9/27/10	Notice of Taking Deposition of Bob Hough (10-6-10)
38.	9/27/10	Notice of Taking Deposition of Jerry Reininger (10-8-10)
39.	9/27/10	Notice of Taking Deposition of Andy Hung (10-8-10)
40.	9/27/10	Notice of Taking Deposition of Bill Finke (10-14-10)
41.	9/28/10	Amended Notice of Taking Deposition of Bill Finke (10-14-10)
42.	9/28/10	Notice of Taking Videotaped Deposition of Bill Burns (10-19-10)
43.	9/29/10	Plaintiff's Answers and Response to State Defendants' First Set of Interrogatories and Requests for Production
44.	10/7/10	Notice of Taking Deposition of Ryan Gravette (10-20-10)
45.	10/13/10	Plaintiff's Answers and Reponses to ENA's First Set of Interrogatories and Requests for Production
46.	10/15/10	Notice of Taking Videotaped Deposition of Clint Berry (11-17-10)
47.	10/15/10	Notice of Taking Videotaped Deposition of Jim Schmit (11-18-10)
48.	10/21/10	Notice of Taking Videotaped Deposition of Brady Kraft (11-15-10)
49.	11/3/10	Notice of Continued Videotaped Deposition of Zickau (11-11-10)
50.	11/11/10	Notice of Continued Videotaped Deposition of Gwartney (12-2-10)
51.	11/12/10	Notice of Taking Videotaped Deposition of Melissa Vandenberg (12-3-10)
52.	11/12/10	Notice of Deposition Duces Tecum Pursuan to I.R.C.P. 30(b)(6) for the Deposition of the State of Idaho, Department of Administration (12-10-10)
53.	11/15/10	Plaintiff's Responses to Defendant Qwest Communications Company's First Requests for Production of Documents to Plaintiff
54.	11/15/10	Plaintiff's Third Set of Requests for Production of Documents to

No.	Date	Document Description
		Defendant Qwest Communications Company
55.	11/15/10	Plaintiff's Second Set of Interrogatories to Defendant Qwest Communications Company
56.	11/15/10	Plaintiff's Third Set of Requests for Production of Documents to Defendant Education Networks of America
57.	11/15/10	Plaintiff's Fourth Requests for Production of Documents to Defendant Idaho Department of Administration
58.	11/15/10	Plaintiff's Second Interrogatories to Defendant Education Networks of America

The following depositions remain to be taken:

Clint Berry, Senior Manager at Qwest Communication, scheduled for November 17, 2010;

Jim Schmit, Qwest Idaho State President, November 18, 2010;

Rex Miller, ENA CFO, to be scheduled;

Melissa Vandenberg, former Deputy Attorney General assigned to the Department of Administration, December 6, 2010.

Additionally, the parties have agreed to complete the deposition of defendant Mike Gwartney, former Director of the Department of Administration.

- 4. Attached hereto as **Exhibit A** is a true and correct excerpt of the deposition of Mike Gwartney, taken September 2, 2010, at 151:6-15.
- 5. Attached hereto as **Exhibit B** is a true and correct excerpt of the deposition of Greg Zickau, taken September 20, 2010, at 135:10-136:7.
- 6. The State Defendants have also failed to fully respond to discovery by Syringa. Specifically, Syringa made a request for the production of information likely contained in Mr. Gwartney's files regarding this matter on August 10, 2010, by requesting the following:

**REQUEST FOR PRODUCTION NO. 51:** All calendars, including electronic

and non-electronic calendars for the timeframe September 1, 2008 through July 31, 2009 for the following individuals...

**REQUEST FOR PRODUCTION NO. 52:** Any and all meeting notes, including electronic, handwritten, and otherwise personal notes concerning the Idaho Education Network RFP02160 to the following individuals for the timeframe September 1, 2008 through July 31, 2009...

<u>REQUEST FOR PRODUCTION NO. 53:</u> Any and all telephone messages, including electronic and handwritten concerning the Idaho Education Network RFP02160 for each and every of the following individuals for the timeframe September 1, 2008 through July 31, 2009...

A true and correct copy of Plaintiff's August 10, 2010 Requests for Production is attached hereto as **Exhibit C.** Mr. Gwartney retired as Director of the Department of Administration in or around August, 2010.

- 7. On August 10, 2010, I sent the State Defendants' counsel a letter asking the Defendants to "please take special care to preserve all records of Mr. Gwartney who has recently retired from the State of Idaho. This relates not only to his computer, but to all electronic records, wherever located, and to all diaries, calendars both hard and electronic, and any writings which do or may contain reference to the issues in the Syringa case." A true and correct copy of that letter is attached as **Exhibit D**.
- 8. A true and correct copy of the State Defendants' Response to Plaintiff's Second Set of Requests for Production of Documents and Interrogatories is attached hereto as **Exhibit E**. That Response indicates calendars will be produced, but that the DOA does not have meeting notes, personal notes, or phone messages responsive to the Requests.
- 9. A true and correct copy of the email dated November 10, 2010, which I received from Merlyn Clark, counsel for the State Defendants, is attached hereto as **Exhibit F.** In that email, Clark stated, in part:

RFP No. 52. The Supplemental Response is that inquiries to the individuals

named that were made when the RFP was first received have produced no meeting notes concerning the IEN RFP02160 for the timeframe September 1, 2008 through July 31, 2009, and none are known to exist in the possession of the IDA or the named individuals. The initial response was not intended to be a response only as to the IDA. I call to your attention that notes of Greg Zickau were produced although he was not among the named individuals.

In that same email, Mr. Clark also provided further response to Request 53:

RFP No. 53. The Supplemental Response is that inquiries to the individuals named that were made when the RFP was first received have produced no telephone messages concerning the IEN RFP02160 for the timeframe September 1, 2008 through July 31, 2009, and none are known to exist in the possession of the IDA or the named individuals. The initial response was not intended to be a response only as to the IDA.

- 10. Notwithstanding the Defendants' promise to produce Mr. Gwartney's records, I was informed on November 11, 2010 by counsel for the State Defendants that Mr. Gwartney's computer was erased despite my August 10, 2010 correspondence and that State Defendant's counsel has been attempting for approximately three months to retrieve the records on Mr. Gwartney's computer. To date, Syringa has not received any information from Mr. Gwartney's computer.
- 11. The State Defendants' Motion for Summary Judgment was received in my office on November 2, 2010. The hearing is scheduled for November 30, 2010.
- 12. Qwest's Motion for Summary Judgment was received in my office on November 1, 2010. The hearing is scheduled for November 30, 2010.
- 13. I called Merlyn Clark, counsel for the State Defendants, to request the State Defendants stipulate that the November 30, 2010 hearing on the State Defendants' Motion for Summary Judgment be continued until Syringa had completed additional discovery.
- 14. I received call from Merlyn Clark denying my request to allow Syringa to complete additional discovery prior to responding to the Motion to Summary Judgment.

- 15. I called Steve Thomas, counsel for Qwest Communication LLC, to request Qwest stipulate that the November 30, 2010 hearing on Qwest's Motion for Summary Judgment be continued until Syringa had completed additional discovery.
- 16. I received an email from Steve Thomas denying my request to allow Syringa to complete additional discovery prior to responding to the Motion for Summary Judgment.
- 17. In order to appropriately respond to the issues raised in the pending Motions for Summary Judgment, Syringa needs to complete its discovery plan in this matter, including but not limited to, completing the deposition of J. Michael "Mike" Gwartney and deposing Qwest representatives Jim Schmit and Clint Berry as well as State of Idaho witness Melissa Vandenberg and ENA CFO Rex Miller. Furthermore, adequate time is necessary to allow Plaintiff to determine the impact of the destruction of Mr. Gwartney's electronic records or for the Defendants to produce those records in time for Plaintiff to respond to Defendants' Motions.
- 18. The dispositive motion cutoff date is July 11, 2011. The trial is not scheduled to commence until April of 2011. Accordingly, more than enough time exists pursuant to the Court's Scheduling order in this matter, to complete and for Defendants to present their motions of summary judgment.

David R. Lombardi

On this 16 day of November 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared David R. Lombardi, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

### **CERTIFICATE OF SERVICE**

I hereby certify that on this <u>lb</u> day of November, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Merlyn W. Clark	U.S. Mail
Steven F. Schossberger	Overnight Mail
HAWLEY TROXELL ENNIS & HAWLEY LLP	Hand Delivery
877 W. Main Street, Suite 1000	Fax (954-5210)
P.O. Box 1617	
Boise, ID 83701	
Attorneys for Idaho Dept. of Administration; J. Michael "Mike" Gwartney and Jack G. "Greg" Zickau	
Dhillin C. Oharraght	✓U.S. Mail
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HALL FARLEY OBERRECHT & BLANTON, P.A. 702 W. Idaho, Ste. 700	Overnight Mail Hand Delivery
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Attorneys for Qwest Communications Company	M. C.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL

DISTRICT OF THE STATE OF IDAHO,

IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an

Idaho limited liability

company,

Plaintiff,

vs.

Case No.

IDAHO DEPARTMENT OF

ADMINISTRATION, et al.,

Defendants.

(Pages 1-225)

VIDEOTAPED DEPOSITION OF J. MICHAEL GWARTNEY
SEPTEMBER 2, 2010

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public



	Page 150		
14 14 15 1	_	14 16.51 1	
14:14:15 1	questioning me about the process and what was	14:16:51 1	was made involving ENA that Syringa would have a
14:14:18 2	going on. He was interested. He's chairman of	-	contract; correct?
14:14:19 3	the House Education Committee.	14:16:57 3	<ul><li>A. I don't agree with that.</li><li>Q. Well, wasn't that your understanding?</li></ul>
14:14:28 4	Q. Did you know at that time that a	14:16:59 4	· · · · · · · · · · · · · · · · · · ·
14:14:34 5	proposal that a technical proposal had been	14:17:02 5	A. That was not my understanding.
14:14:37 6	submitted by Qwest?	14:17:03 6	Q. Well, what was your understanding of a
14:14:39 7	A. Did I know that a proposal had been	14:17:05 7	teaming agreement?
14:14:41 8	submitted?	14:17:06 8	A. I have no knowledge of the agreement
14:14:42 9	Q. Yes.	14:17:08 9	that Syringa had with ENA. I never saw any of
14:14:44 10	A. As a result of this letter, of this	14:17:1110	those agreements.
14:14:4611	memo, yes.	14:17:1311	Q. My question is, what, to your
14:14:47 12	Q. Okay. Did you share that with	14:17:1612	understanding, is a teaming agreement?
14:14:4813	Mr. Nonini?	14:17:2313	A. It's an agreement to get together and
14:14:51 14	A. I don't recall that I specifically	14:17:2614	share various expertise, but there's a lead and a
14:14:5315	did.	14:17:3015	subcontractor. And so I had nothing to do with the subcontractors.
14:14:5616	Q. So there were, I think, periodic		
14:15:0217	telephone conferences with the evaluators.	14:17:3417	Q. Okay. But you had you had dealt
14:15:0618	Do you know how those took place?	14:17:3718	with teaming agreements before; correct?  A. Not in this context I hadn't, no.
14:15:0719	A. I do not.	14:17:4119	•
14:15:08 20	Q. Do you know how whether the evaluators all met in one location to evaluate the	14:17:4520	Q. Okay. But you had seen them in other
14:15:11:21		14:17:4621	contexts? A. Yes.
14:15:15:22	proposals or how they did it?	14:17:4722	
14:15:1823	A. I do not know.		Q. Okay. And you were familiar with the idea of teaming agreements, weren't you?
14:15:2024	Q. Do you know who the evaluators were?	14:17:4924	A. I was more familiar with a
14:15:22 25	A. No.	14:17:5325	A. I was more familiar with a
	Page 151		Page 153
14:15:28 1	Q. Do you know how the point process was	14:17:55 1	contractor/subcontractor relationship, which I
14:15:31 2	constructed to grade the evaluations of the	14:17:58 2	thought was in place.
14:15:35 3	proposals?	14:17:59 3	Q. Okay. But it's consistent with those
14:15:38 4	A. I was briefed on that, but generally l	14:18:07 4	kinds of contracts, isn't it, that when the
14:15:41 5	know. But not specifically.	14:18:10 5	principal gets the contract that if there is
14:15:51 6	Q. I'd like to go back for a moment to	14:18:13 6	already a contract between the sub and the prime,
14:15:55 7	Exhibit 26. Mr. Zickau says, "We have four	14:18:18 7	that the sub has an interest in the award, doesn't
14:16:05 8	proposals." And one of the proposals apparently	14:18:22 8	he?
14:16:07 9	is ENA slash Syringa.	14:18:22 9	MR. THOMAS: Objection. Form, foundation.
14:16:1010	What did that mean to you at the time?	14:18:25 10	MR. SCHOSSBERGER: Same objection.
14:16:1711	A. It meant that ENA and Syringa had a	14:18:27 11	Q. (BY MR. LOMBARDI): Go ahead. Isn't
14:16:1812	teaming agreement.	14:18:27 12	that your understanding?
14:16:1913	Q. Okay. And you knew that at the time,	14:18:28 13	A. Why don't you restate the question,
14:16:2114	didn't you?	14:18:30 14	please.
14:16:2215	A. That's my presumption, yeah.	14:19:10 15	(Exhibit 27 marked.)
14:16:2416	Q. Okay. And it meant that they were	14:19:11 16	Q. (BY MR. LOMBARDI): Mr. Gwartney, I'm
14:16:2817	acting in a fashion that was consistent with the	14:19:12 17	going to hand you what's been marked as
14:16:3118	request for information that we've talked about	14:19:14 18	Exhibit 27.
14:16:3319	and that they had partnered up to do the project	14:19:30 19	Have you seen that document before?
14:16:3620	together; correct?	14:19:41 20	A. I think so, yes.
14:16:3921	A. I don't think they were partners. But	14:19:42 21	Q. Okay. And what is it?
14:16:4122	one of them was a subcontractor. And Syringa was	14:19:51 22	A. It's a notice to Education Networks of
14:16:4323	a subcontractor in my mind, but that's	14:19:55 23	America where they stood relative to other bidders
14:16:4724	Q. Okay. Okay. But you understood that	14:19:58 24	on this particular project.
14:16:4725	it was the expectation of Syringa that if an award	14:20:03 25	Q. Well, does it show the score for each

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho ) limited liability company, ) Case No. CV OC 0923757 Plaintiff, ) VOLUME I vs. IDAHO DEPARTMENT OF ) (Pages 1 through 182) ADMINISTRATION, et al., Defendants.

VIDEOTAPED DEPOSITION OF JACK G. "GREG" ZICKAU TAKEN SEPTEMBER 20, 2010

REPORTED BY:

SHERI FOOTE, CSR No. 90, RPR, CRR

Notary Public



		<del></del>	10.1
	Page 134		Page 136
14:45:38 1	Q. And that was the first time that you had	14:49:02 1	Ms. Hill?
14:45:40 2	ever made any writing about this conversation you	14:49:09 2	A. Yes, I believe I did.
14:45:44 3	had with Laura Hill concerning Syringa's	14:49:12 3	Q. Who did you tell?
14:45:46 4	participation?	14:49:14 4	A. I believe that I told Teresa Luna. I
14:45:47 5	A. I believe so.	14:49:19 5	believe that I told our in-house counsel, Melissa
14:45:49 6	Q. Why did you wait so long to make any	14:49:24 6	Vandenberg, and I I'm not sure if I told
14:45:53 7	written documentation concerning the information	14:49:29 7	anyone else.
14:45:58 8	you received from Laura Hill about Syringa's	14:49:30 8	Q. Did you tell Mr. Gwartney?
14:46:01 9	participation?	14:49:31 9	A. I don't recall.
14:46:0310	A. I don't know.	14:49:3410	Q. When did you tell Teresa Luna?
14:46:0611	Q. Was it important?	14:49:3711	A. Probably shortly after I learned. 1
14:46:1012	A. It was important that I have the	14:49:4012	don't recall the specific time.
14:46:1213	confirmation. I received it.	14:49:4113	Q. What did you tell her?
14:46:1614	Q. But you didn't document it at the time	14:49:4514	A. That we had received information back
14:46:1815	you received it?	14:49:4815	that Mr. Lowe was of a position that he was going
14:46:1916	A. I did not.	14:49:5516	to get the entire network.
14:46:2017	Q. Did Ms. Hill document her conversation	14:49:5817	Q. Now, I believe you said something about
14:46:2418	to your knowledge, her conversation with	14:50:0018	this didn't involve Qwest?
14:46:2919	Mr. Lowe?	14:50:0219	A. I believe I said that the conversation
14:46:3020	A. I don't know. Not to my knowledge.	14:50:0420	didn't involve Qwest.
14:46:4621	Q. Did you do anything else other than	14:50:0621	MR. CLARK: Counsel, are you referring
14:46:5322	speaking with Mr. Collie as a consequence of	14:50:0722	to the conversation with Mr. Collie?
14:46:5823	receiving information from Ms. Hill about	14:50:1023	MR. LOMBARDI: No, I'm referring to the
14:47:0124	Syringa's willingness to participate with Qwest,	14:50:1324	conversation that Ms. Hill related to the
14:47:0725	as you've described, in providing backbone and	14:50:1825	witness.
	Page 135		Page 137
14:47:10 1	connectivity through their ILEC's?	14:50:18 1	
14:47:10 1	A. Can I have that repeated, please. I	14:50:18 1	MR. CLARK: Okay. THE WITNESS: Correct. And that as far
14:47:14 2	must be getting tired.	14:50:19 2	as I know did not involve Qwest. I did not ask
14:47:21 3		14:50:25 4	-
	(Record read back.) THE WITNESS: I'm not sure I understand	14:50:25 4	her to mention Qwest in relaying the information
14:47:44 5		14:50:29 5	and she did not report back to me that she
14:47:58 6	the question.		mentioned Qwest in relaying the information.
14:47:59 7	Q. (BY MR. LOMBARDI) Let me try it again,	14:50:34 7	Q. (BY MR. LOMBARDI) Well, in terms of
14:48:02 8	then.  A. Please do. Thank you.	14:50:35 8	what the State was thinking about doing, it certainly did involve Qwest; didn't it?
14:48:02 9 14:48:0510	Q. Ms. Hill gave you some information about	14:50:39 9	• ,
	Syringa's unwillingness to participate with	14:50:4110	A. No, I don't agree.     Q. Well, Qwest would be providing service
14:48:1011 14:48:1512	Qwest; true?	14:50:4211	and backbone where its ILEC's had last-mile
1		14:50:4612	
14:48:1613	A. No, she gave me some information about Mr. Lowe's unwillingness to participate in the	14:50:5113	connectivity according to the concept; isn't that true?
14:48:2314 14:48:2715	Idaho Education Network as the State determined	14:50:5314	
		14:50:5315	A. Yes, that is true according to that
14:48:2916	it was best to be implemented.	14:50:5616	concept.
	Q. Okay.		Q. So, to that extent Qwest would have been involved, wouldn't it?
14:48:3318	A. The conversation as far as I know did	14:50:5918	involved; wouldn't it?
14:48:3619	not involve Qwest.	14:51:0119	A. To that extent, Qwest was involved, yes.
14:48:3920	Q. You followed up on the information that	14:51:0520 14:51:1021	Q. Sure. And Qwest also had a statewide
14:48:4221	Ms. Hill provided you by talking to Mr. Collie;	i	blanket purchase order in effect at the time for
14:48:4722	right?	14:51:1222	the Idaho Education Network; didn't it?
14:48:4823	A. That is my recollection, yes.	14:51:1523	A. Yes.
14:48:5024	Q. Did you tell anyone other than	14:51:1624	Q. So, it was certainly a candidate to
14:48:5825	Mr. Collie and Ms. Hill what you had learned from	14:51:2225	provide the IEN backbone and last-mile

David R. Lombardi, ISB #1965 Amber N. Dina, ISB #7708 GIVENS PURSLEY LLP 601 W. Bannock P.O. Box 2720 Boise, Idaho 83701 Telephone Number: (208) 388-1200 Facsimile: (208) 388-1300

Attorneys for Plaintiff Syringa Networks, LLC

# IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,

Plaintiff,

VS.

IDAHO DEPARTMENT OF
ADMINISTRATION; J. MICHAEL
"MIKE" GWARTNEY, in his personal and
official capacity as Director and Chief
Information Officer of the Idaho
Department of Administration; JACK G.
"GREG" ZICKAU, in his personal and
official capacity as Chief Technology
Officer and Administrator of the Office of
the CIO; EDUCATION NETWORKS OF
AMERICA, Inc., a Delaware corporation;
QWEST COMMUNICATIONS
COMPANY, LLC, a Delaware limited
liability company;

Defendants.

Case No. CV OC 0923757

PLAINTIFF'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES TO DEFENDANT IDAHO DEPARTMENT OF ADMINISTRATION

TO: DEFENDANT IDAHO DEPARTMENT OF ADMINISTRATION

PLAINTIFF'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES TO DEFENDANT IDAHO DEPARTMENT OF ADMINISTRATION - 1

**EXHIBIT** \_\_\_\_\_\_ 001752

Plaintiff Syringa Networks, LLC ("Plaintiff" or "Syringa") requires you to respond to the following requests for production within thirty (30) days from the date of service hereof and in conformance with all provisions of Rule 34 of the Idaho Rules of Civil Procedure.

In responding to these requests for production, furnish all information available to you, including information in the possession of your attorneys (and investigators, experts, etc., retained by you and your attorneys) not merely information known of your own personal knowledge.

If you cannot respond to the following requests for production in full after exercising due diligence to secure the information to do so, so state, and respond to the extent possible, specifying your inability to respond to the remainder, and stating whatever information and knowledge you have concerning the unanswered portion.

Pursuant to Rule 34 of the Idaho Rules of Civil Procedure, it is requested that you produce the documents herein requested for inspection and copying within thirty (30) days after receipt of this request. You may produce said documents at the office of GIVENS PURSLEY LLP, 601 West Bannock Street, Boise, Idaho 83702, or by copying or mailing said documents to the attorneys for Plaintiff via U.S. Mail, to P.O. Box 2720, Boise, Idaho 83701-2720, on or before said date.

Unless you furnish copies of all of the following requested documents by delivering or mailing them to counsel, upon production you will be required to keep such documents available for a reasonable time thereafter to enable counsel to inspect and to photocopy said documents.

#### **DEFINITIONS**

Syringa hereby incorporates by reference the Definitions contained in *Plaintiff's First*Request for Production of Documents to Defendant Idaho Department of Administration served in this matter on February 2, 2010.

#### REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 48: Any and all Statewide Blanket Purchase

Orders or other contracts for multiple awards under Idaho Code § 67-5718A where some or all

of the recipients of the award were designated by You and/or the State of Idaho as equal partners.

REQUEST FOR PRODUCTION NO. 49: Any and all notes, logs, correspondence, drafts and other Documentation, including but not limited to electronic records – including metadata – relating to "the evaluators' recommendation that the contract be awarded to both ENA and Qwest" as referenced on page 7 in Your Memorandum in Opposition to Plaintiff's Motion for Order to Show Cause.

REQUEST FOR PRODUCTION NO. 50: Any and all notes, logs, correspondence, drafts and other Documentation, including but not limited to electronic records – including metadata – relating to the discussion between Bill Burns and Mark Little on December 3, 2008, as referenced on page 3 in Your Memorandum in Opposition to Plaintiff's Motion for Order to Show Cause.

REQUEST FOR PRODUCTION NO. 51: All calendars, including electronic and non-electronic calendars for the timeframe September 1, 2008 through July 31, 2009 for each of the following individuals:

Mike Gwartney
Laura Hill
Greg Zickau
Theresa Luna
Mark Little
Sally Brevick
Mike Guryan

**REQUEST FOR PRODUCTION NO. 52:** Any and all meeting notes, including electronic, handwritten, and otherwise personal notes concerning the Idaho Education Network

RFP02160 to the following individuals for the timeframe September 1, 2008 through July 31, 2009:

Mike Gwartney Laura Hill Theresa Luna Mark Little Sally Brevick Mike Guryan

REQUEST FOR PRODUCTION NO. 53: Any and all telephone messages, including electronic and handwritten concerning the Idaho Education Network RFP02160 for each and every of the following individuals for the timeframe September 1, 2008 through July 31, 2009:

Mark Little
Laura Hill
Greg Zickau
Teresa Luna
Mike Gwartney
Sally Brevick
Mike Guryan

**REQUEST FOR PRODUCTION NO. 54**: Any notes made by any of the members of the independent evaluation team during the course of their participation in the IEN RFP evaluation process.

REQUEST FOR PRODUCTION NO. 55: Any and all notes, evidence and documentation of the "post RFP hotwash" to which reference is made on document DOA000156.

**REQUEST FOR PRODUCTION NO. 56:** All "data and comments" collected by the division of purchasing office to which reference is made on document DOA000156.

REQUEST FOR PRODUCTION NO. 56: All bid protests between 1996 and 2010 where protest was made of a multiple award made pursuant to Idaho Code Section 67-5718A.

#### **INTERROGATORIES**

INTERROGATORY NO. 7: Steve Schossberger, counsel for the State of Idaho, represented in open court on Tuesday, August 3, 2010 that the document QWEST000327 which was an email from Clint Berry sent to state employee Mark Little on Tuesday, January 27, 2009, at 03:04 p.m. was deleted by Mr. Little and was not, therefore, produced by the State of Idaho in response to Syringa's public record request of February and August 2009 or its first Request for Production of Documents of February 2, 2010. Please describe each and every other electronic record, including emails, which relate to the Idaho Education Network the Idaho Education Network RFP02160 from the timeframe September 1, 2008 through July 31, 2009 which has been deleted by stating the following:

- a) The author
- b) The recipients
- c) The date
- d) The content
- e) The date deleted.

INTERROGATORY NO. 8: Please identify all documents from the timeframe

September 1, 2008 through July 31, 2009 relating to the Idaho Education Network RFP02160

which have been lost, destroyed, or otherwise rendered unavailable in this litigation and describe each as follows:

- a) The author
- b) The recipients
- c) The date
- d) The content

e) The date when the document was lost, destroyed or made unavailable.

<u>INTERROGATORY NO. 9</u>: Please identify all individuals who contributed, in any fashion, to the preparation of DOA000156 through DOA000158 and/or any part thereof.

DATED this 10th day of August, 2010.

GIVENS PURSLEY LLP

By:

DAVID R. LOMBARD Attorneys for Plaintiff

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this //day of August, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Merlyn W. Clark	U.S. Mail
Steven F. Schossberger	Overnight Mail
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Attorneys for Idaho Dept. of Administration; J.	
Michael "Mike" Gwartney and Jack G. "Greg"	
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Attorneys for Qwest Communications Company	
, , ,	
	V
Dav	id R. Lombardi



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Franklin G. Lee
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Deborah E. Nelson Kelsey J. Nunez W. Hugh O'Riordan, i.L.M. Angela M. Reed Justin A. Steiner Robert B. White

Of Counsel Contey E. Werd

Retired Kenneth L. Pursley James A. McClure Raymond D. Givens (1917-2008)

August 10, 2010

#### VIA FACSIMILE

Merlyn W. Clark Steven F. Schossberger HAWLEY TROXELL ENNIS & HAWLEY P.O. Box 1617 Boise, ID 83701

Re:

Syringa Networks, LLC v. Idaho Dept of Administration, et al.

GP File: 5821-79

#### Gentlemen:

Although I understand there is a "litigation hold" concerning records relating to the IEN procurement and issues raised in the above case, I am writing to ask that you please take special care to preserve all records of Mr. Gwartney who has recently retired from the State of Idaho. This request relates not only to his computer, but to all electronic records, wherever located, and to all diaries, calendars — both hard and electronic, and any writings which do or may contain reference to the issues in the Syringa case.

Thank you for your attention to this matter.

Sincerely.

David R. Lombardi

DRL/lkb cc: Greg Lowe 935123\_1 Merlyn W. Clark, ISB No. 1026 Steven F. Schossberger, ISB No. 5358 D. John Ashby, ISB No. 7228 HAWLEY TROXELL ENNIS & HAWLEY LLP 877 Main Street, Suite 1000 P.O. Box 1617 Boise, ID 83701-1617 Telephone: 208.344,6000

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Attorneys for Defendants Idaho Department of Administration; J. Michael "Mike" Gwartney and Jack G. "Greg" Zickau

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,

Plaintiff,

VS.

IDAHO DEPARTMENT OF
ADMINISTRATION; J. MICHAEL
"MIKE" GWARTNEY, in his personal
and official capacity as Director and Chief
Information Officer of the Idaho Department
of Administration; JACK G. "GREG"
ZICKAU, in his personal and official
capacity as Chief Technology Officer and
Administrator of the Office of the CIO;
ENA SERVICES, LLC, a Division of
EDUCATION NETWORKS OF AMERICA,
Inc., a Delaware corporation; QWEST
COMMUNICATIONS COMPANY, LLC,
a Delaware limited liability company,

Defendants.

Case No. CV OC 0923757

IDAHO DEPARTMENT OF ADMINISTRATION'S RESPONSE TO PLAINTIFF'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES

IDAHO DEPARTMENT OF ADMINISTRATION'S RESPONSE TO PLAINTIFF'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES - 1

EXHIBIT\_E

01162 0105,2022804.1

TO: PLAINTIFF SYRINGA NETWORKS, LLC AND ITS COUNSEL OF RECORD COMES NOW Idaho Department of Administration ("IDA"), a Defendant in the above-entitled action, by and through its counsel of record, Hawley Troxell Ennis & Hawley LLP, and, in accordance with the requirements of Rules 33 and 34 of the Idaho Rules of Civil Procedure, hereby files its response to "Plaintiff's Second Set of Requests for Production of Documents and Interrogatories to Defendant Idaho Department of Administration."

Unless otherwise specified, inspection and copying will be permitted as requested, except that some other time and place which is mutually agreeable to the parties may be substituted for the time and place specified in the request.

#### REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 48: Any and all Statewide Blanket Purchase

Orders or other contracts for multiple awards under Idaho Code § 67-5718A where some or all of
the recipients of the award were designated by You and/or the State of Idaho as equal partners.

RESPONSE TO REQUEST FOR PRODUCTION NO. 48: Objection: Counts One,

Two and Three of the Complaint have been dismissed by the Court, and this request is not relevant and not reasonably calculated to lead to the discovery of admissible evidence as to Court Four (Tortious Interference with Contract) of the Complaint.

Defendant further objects on the grounds that the request is overly broad, unduly burdensome, so vague as to be unanswerable, and not reasonably calculated to lead to the discovery of admissible evidence as to Counts Two and Three.

REQUEST FOR PRODUCTION NO. 49: Any and all notes, logs, correspondence, drafts and other Documentation, including but not limited to electronic records — including metadata — relating to "the evaluators' recommendation that the contract be awarded to both

ENA and Qwest" as referenced on page 7 in Your Memorandum in Opposition to Plaintiff's Motion for Order to Show Cause.

RESPONSE TO REQUEST FOR PRODUCTION NO. 49: Objection: Counts One,

Two and Three of the Complaint have been dismissed by the Court, and this request is not relevant and not reasonably calculated to lead to the discovery of admissible evidence as to Court Four (Tortious Interference with Contract) of the Complaint.

Defendant further objects on the grounds that the request is overly broad, unduly burdensome, so vague as to be unanswerable, and not reasonably calculated to lead to the discovery of admissible evidence as to Counts Two and Three.

Subject to and without waiving the foregoing objections, see document identified by Bates numbers DOA000156-158.

REQUEST FOR PRODUCTION NO. 50: Any and all notes, logs, correspondence, drafts and other Documentation, including but not limited to electronic records — including metadata — relating to the discussion between Bill Burns and Mark Little on December 3, 2008, as referenced on page 3 in Your Memorandum in Opposition to Plaintiff's Motion for Order to Show Cause.

RESPONSE TO REQUEST FOR PRODUCTION NO. 50: Objection: Counts One,

Two and Three of the Complaint have been dismissed by the Court, and this request is not relevant and not reasonably calculated to lead to the discovery of admissible evidence as to Court Four (Tortious Interference with Contract) of the Complaint.

Defendant further objects on the grounds that the request is overly broad, unduly burdensome, so vague as to be unanswerable, and not reasonably calculated to lead to the discovery of admissible evidence as to Counts Two and Three.

REQUEST FOR PRODUCTION NO. 51: All calendars, including electronic and non-electronic calendars for the timeframe September 1, 2008 through July 31, 2009 for each of the following individuals:

Mike Gwartney Laura Hill Greg Zickau Teresa Luna Mark Little Sally Brevick Mike Guryan

RESPONSE TO REQUEST FOR PRODUCTION NO. 51: The calendars for the requested time period for the identified individuals will be produced.

REQUEST FOR PRODUCTION NO. 52: Any and all meeting notes, including electronic, handwritten, and otherwise personal notes concerning the Idaho Education Network RFP02160 to the following individuals for the timeframe September 1, 2008 through July 31, 2009:

Mike Gwartney Laura Hill Teresa Luna Mark Little Sally Brevick Mike Guryan

#### RESPONSE TO REQUEST FOR PRODUCTION NO. 52:

Defendant objects on the grounds that the request is overly broad, unduly burdensome, so vague as to be unanswerable, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the objections, DOA has located and will produce the notes of Greg Zickau per this request even though he is not specifically named in the request.

DOA does not have in its possession, custody or control any meeting notes or personal notes responsive to this request for the identified individuals.

REQUEST FOR PRODUCTION NO. 53: Any and all telephone messages, including electronic and handwritten concerning the Idaho Education Network RFP02160 for each and every of the following individuals for the timeframe September 1, 2008 through July 31, 2009:

Mark Little Laura Hill Greg Zickau Teresa Luna Mike Gwartney Sally Brevick Mike Guryan

RESPONSE TO REQUEST FOR PRODUCTION NO. 53: DOA does not have in its possession, custody or control any telephone messages responsive to this request for the identified individuals.

REQUEST FOR PRODUCTION NO. 54: Any notes made by any of the members of the independent evaluation team during the course of their participation in the IEN RFP evaluation process.

RESPONSE TO REQUEST FOR PRODUCTION NO. 54: Objection: Counts One,

Two and Three of the Complaint have been dismissed by the Court, and this request is not relevant and not reasonably calculated to lead to the discovery of admissible evidence as to Court Four (Tortious Interference with Contract) of the Complaint.

Defendant further objects on the grounds that the request is overly broad, unduly burdensome, so vague as to be unanswerable, and not reasonably calculated to lead to the discovery of admissible evidence as to Counts Two and Three.

Subject to and without waiving the foregoing objections, DOA has produced all documents in its possession, custody and control made by any of the members of the independent evaluation team during the course of their participation in the IEN RFP evaluation process.

REQUEST FOR PRODUCTION NO. 55: Any and all notes, evidence and documentation of the "post RFP hotwash" to which reference is made on document DOA000156.

RESPONSE TO REQUEST FOR PRODUCTION NO. 55: Objection: Counts One,

Two and Three of the Complaint have been dismissed by the Court, and this request is not relevant and not reasonably calculated to lead to the discovery of admissible evidence as to Court Four (Tortious Interference with Contract) of the Complaint.

Defendant further objects on the grounds that the request is overly broad, unduly burdensome, so vague as to be unanswerable, and not reasonably calculated to lead to the discovery of admissible evidence as to Counts Two and Three.

Subject to and without waiving the foregoing objections, see DOA000156-158.

REQUEST FOR PRODUCTION NO. 56: All "data and comments" collected by the division of purchasing office to which reference is made on document DOA000156.

RESPONSE TO REQUEST FOR PRODUCTION NO. 56: Objection: Counts One,

Two and Three of the Complaint have been dismissed by the Court, and this request is not relevant and not reasonably calculated to lead to the discovery of admissible evidence as to Court Four (Tortious Interference with Contract) of the Complaint.

Defendant further objects on the grounds that the request is overly broad, unduly burdensome, so vague as to be unanswerable, and not reasonably calculated to lead to the discovery of admissible evidence as to Counts Two and Three.

Subject to and without waiving the foregoing objections, see DOA000156-158.

REQUEST FOR PRODUCTION NO. 57: All bid protests between 1996 and 2010 where protest was made of a multiple award made pursuant to Idaho Code Section 67-S718A.

RESPONSE TO REQUEST FOR PRODUCTION NO. 57: Objection: Counts One,

Two and Three of the Complaint have been dismissed by the Court, and this request is not relevant and not reasonably calculated to lead to the discovery of admissible evidence as to Court Four (Tortious Interference with Contract) of the Complaint.

Defendant further objects on the grounds that the request is overly broad, unduly burdensome, so vague as to be unanswerable, and not reasonably calculated to lead to the discovery of admissible evidence as to Counts Two and Three.

#### INTERROGATORIES

INTERROGATORY NO. 7: Steve Schossberger, counsel for the State of Idaho, represented in open court on Tuesday, August 3, 2010 that the document QWEST000327 which was an email from Clint Berry sent to state employee Mark Little on Tuesday, January 27, 2009, at 03:04 p.m. was deleted by Mr. Little and was not, therefore, produced by the State of Idaho in response to Syringa's public record request of February and August 2009 or its first Request for Production of Documents of February 2, 2010. Please describe each and every other electronic record, including emails, which relate to the Idaho Education Network the Idaho Education Network RFP02160 from the timeframe September 1, 2008 through July 31, 2009 which has been deleted by stating the following:

- a) The author
- b) The recipients
- c) The date
- d) The content

#### e) The date deleted.

ANSWER TO INTERROGATORY NO. 7: Objection: this interrogatory is overly broad, vague, unduly burdensome and impossible to answer as propounded. Subject to and without waiving the foregoing objections, DOA will produce documents "which relate to the Idaho Education Network RFP02160 from the timeframe September 1, 2008 through July 31, 2009" which were deleted in the normal course of business before there was any litigation hold in effect, which have been recovered from the deleted computer files, for Bill Burns, Gail Ewart, Greg Zickau, Mark Little and Tom Nordberg.

INTERROGATORY NO. 8: Please identify all documents from the timeframe

September 1, 2008 through July 31, 2009 relating to the Idaho Education Network RFP02160

which have been lost, destroyed, or otherwise rendered unavailable in this litigation and describe each as follows:

- a) The author
- b) The recipients
- c) The date
- d) The content
- e) The date when the document was lost, destroyed or made unavailable.

ANSWER TO INTERROGATORY NO. 8: Objection: this interrogatory is overly broad, vague, unduly burdensome and impossible to answer as propounded. Subject to and without waiving the foregoing objections, DOA is not aware of any documents, which have not already been produced, from the timeframe September 1, 2008 through July 31, 2009 relating to the Idaho Education Network RFP02160 which have been lost, destroyed, or otherwise rendered unavailable in this litigation.

<u>INTERROGATORY NO. 9</u>: Please identify all individuals who contributed, in any fashion, to the preparation of DOA000156 through DOA000158 and/or any part thereof.

ANSWER TO INTERROGATORY NO. 9: Laura Hill.

DATED THIS 10th day of September, 2010.

HAWLEY TROXELL ENNIS & HAWLEY LLP

Ву

Merlyh W. Clark, ISB No. 1026 Steven F. Schossberger, ISB No. 5358 Attorneys for Defendants Idaho Department of Administration; J. Michael "Mike" Gwartney and Jack G. "Greg" Zickau

#### VERIFICATION

Teresa Luna, being first duly swom upon oath, deposes and says:

That Teresa Luna is the Acting Director of Idaho Department of Administration, the Defendant in the above-entitled action; that she has read the within and foregoing Defendant Idaho Department of Administration's Response to Plaintiff's Second Set of Requests for Production of Documents and Interrogatories; and that the statements therein contained are true.

Teresa Luna

STATE OF IDAHO	)	
	) ss.	
County of Ada	)	
I LIMIN E	IllIZE	, a Notary Public, do hereby certify that on this nally appeared before me Teresa Luna, who, being by me
day of September	2010 person	hally appeared before me Teresa Luna, who, being by me
first duly sworn, declared	that she is the	e Acting Director of Idaho Department of Administration,
		ment as Acting Director of the Idaho Department of
		therein contained are true.
·		
		ave hereunto set my hand and affixed my official seal the
day and year in this certifi	icate first abov	ve written.
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NOTARL NO

Residing at 120/SE 1DAHO

My commission expires \( \omega \square{5/20} \)

Notary Public for Idaho

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day of Septrue copy of the foregoing IDAHO DEPARTMENT OF A TO PLAINTIFF'S SECOND SET OF REQUESTS FOR AND INTERROGATORIES by the method indicated bel following:	ADMINISTRATION'S RESPONSE PRODUCTION OF DOCUMENTS
David R. Lombardi Amber N. Dina GIVENS PURSLEY, LLP 601 W. Bannock P.O. Box 2720 Boise, ID 83701 [Attorneys for Plaintiff]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 208,388.1300
B. Lawrence Theis Meredith Johnston Steven J. Perfrement HOLME ROBERTS & OWEN LLP 1700 Lincoln Street, Suite 4100 Denver, CO 80203 [Attorneys for Qwest Communications Company, LLC]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 303.866.0200
Phillip S. Oberrecht Leslie M.G. Hayes HALL FARLEY OBERRECHT & BLANTON, P.A. 702 W Idaho, Suite 700 P.O. Box 1271 Boise, ID 83701 [Attorneys for ENA Services, LLC]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 208.395.8585
Robert S. Patterson BRADLEY ARANT BOULT CUMMINGS LLP 1600 Division Street, Suite 700 Nashville, TN 37203 [Attorneys for ENA Services, LLC]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 615.252.6335

Stephen R. Thomas	U.S. Mail, Postage Prepaid
MOFFATT, THOMAS, BARRETT, ROCK	Hand Delivered
& FIELDS, CHARTERED	Overnight Mail
101 S. Capitol Boulevard, 10th Floor	E-mail
P.O. Box 829	Telecopy: 208,385.5384
Boise, ID 83701	
[Attorneys for Qwest Communications Company, LLC]	

Sterling W. Carle

Merlyn W. Clark, ISB No. 1026 Steven F. Schossberger, ISB No. 5358 D. John Ashby, ISB No. 7228 HAWLEY TROXELL ENNIS & HAWLEY LLP 877 Main Street, Suite 1000 P.O. Box 1617 Boise, ID 83701-1617 Telephone: 208.344.6000

Telephone: 208.344.6000 Facsimile: 208.954.5210

Email: mclark@hawleytroxell.com sschossberger@hawleytroxell.com jashby@hawleytroxell.com

Jashuy@nawieyhoxen.com

Attorneys for Defendants Idaho Department of Administration; J. Michael "Mike" Gwartney and Jack G. "Greg" Zickau

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,

Plaintiff.

VS.

IDAHO DEPARTMENT OF
ADMINISTRATION; J. MICHAEL
"MIKE" GWARTNEY, in his personal
and official capacity as Director and Chief
Information Officer of the Idaho Department
of Administration; JACK G. "GREG"
ZICKAU, in his personal and official
capacity as Chief Technology Officer and
Administrator of the Office of the CIO;
ENA SERVICES, LLC, a Division of
EDUCATION NETWORKS OF AMERICA,
Inc., a Delaware corporation; QWEST
COMMUNICATIONS COMPANY, LLC,
a Delaware limited liability company,

Defendants.

Case No. CV OC 0923757

NOTICE OF COMPLIANCE

> David R. Lombardi Amber N. Dina GIVENS PURSLEY, LLP 601 W. Bannock P.O. Box 2720 Boise, ID 83701 [Attorneys for Plaintiff]

DATED THIS 10 day of September, 2010.

HAWLEY TROXELL ENNIS & HAWLEY LLP

Βv

Merlyn W. Clark, ISB No. 1026

Steven F. Schossberger, ISB No. 5358

Attorneys for Defendants Idaho Department of Administration; J. Michael "Mike" Gwartney

and Jack G. "Greg" Zickau

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this Lo day of Sept true copy of the foregoing NOTICE OF COMPLIANCE the addressed to each of the following:	tember, 2010, I caused to be served a by the method indicated below, and
David R. Lombardi Amber N. Dina GIVENS PURSLEY, LLP 601 W. Bannock P.O. Box 2720 Boise, ID 83701 [Attorneys for Plaintiff]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 208.388.1300
B. Lawrence Theis Meredith Johnston Steven J. Perfrement HOLME ROBERTS & OWEN LLP 1700 Lincoln Street, Suite 4100 Denver, CO 80203 [Attorneys for Qwest Communications Company, LLC]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 303,866,0200
Phillip S. Oberrecht Leslie M.G. Hayes HALL FARLEY OBERRECHT & BLANTON, P.A. 702 W Idaho, Suite 700 P.O. Box 1271 Boise, ID 83701 [Attorneys for ENA Services, LLC]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 208,395.8585
Robert S. Patterson BRADLEY ARANT BOULT CUMMINGS LLP 1600 Division Street, Suite 700 Nashville, TN 37203 [Attorneys for ENA Services, LLC]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 615,252,6335
Stephen R. Thomas MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 101 S. Capitol Boulevard, 10th Floor P.O. Box 829 Boise, ID 83701 [Attorneys for Qwest Communications Company, LLC]	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail E-mail Telecopy: 208,385.5384

Sevent Schossberger Merlyn W. Clark

NOTICE OF COMPLIANCE - 3

#### Lisa Bush

From:

Merlyn Clark [mclark@hawleytroxell.com]

Sent:

Wednesday, November 10, 2010 2:13 PM

To:

David R Lombardi; Amber N. Dina

Cc:

larry.theis@hro.com; David Brown; Edith Pacillo; John Ashby; Karen Foruria; Karen Ramos; Kris Coffman; Lynn Mize; Matt Gordon; Merlyn Clark; Patterson, Robert S; Phill Oberrecht;

Sherry Montosa: Stephanie Rzepa: Steve Schossberger: Steve Thomas:

steven.perfrement@hro.com; Teri Mercill, Asst. to S. J. Perfrement

Subject:

Idaho Department of Administration's Response to Plaintiff's Second Set of Requests for

Production of Documents and Interrogatories

David, You called on November 2, 2010 and inquired about the IDA's Responses to Requests for Production Nos. 48, 52, 53 and 57. I told you I would inquire and get back to you.

In the IDA's Responses, we raised objections which are stated in the Responses and I will not repeat them here. The IDA does not waive those objections. Notwithstanding the objections, I have learned and supplement the IDA's Responses as follows:

RFP No. 48. The Supplemental Response is there have been no Statewide Blanket Purchase Orders or other contracts for multiple awards under I.C. 67-5718A where some or all of the recipients of the award were designated by IDA or the State as equal partners; at least none since 1997, which is the extent of my research.

RFP No. 52. The Supplemental Response is that inquiries to the individuals named that were made when the RFP was first received have produced no meeting notes concerning the IEN RFP02160 for the timeframe September 1, 2008 through July 31, 2009, and none are known to exist in the possession of the IDA or the named individuals. The initial response was not intended to be a response only as to the IDA. I call to your attention that notes of Greg Zickau were produced although he was not among the named individuals.

RFP No. 53. The Supplemental Response is that inquiries to the individuals named that were made when the RFP was first received have produced no telephone messages concerning the IEN RFP02160 for the timeframe September 1, 2008 through July 31, 2009, and none are known to exist in the possession of the IDA or the named individuals. The initial response was not intended to be a response only as to the IDA.

No. 57. The Supplemental Response is that there have been no bid protests since 1997 where protest was made of a multiple award made pursuant to I. C. Section 67-5718A. I did not research prior to 1997.

I trust these responses cover the issues you raised in the telephone call on November 2, 2010. Merlyn

Merlyn W. Clark

Partner /ADR Neutral email: mclark@hawleytroxell.com direct 208.388.4836 fax 208.954.5210 web hawlevtroxell.com

HAW LEY TROXELL ENNIS & HAWLEY LLP

This e-mail message from the law firm of Hawley Troxell Ennis & Hawley, LLP is intended only for named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately at 208,344,6000 if you have received this message in error, and delete the message.



David R. Lombardi, ISB #1965 Amber N. Dina, ISB #7708 GIVENS PURSLEY LLP 601 W. Bannock P.O. Box 2720 Boise, Idaho 83701 Telephone Number: (208) 388-1200 Facsimile: (208) 388-1300

842718\_1

Attorneys for Plaintiff Syringa Networks, LLC

题 16 am J. BAVIO BAWATRO, Clask PUR THE MES

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,

Plaintiff.

VS.

**IDAHO DEPARTMENT OF** ADMINISTRATION; J. MICHAEL "MIKE" GWARTNEY, in his personal and official capacity as Director and Chief Information Officer of the Idaho Department of Administration; JACK G. "GREG" ZICKAU, in his personal and official capacity as Chief Technology Officer and Administrator of the Office of the CIO: EDUCATION NETWORKS OF AMERICA, Inc., a Delaware corporation; **OWEST COMMUNICATIONS** COMPANY, LLC, a Delaware limited liability company;

Defendants.

Case No. CV OC 0923757

MEMORANDUM IN SUPPORT OF MOTION FOR CONTINUANCE OF SUMMARY JUDGMENT HEARING **UNDER IRCP 56(f)** 



#### I. INTRODUCTION

Before the Court is Syringa Networks, LLC's ("Syringa") Motion for Continuance of Summary Judgment Hearing Under Idaho Rule of Civil Procedure ("IRCP") 56(f) filed in response to the Motions for Summary Judgment filed by Defendants Idaho Department of Administration, J. Michael "Mike" Gwartney and Jack G. "Greg" Zickau (collectively "State Defendants") on November 2, 2010 ("State Defendants' Motion") and Qwest on November 1, 2010. Syringa seeks a continuance of the hearing on Defendants' Motions for Summary Judgment because it has not yet completed the discovery needed to respond to Defendants' motions and the time for the completion of discovery has not yet expired.

#### II. STANDARD OF REVIEW

IRCP 56(c) allows for the entry of summary judgment, "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element to the party's case, and on which that party will bear the burden of proof at trial." Jenkins v. Boise Cascade Corp., 141 Idaho 233, 239, 108 P.3d 380, 386 (2005) (emphasis in original). Pursuant to IRCP 56(f), a party may request more time to respond to a pending motion for summary judgment where the facts are not sufficiently developed for the party to oppose the motion. Id. IRCP 56(f) provides:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or <u>may order a continuance</u> to permit affidavits to be obtained or <u>depositions to be taken or discovery to be had</u> or may make such other order as is just.

IRCP 56(f) (emphasis added); see also Doe v. Sisters of Holy Cross, 126 Idaho 1036, 895 P.2d 1229 (Ct. App. 1995) (holding trial court erred in denying Plaintiff's Rule 56(f) motion seeking

an opportunity to conduct discovery of relevant facts before disposition of the defendant's summary judgment motion). In short, IRCP 56(f) requires the party opposing a summary judgment to explain what discovery is necessary and how it is relevant to responding to the pending motion. IRCP 56(f); see also Jenkins at 239, 108 P.3d at 386.

#### III. ARGUMENT

A. Syringa Requires Additional Time to Complete Depositions in Order to Respond to the Factual Allegations Asserted by the Qwest and the State Defendants' Motions for Summary Judgment.

Defendants' Motions for Summary Judgment are directed to Syringa's claims for interference with contract and/or interference with prospective economic advantage. The proof of both requires proof of intent.

The proof of intent in business tort cases like these rarely comes directly from the mouths of the defendants or witnesses with direct knowledge. Proof of intent, as noted by the Idaho Supreme Court in *Highland Enterprises.*, *Inc. v. Barker*, 133 Idaho 330, 986 P.2d 996 (1999) usually comes from circumstantial evidence and inference:

In proving the element of intent, the plaintiff may show that the interference "with the other's prospective contractual relation is intentional if the actor desires to bring it about or if he knows that the interference is certain or substantially certain to occur as a result of his action." Restatement (Second) of Torts § 766 B ctm. d (1977). Intent can be shown even if the interference is incidental to the actor's intended purpose and desire "but known to him to be a necessary consequence of his action." *Id.* at § 766 cmt. j.

The trial court correctly noted that, "[w]hat motivates a person to act seldom is susceptible of direct proof." *Kalgaard v. Lindo Mar Adventure Club, Ltd.*, 147 Or.App. 61, 934 P.2d 637, 640 (1997) (addressing whether the lower court should have granted summary judgment for a claim of tortious interference with a potential business relationship). A California case addressing the intentional tort of interference with contract (and noting that intentional interference with contract and intentional interference with economic advantage do not differ with regard to intent) held that "[i]ntent, of course, may be established by inference as well as by direct proof." *Savage v. Pacific Gas & Electric Co.*, 21 Cal.App.4th 434, 26

Cal.Rptr.2d 305, 314 (1993) (quoting *Seaman's Direct Buying Service, Inc. v. Standard Oil Co.*, 36 Cal.3d 752, 206 Cal.Rptr. 354, 686 P.2d 1158, 1165 (1984)). Accordingly, the jury may infer culpable intent from conduct substantially certain to interfere with the prospective economic relationship. *Id.* 

*Id.* at 340, 986 P.2d at 1006. Plaintiff recognized the need to establish the circumstances from which intent to interfere can be inferred and undertook discovery for that purpose.

Plaintiff's discovery efforts to date have been extensive, focused and designed for completion within the discovery cut off date of December 13, 2010. That discovery consisted of:

No.	Date	Document Description
1.	2/2/10	Plaintiff's First Interrogatories to Defendant Qwest
2.	2/2/10	Plaintiff's First Interrogatories to Defendant ENA
3.	2/2/10	Plaintiff's First Interrogatories to Defendant DOA
4.	2/2/10	Plaintiff's First Requests for Production of Documents to Qwest
5.	2/2/10	Plaintiff's First Requests for Production of Documents to ENA
6.	2/2/10	Plaintiff's First Requests for Production of Documents to DOA
7.	4/20/10	Notice of Taking Depo of Andy Hung
8.	4/20/10	Notice of Taking Depo of Bob Hough
9.	4/20/10	Notice of Taking Depo of Bill Finke
10.	4/20/10	Notice of Taking Depo of Ryan Gravette
11.	4/29/10	Notice Vacating Depositions
12.	8/4/10	Notice of Taking Deposition of Clint Berry
13.	8/4/10	Notice of Taking Deposition of Jim Schmit
14.	8/4/10	Notice of Taking Deposition of Bob Collie
15.	8/4/10	Notice of Taking Deposition of Gayle Nelson
16.	8/4/10	Notice of Taking Deposition of J. Michael "Mike" Gwartney
17.	8/4/10	Notice of Taking Deposition of Teresa Luna
18.	8/4/10	Notice of Taking Deposition of Mark Little

No.	Date	Document Description
19.	8/4/10	Notice of Taking Deposition of Jack G. "Greg" Zickau
20.	8/4/10	Notice of Taking Deposition of Laura Hill
21.	8/10/10	Plaintiff's Second Set of Requests for Production of Documents and Interrogatories to Defendant Idaho Department of Administration
22.	8/11/10	Plaintiff's Second Set of Requests for Production of Documents to Defendant Education Networks of America
23.	8/11/10	Plaintiff's Second Set of Requests for Production of Documents to Defendant Qwest Communications Company
24.	8/11/10	Notice of Service of Discovery Requests
25.	8/23/10	Amended Notice of Taking videotaped Deposition of Laura Hill
26.	8/23/10	Amended Notice of Taking Videotaped Deposition of Jack G. "Greg" Zickau
27.	8/23/10	Amended Notice of Taking Videotaped Deposition of Mark Little
28.	8/23/10	Amended Notice of Taking Videotaped Deposition of Teresa Luna
29.	8/23/10	Amended Notice of Taking Videotaped Deposition of J. Michael "Mike" Gwartney
30.	8/23/10	Amended Notice of Taking Videotaped Deposition of Jim Schmit
31.	8/23/10	Amended Notice of Taking Videotaped Deposition of Clint Berry
32.	8/27/10	Notice of Postponement of Videotaped Depos of Clint Berry and Jim Schmit
33.	8/27/10	Plaintiff's Third Requests for Production of Documents to Defendant Idaho Department of Administration
34.	9/1/10	Amended Notice of Taking Videotaped Deposition of Gayle Nelson
35.	9/1/10	Amended Notice of Taking Videotaped Deposition of Bob Collie
36.	9/27/10	Notice of Taking Deposition of Randy Gaines (10-6-10)
37.	9/27/10	Notice of Taking Deposition of Bob Hough (10-6-10)
38.	9/27/10	Notice of Taking Deposition of Jerry Reininger (10-8-10)
39.	9/27/10	Notice of Taking Deposition of Andy Hung (10-8-10)
40.	9/27/10	Notice of Taking Deposition of Bill Finke (10-14-10)

No.	Date	Document Description
41.	9/28/10	Amended Notice of Taking Deposition of Bill Finke (10-14-10)
42.	9/28/10	Notice of Taking Videotaped Deposition of Bill Burns (10-19-10)
43.	9/29/10	Plaintiff's Answers and Response to State Defendants' First Set of Interrogatories and Requests for Production
44.	10/7/10	Notice of Taking Deposition of Ryan Gravette (10-20-10)
45.	10/13/10	Plaintiff's Answers and Reponses to ENA's First Set of Interrogatories and Requests for Production
46.	10/15/10	Notice of Taking Videotaped Deposition of Clint Berry (11-17-10)
47.	10/15/10	Notice of Taking Videotaped Deposition of Jim Schmit (11-18-10)
48.	10/21/10	Notice of Taking Videotaped Deposition of Brady Kraft (11-15-10)
49.	11/3/10	Notice of Continued Videotaped Deposition of Zickau (11-11-10)
50.	11/11/10	Notice of Continued Videotaped Deposition of Gwartney (12-2-10)
51.	11/12/10	Notice of Taking Videotaped Deposition of Melissa Vandenberg (12-3-10)
52.	11/12/10	Notice of Deposition Duces Tecum Pursuan to I.R.C.P. 30(b)(6) for the Deposition of the State of Idaho, Department of Administration (12-10-10)
53.	11/15/10	Plaintiff's Responses to Defendant Qwest Communications Company's First Requests for Production of Documents to Plaintiff
54.	11/15/10	Plaintiff's Third Set of Requests for Production of Documents to Defendant Qwest Communications Company
55.	11/15/10	Plaintiff's Second Set of Interrogatories to Defendant Qwest Communications Company
56.	11/15/10	Plaintiff's Third Set of Requests for Production of Documents to Defendant Education Networks of America
57.	11/15/10	Plaintiff's Fourth Requests for Production of Documents to Defendant Idaho Department of Administration
58.	11/15/10	Plaintiff's Second Interrogatories to Defendant Education Networks of America

Plaintiff has also noticed the depositions of Qwest employees Clint Berry and Jim Schmit

for November 17 and 18, the deposition of Melissa Vandenberg, as to whom the State Defendants partially waived attorney client privilege, for December 6, 2010, and is working with the defendants to schedule the deposition of ENA CFO Rex Miller and the schedule the completion of the deposition of Mike Gwartney.

Qwest's Motion for Summary Judgment asserts, in part, that Qwest employees did not interfere with the teaming agreement between Syringa and ENA. While Syringa has emails and records of meetings and telephone conversations indicating the contrary, to fully respond to Qwest's assertion, Syringa must depose Clint Berry and Jim Schmit, whom it believes actually did the interfering.

The State has produced 19,256 pages, ENA has produced 11,260 pages and Qwest has produced 8,455 pages of documents in this case. The depositions of Qwest employees Mr. Berry and Mr. Schmit were originally scheduled to take place August 31, 2009 and September 1, 2009, seven months after Syringa's First Request for Production of Documents to Qwest. Documents, including emails evidencing intent to interfere with the Teaming Agreement between ENA and Syringa were promised, but were not actually produced by Qwest in time to review to prepare for those depositions. Syringa, therefore, postponed the depositions of Mr. Berry and Mr. Schmit to give Qwest time to produce the documents that had been requested. The depositions of Mr. Berry and Mr. Schmit before receipt and review of the Qwest documents would have been counterproductive, a waste of time, and inconsistent with IRCP 1.

The State Defendants' Motion for Summary Judgment also asserts, in part, that the State Defendants did not interfere with the teaming agreement between Syringa and Qwest. Again, while Syringa has numerous emails, records of meetings and telephone conversations indicating the contrary, because some of the State Defendants' interference involved interactions with Clint

Berry and Jim Schmit, Syringa must be allowed to depose these individuals before it can adequately respond to the State's Motion.

Further, Syringa has still not completed the depositions of State witnesses, including Mike Gwartney and Melissa Vandenberg. State witnesses testified that Melissa Vandenberg instructed them that the State could unilaterally amend the RFP after the contract had been issued. (Affidavit of David Lombardi in Support of Motion for Continuance of Summary Judgment Hearing Under IRCP 56(f) ("Lombardi Aff.") at ¶¶ 4-5). This resulted in the creation of the Amended SBPO, from which Syringa was excluded. In order to fully respond to the State Defendants' assertion that the State Defendants did not interfere with the teaming agreement between Syringa and ENA, Syringa must inquire further into this advice which has been attributed to Ms. Vandenberg.

Each of the above-mentioned depositions will be concluded prior to the discovery deadline of December 13, 2010 and the January 11, 2011 deadline for dispositive motions, causing no delay to the Court or Defendants.

# B. The State Defendants Have Yet to Adequately Respond to Syringa's Discovery Requests Due to Spoiliation of Evidence.

On August 10, 2010, Syringa sent the State Defendants a request for production of information, some of which might have been contained in Mr. Gwartney's computer. For Example, Request 51 asked for "All calendars, including electronic and non-electronic calendars for the timeframe September 1, 2008 through July 31, 2009 for the following individuals" for Mr. Gwartney. (Lombardi Aff. ¶ 6). Request 52 asked for "Any and all meeting notes, including electronic, handwritten, and otherwise personal notes concerning the Idaho Education Network RFP02160 to the following individuals for the timeframe September 1, 2008 through July 31, 2009" for Mr. Gwartney. *Id.* Request 53 asked for "Any and all telephone messages, including

electronic and handwritten concerning the Idaho Education Network RFP02160 for each and every of the following individuals for the timeframe September 1, 2008 through July 31, 2009" for Mr. Gwartney. *Id.* The State Defendants responded that they did not have in their possession, custody, or control any of the above requested information for any of the individuals, including Mr. Gwartney. (Lombardi Aff. ¶ 8).

In an email dated November 10, 2010, Merlyn Clark, counsel for the State Defendants, provided further response to Request 52, stating:

RFP No. 52. The Supplemental Response is that inquiries to the individuals named that were made when the RFP was first received have produced no meeting notes concerning the IEN RFP02160 for the timeframe September 1, 2008 through July 31, 2009, and none are known to exist in the possession of the IDA or the named individuals. The initial response was not intended to be a response only as to the IDA. I call to your attention that notes of Greg Zickau were produced although he was not among the named individuals.

(Lombardi Aff. ¶ 9).

In that same email, Mr. Clark also provided further response to Request 53:

RFP No. 53. The Supplemental Response is that inquiries to the individuals named that were made when the RFP was first received have produced no telephone messages concerning the IEN RFP02160 for the timeframe September 1, 2008 through July 31, 2009, and none are known to exist in the possession of the IDA or the named individuals. The initial response was not intended to be a response only as to the IDA.

Id.

However, there is good reason the State Defendants have been unable to find information in response to Requests 52, 52 and 53, as well as others. In or around August, 2010, Mr. Gwartney retired as the Director of the Department of Administration. On August 10, 2010, counsel for Syringa specifically requested that Mr. Gwartney's computer be preserved as evidence. That correspondence states, in part:

#### Gentlemen:

Although I understand there is a "litigation hold" concerning records relating to the IEN procurement and issues raised in the above case, I am writing to ask that you please take special care to preserve all records of Mr. Gwartney who has recently retired from the State of Idaho. This request relates not only to his computer, but to all electronic records, wherever located, and to all diaries, calendars—both hard and electronic, and any writings which do or may contain reference to the issues in the Syringa case.

(Lombardi Aff., ¶ 7) Incredibly, despite the existence of a litigation hold and despite correspondence to the State Defendants specifically requesting that the electronic materials be preserved, the State Defendants informed Syringa on November 11, 2010 that Mr. Gwartney's computer was erased *approximately 3 months ago*.

"The doctrine of spoliation of evidence 'provides that when a party with a duty to preserve evidence intentionally destroys it, an inference arises that the destroyed evidence was unfavorable to that party." *Ada County Highway District v. Total Success Investments, LLC*, 145 Idaho 360, 368, 179 P.3d 323, 331 (2008) (citing *Courtney v. Big O Tires, Inc.*, 139 Idaho 821, 824, 87 P.3d 930, 933 (2003) (quoting *Bromley v. Garey*, 132 Idaho 807, 812, 979 P.2d 1165, 1170 (1999) (internal quotations omitted))). Counsel for State Defendants have informed Syringa that they are attempting to retrieve as much information from the erased computer as they can. Until the State Defendants have had a chance to do so, the materials have been produced and reviewed by Plaintiff, and Mr. Gwartney has been examined as to the contents, summary judgment is clearly premature.<sup>1</sup>

#### C. Requests for Production and Interrogatories are still outstanding.

Syringa recently sent Requests for Production and Interrogatories to the State Defendants and Qwest. These requests are currently outstanding. Syringa is not suggesting that the

<sup>&</sup>lt;sup>1</sup> In the event the materials are not recovered, the Motion for Summary Judgment as to Mr. Gwartney should be denied outright pursuant to legal interference. See Ada County Hwy Dist. at 368, 179 P.3d at 331.

Defendants should have already responded to these discovery requests. Rather, this is simply another illustration that discovery is still underway, and that, until after the discovery deadline on December 13, 2010, summary judgment is premature.

#### IV. CONCLUSION

Pursuant to Rule 56(f), the Court should postpone the November 30, 2010 hearing on the State Defendants' and Qwest's Motions for Summary Judgment until after Syringa has had a fair opportunity to complete additional discovery, including but not limited to, taking the depositions of Clint Berry, Jim Schmit, ENA CFO Rex Miller and Melissa Vandenberg and completing the deposition of J. Michael "Mike" Gwartney. All but one of these depositions is scheduled to occur over the coming month, and all will occur before the dispositive motion cut off.

DATED this <u>lo</u> day of November 2010.

GIVENS PURSLEY LI

By:

DAVID R. LOMBARDI Attorneys for Plaintiff

## **CERTIFICATE OF SERVICE**

I hereby certify that on this  $\frac{\int b}{\int b}$  day of November, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Attorneys for Defendant ENA Services, LLC, a Division of Education Networks of America, Inc.

#### IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYR INGA NETWORKS, LLC, AN Idaho limited liability company,

Plaintiff,

VS.

IDAHO DEPARTMENT OF
ADMINISTRATION; J. MICHAEL "MIKE"
GWARTNEY, in his personal and official
capacity as Director and Chief Information
Officer of the Idaho Department of
Administration; JACK G. "GREG" ZICKAU,
in his personal official capacity of Chief
Technology Officer and Administrator of the
Office of the CIO; ENA SERVICES, LLC, a
Division of EDUCAT ION NETWORKS OF
AMERICA, INC. a Delaware corporation;
QWEST COMMUNICATIONS COMPANY,
LLC, a Delaware limited liability company,

Case No. CV OC 0923757

AFFIDAVIT OF LESLIE M. HAYES IN SUPPORT OF ENA SERVICES, LLC'S MOTION FOR SUMMARY JUDGMENT

Defendants.

STATE OF IDAHO	)
	) ss
County of Ada	)

Leslie M. Hayes, being first duly sworn upon oath, deposes and says:

- 1. That she is an attorney of record for defendant ENA Services, LLC, in the aboveentitled action and, as such, has personal knowledge of the facts set forth herein.
- 2. Attached hereto as Exhibit "A" are excerpts from the deposition of Gregory D. Lowe, taken August 5, 2010.
- 3. Attached hereto as Exhibit "B" are excerpts from the deposition of Gregory D. Lowe, taken November 5, 2010.
- 4. Attached hereto as Exhibit "C" are excerpts from the deposition of Robert M. Collie, III, taken September 29, 2010.
- 5. Attached hereto as Exhibit "D" are excerpts from the deposition of J. Michael Gwartney, taken September 2, 2010.
- 6. Attached hereto as Exhibit "E" are excerpts from the deposition of Brady N. Kraft, taken November 15, 2010.
- 7. Attached hereto as Exhibit "F" are excerpts from the deposition of Jack G. "Greg" Zickau, taken September 20, 2010.
- 8. Attached hereto as Exhibit "G" are excerpts from the deposition of Jack G. "Greg" Zickau, taken November 11, 2010.
- 9. Attached hereto as Exhibit "H" is a true and correct copy of pages LOWE 30(b)(6) 000070 through LOWE 30(b)(6) 000073 of deposition exhibit 3.
  - 10. Attached hereto as Exhibit "I" is a true and correct copy of deposition exhibit 6.
  - 11. Attached hereto as Exhibit "J" is a true and correct copy of deposition exhibit 14.
  - 12. Attached hereto as Exhibit "K" is a true and correct copy of deposition exhibit 27.

- 13. Attached hereto as Exhibit "L" is a true and correct copy of deposition exhibit 31.
- Attached hereto as Exhibit "M" is a true and correct copy of deposition exhibit 14.

32.

- Attached hereto as Exhibit "N" is a true and correct copy of deposition exhibit 49. 15.
- Attached hereto as Exhibit "O" is a true and correct copy of deposition exhibit 50. 16.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

SUBSCRIBED AND SWORN TO before me this 23day of November, 2010.

Residing at Commission expires

# **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 23 day of November, 2010, I caused to be served a true copy of the foregoing AFFIDAVIT OF COUNSEL IN SUPPORT OF ENA SERVICES, LLC'S MOTION FOR SUMMARY JUDGMENT, by the method indicated below, and addressed to each of the following:

David R. Lombardi Amber N. Dina GIVENS PURSLEY LLP 601 W. Bannock P. O. Box 2720 Boise, ID 83701 Fax: (208) 388-1300	_ _ <u>*</u>	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Telecopy
Merlyn W. Clark HAWLEY TROXELL ENNIS & HAWLEY LLP 877 W Main St, Ste 1000 PO Box 1617 Boise, ID 83701-1617 Fax: (208) 954-5210		U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Telecopy
Stephen R. Thomas MOFFATT THOMAS BARRETT ROCK & FIELDS CHARTERED 101 S Capitol Blvd, 10th Fl PO Box 829 Boise, ID 83701-0829 Fax: (208) 385-5384	<u></u>	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Telecopy
B. Lawrence Theis Steven Perfrement HOLME ROBERTS & OWEN LLP 1700 Lincoln Street, Suite 4100 Denver, CO 80203 Fax: (303) 866-0200	<u>×</u>	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Telecopy

Phillip S. Oberrecht Leslie M.G. Hayes

# IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company, Plaintiff, ) Case No. vs. ) OC 0923757 IDAHO DEPARTMENT OF ADMINISTRATION, et al., ) ) VOLUME I Defendants. (Pages 1-234)

RULE 30(B)(6) DEPOSITION OF SYRINGA NETWORKS, LLC TESTIMONY OF GREG LOWE AUGUST 5, 2010

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

ſ		
		Page 94
11:20:38	1	learned earlier, the last-mile connectivity under
11:20:42	2	the teaming agreement was to be competitively bid
11:20:44	3	so that ENA and therefore the State got the
11:20:48	4	lowest price possible?
11:20:50	5	A. Let me answer that a little differently.
11:20:52	6	Q. Okay.
11:20:54	7	A. In order to put in a fixed price bid, we
11:20:57	8	had to go out and get quotes for the last mile.
11:21:01	9	If you look at the pricing schedules that we gave
11:21:04	10	ENA as part of the RFP response, they're broken
11:21:09	11	down into two basic categories. One was a core
11:21:14	12	charge. And that core charge is what we were
11:21:17	13	going to charge ENA for the backbone. And in the
11:21:20	14	teaming agreement, it was one backbone.
11:21:23	15	The lion's share of the charge was
11:21:27	16	access charges. And we went out to the best of
11:21:30	17	our ability to find various suppliers, Qwest
11:21:34	18	Wholesale, Verizon, Frontier, Cable One, Direct
11:21:39	19	Communications, anybody and everybody. We went
11:21:42	20	out to find what we believed at that time the
11:21:45	21	lowest cost last mile. And then we presented
11:21:48	22	that with our markup as a price to ENA.
11:21:53	23	So, ENA received core charges and access
11:21:57	24	charges as a part of the fixed price that we gave
11:22:00	25	them. So, we had a solution and we knew that the

		Page 95
11:22:04	1	solution would not exceed at least the access
11:22:08	2	charges. But we left the ability in the teaming
11:22:11	3	agreement for ENA to come back in. Because this
11:22:14	4	thing this thing went from an RFP let of
11:22:17	5	December 15th to an RFP response of January 12th.
11:22:17	6	Q. Right.
11:22:20	7	A. We had less than a month. We did a lot
11:22:23	8	of work to come up with what we believed to be
11:22:25	9	the lowest cost. We left the provisions in the
11:22:27	10	teaming agreement so that once the award was made
11:22:30	11	and once we initiated on this platform, if ENA
11:22:36	12	could find a cheaper access provider that was
11:22:44	13	available to them, then great. Syringa Networks
11:22:47	14	would have first right of refusal if it matched
11:22:51	15	the price, matched the technical capabilities,
11:22:54	16	et cetera. Those provisions were left in place
11:22:57	17	to protect Idaho's taxpayers. We went to great
11:23:02	18	length, I went to great length in my
11:23:03	19	conversations with Jason Kreizenbeck, in the
11:23:04	20	teaming agreement wording, and intent of what
11:23:07	21	Syringa Networks wanted to do to protect Idaho's
11:23:10	22	taxpayers.
11:23:12	23	Q. Got it. How many conversations did you
11:23:20	24	have with Jason? Was there just the one?

A. Just that one.

11:23:21 25

- Q. Do you have any facts that would
- support an allegation that Qwest had any
- involvement in instructing ENA as to who it would
- 4 work with?
- <sup>5</sup> A. Rephrase your question.
- o. Sure.
- A. They didn't need to instruct them --
- MR. LOMBARDI: Wait for the question.
- THE WITNESS: Sorry. I was going to answer
- what I thought you meant. Rephrase the question.
- O. (BY MR. PERFREMENT): Was Owest
- involved in instructing ENA with respect to who it
- could use for the IEN project?
- A. Yes.
- 15 O. How?
- A. By the amended blanket purchase order.
- Q. By drafting an amended blanket
- purchase order?
- A. Right. The amended blanket purchase
- order very clearly put the handcuffs on ENA's
- ability to execute its Teaming Agreement.
- Q. Anything else?
- A. Not that I'm aware of at this time.
- Q. Let's look at paragraph 104 of
- Exhibit 4.

- under this arrangement?
- MR. LOMBARDI: Same objection. You can
- <sup>3</sup> answer.
- THE WITNESS: The answer is it depends.
- 5 And we'll go back to section 2(a), the first
- 6 sentence. The first sentence refers to the
- <sup>7</sup> schools portion of the IEN. Remember IdaNet was
- being folded in and ENA wanted nothing to do with
- <sup>9</sup> the State agencies.
- And so for State agency connectivity,
- ENA said "That's yours to deal with." So I don't
- know if that answers your question or not. But we
- were acting in conjunction with the schools and
- independently when it came to the State agencies.
- Q. (BY MR. PERFREMENT): So under this
- agreement was it your understanding that the roles
- of the parties would change perhaps depending on
- what the nature of the ultimate award by the State
- <sup>19</sup> was?
- <sup>20</sup> A. No.
- Q. Okay. The second sentence of
- section 2(a) says, "If ENA or Syringa are awarded
- the Prime Contract, ENA and Syringa shall enter
- into an agreement pursuant to which Syringa shall
- provide connectivity services statewide to ENA."

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- Do you see that?
- <sup>2</sup> A. Correct.
- Q. Under what terms would Syringa provide
- deconnectivity services statewide to ENA?
- A. As ENA took orders to connect schools,
- we would provide the connectivity to fulfill those
- <sup>7</sup> orders.
- Q. Under what pricing would that
- <sup>9</sup> connectivity be provided to ENA?
- A. I'm sorry. You mean the pricing that
- was submitted in the RFP response?
- Q. No. Under this agreement --
- A. Under --
- Q. -- what would the pricing to ENA be?
- A. It was already established as part of
- the RFP response.
- Q. So whatever pricing was contained
- within the RFP response, is your understanding?
- A. Correct.
- O. And were the other terms of those
- connectivity services also provided in the RFP
- response?
- A. I'm sorry. I don't understand your
- <sup>24</sup> question.
- Q. Sure. For example, the term, the

- bandwidth, the, you know, service availability
- terms, things like that.
- A. There was a list of schools with a
- list of stated bandwidth and delivery methods that
- was part. That's how we quoted it.
- 6 Q. Okay. And you'll note in section 2(a)
- it says "If ENA or Syringa are awarded the Prime
- 8 Contract, ENA and Syringa shall enter into an
- 9 agreement pursuant to which Syringa shall provide
- connectivity services statewide to ENA."
- Do you see that?
- 12 A. I do.
- Q. Subsequent to ENA being awarded a
- contract, did ENA and Syringa enter into an
- agreement pursuant to which Syringa shall provide
- connectivity services statewide to ENA?
- A. Well, this agreement specifically
- states how the workflow would happen. What this
- agreement does not state is how the money flow
- would happen.
- Q. Explain.
- A. The logistics of how orders would be
- placed, the logistics of how billing would occur,
- when billing would occur, how you would get paid.
- The subsequent agreement was for the logistics of

- what this Teaming Agreement defined as a work --
- you know, as a work body should the IEN Alliance
- win.
- $\mathbb{Q}$ . So if you turn to paragraph 3 --
- <sup>5</sup> A. Uh-huh.
- Q. -- it talks about ENA and Syringa
- 7 responsibilities.
- Is that the workflow you were
- 9 discussing?
- A. Yes, division of labor.
- O. Division of labor. And if I
- understand your testimony correctly, there is not
- within this Teaming Agreement a division of money?
- A. There is not the logistics of how all
- of that would work.
- Q. And at the time you entered into this
- 17 Teaming Agreement, how did you expect that to be
- worked out?
- A. In subsequent negotiations upon
- winning. We knew what things cost. We didn't
- know the way the money would flow.
- Q. Did you at any time enter into a
- second contract with ENA delineating how the money
- <sup>24</sup> would flow?
- A. We did not.

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- Q. Okay. Did you at any time enter into
- <sup>2</sup> a subsequent contract with ENA regarding the
- logistics of order entry, billing, and whatnot?
- $^{4}$  A. We did not.
- <sup>5</sup> Q. Okay. Those terms remained
- 6 unresolved?
- $^{\prime}$  A. Correct.
- <sup>8</sup> Q. If you'll look at section 1 on the
- <sup>9</sup> first page of Exhibit 6, it talks about
- confidential information?
- A. Correct.
- Q. And the second sentence says,
- "Confidential Information includes the Proposal
- and the terms of this agreement."
- Do you see that?
- <sup>16</sup> A. I do.
- Q. Are you aware of any violation by ENA
- of this confidentiality provision with respect to
- the terms of this agreement?
- A. I am not.
- O. Did Syringa at any time violate
- section 1's -- actually, are you aware of any
- violation of this provision with respect to
- 24 Syringa?
- A. I don't know exactly how to answer

IN	THE	DISTRI	CT (	COURT	OF	TH	E F	OURT	ı Ju	DICIAL	DIST	[RIC]
0	F THE	E STATE	OF	IDAHO	). <u>:</u>	IN	AND	FOR	THE	COUNTY	OF	ADA

SYRINGA NETWORKS, LLC, an Idaho	)	
limited liability company,	)	
Plaintiff,	)	Case No. CV OC 0923757
vs.	)	
IDAHO DEPARTMENT OF	)	VOLUME I
ADMINISTRATION, et al.,	)	(Pages 1 through 232)
Defendants.	)	
	١.	

VIDEOTAPED DEPOSITION OF GREGORY D. LOWE TAKEN NOVEMBER 5, 2010

REPORTED BY:

SHERI FOOTE, CSR No. 90, RPR, CRR

Notary Public

			Page 33
c	9:52:00	1	A. Correct.
C	9:52:01	2	Q. It's individually negotiated?
0	9:52:02	3	A. And this is again, I don't want to
C	9:52:04	4	get into the nuances of a definition, but
0	9:52:05	5	traditionally ILEC and CLEC is borne out of an
0	9:52:08	6	entity that offers phone service. Once you don't
0	9:52:12	7	offer phone service, then there's the best
0	9:52:18	8	classification is called a DLEC. And so,
0	9:52:21	9	Syringa I know, there's layers. But Syringa
0	9:52:25	10	Networks does not offer any type of phone service
0	9:52:28	11	to end customers. Therefore, we would never be a
0	9:52:32	12	CLEC in a market. It's complicated.
0	9:52:35	13	Q. I'm getting there.
0	9:52:35	14	A. Yeah.
0	9:52:42	15	Q. I've done a lot of reading on it. I
0	9:52:46	16	think I'm about to put the pieces of the puzzle
0	9:52:49	17	together.
0	9:52:49	18	A. Okay.
0	9:52:49	19	Q. I saw you use in your deposition the
0	9:52:52	20	term "common carrier," which in my reading I
0	9:52:56	21	figured out what it meant for a telephone
0	9:52:59	22	company. And I can tell you, you were talking
0	9:53:06	23	about it in connection, I think, with IdaNet.
0	9:53:10	24	And we can come back to it in a minute if I can't
0	9:53:18	25	find it. But in the Syringa world, do you use

		Page 34
09:53:19	1	the term "common carrier" "carrier of record,"
09:53:20	2	I'm sorry? I apologize, "carrier of record."
09:53:20	3	A. Yes.
09:53:23	4	Q. What does that mean?
09:53:24	5	A. To me it means the contracting entity
09:53:27	6	that is responsible for the overall connectivity.
09:53:33	7	So, for instance, today ENA is hooking
09:53:39	8	in to various schools throughout the state as
09:53:42	9	part of the IEN project and they are contracting
09:53:46	10	through Qwest to make that connectivity. Qwest
09:53:49	11	is the carrier of record for ENA. ENA is the
09:53:53	12	carrier of record for the federal government
09:53:55	13	because ENA is billing the federal government.
09:53:59	14	So, from the federal government's view, ENA is
09:54:02	15	the carrier of record. ENA has no knowledge of
09:54:09	16	who Qwest subcontracts with unless they ask.
09:54:16	17	Q. Let me test what I just heard and make
09:54:19	18	sure I understand it.
09:54:20	19	A. Okay.
09:54:21	20	Q. Without regard to the IEN
09:54:24	21	A. Okay.
09:54:24	22	Q the carrier of record is really the
09:54:28	23	single point of contact that's responsible for
09:54:31	24	the connectivity required under that contract.
09:54:35	25	And they may go some contract with somebody.
1		

		Page 35
09:54:38	1	They may go pay a NECA tariff in an ILEC region.
09:54:43	2	But however they do it, the carrier of record is
09:54:46	3	that single point of contact for the contract who
09:54:51	4	is responsible for connectivity services?
09:54:53	5	A. That is how I use the definition.
09:54:58	6	MR. PATTERSON: Would you mark that for
09:54:59	7	me so that the next time I confuse myself we can
09:55:02	8	come back to it.
09:55:05	9	THE COURT REPORTER: Okay.
09:55:09	10	(Transcript marked.)
09:55:09	11	Q. (BY MR. PATTERSON) All right, let's
09:55:12	12	talk about IdaNet now.
09:55:12	13	A. Okay.
09:55:12	14	Q. This may be a good segue from "carrier
09:55:14	15	of record" into "IdaNet." Tell me what IdaNet
09:55:16	16	is.
09:55:17	17	A. I can only tell you to the best of my
09:55:20	18	knowledge. Again, IdaNet is not my business.
09:55:22	19	So, IdaNet is a state network who as I understand
09:55:27	20	it was an attempt to do, again, bulk breaking to
09:55:32	21	establish some form of a backbone through various
09:55:34	22	carriers and then stitch together local access
09:55:40	23	offices into that backbone. So, IdaNet became an
09:55:44	24	overarching name for an attempt to have a network
09:55:49	25	that was dedicated to these agencies.

		Page 60
10:24:10	1	RFP asked for a solution. And ENA standing alone
10:24:16	2	could not have responded to that RFP with what it
10:24:19	3	does as core business.
10:24:20	4	Q. Agreed.
10:24:22	5	A. And Syringa Networks as it stands alone
10:24:25	6	would have probably had a better chance to
10:24:29	7	respond on its own, but we realize that we don't
10:24:33	8	have certain expertise.
10:24:34	9	The two married together, Syringa
10:24:38	10	Networks and Education Networks of America,
10:24:42	11	provide a very solid end-to-end solution and
10:24:44	12	response to that RFP. Hence, that's why, whether
10:24:49	13	you want to use the word "partnership" or
10:24:52	14	"relationship" or "agreement," whatever term,
10:24:54	15	that's why that came into existence. It's a
10:24:58	16	co-dependence between both entities on each other
10:25:03	17	in order to satisfy what the RFP was asking for.
10:25:09	18	Q. Well, I'm still just looking for
10:25:12	19	terminology that I can use to communicate.
10:25:16	20	A. Right.
10:25:16	21	Q. You talked about, I think you said "core
10:25:19	22	competencies."
10:25:20	23	A. Mm-hmm.
10:25:22	24	Q. And that ENA did not have the core

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10:25:25

competency to provide the communication services

		Page 61
10:25:28	1	that Syringa has as its core competency; is that
10:25:35	2	a fair statement?
10:25:36	3	A. They don't own or operate a network in
10:25:38	4	Idaho. So, that would be a fair statement.
10:25:40	5	Q. So, can we agree for our communication
10:25:43	6	purposes that ENA's core competency was the I
10:25:48	7	don't know how you want to describe ENA's core
10:25:52	8	competency.
10:25:52	9	A. My description of ENA would be the
10:25:56	10	content and logistical coordination of content
10:26:01	11	for schools.
10:26:01	12	Q. Okay. So, by shorthand, its core
10:26:05	13	competency was the content and logistical
10:26:10	14	coordination for the schools? Syringa's core
10:26:11	15	competency was what?
10:26:11	16	A. Connecting the schools and delivering
10:26:13	17	that content.
10:26:14	18	Q. And do we want to call that
10:26:16	19	"connectivity"?
10:26:16	20	A. That's fine for this purpose. Content
10:26:19	21	and connectivity.
10:26:19	22	Q. And so, I think where I got lost in all
10:26:24	23	of this was I was trying to figure out the
10:26:28	24	difference between the IdaNet statewide blanket
10:26:30	25	purchase order and the IEN RFP. And as I

		Page 62
10:26:39	1	understood what you were telling me, under the
10:26:41	2	IdaNet statewide blanket purchase order there
10:26:44	3	could be multiple carriers of record depending on
10:26:48	4	which department contracted for services with
10:26:51	5	which of the carriers that were successful under
10:26:58	6	the IdaNet RFP; is that fair?
10:27:00	7	MR. LOMBARDI: Object to the form.
10:27:01	8	THE WITNESS: So, I don't know what the
10:27:02	9	IdaNet RFP was, but if we're talking about the
10:27:05	10	IdaNet SBPO, that had multiple carriers. But
10:27:09	11	IdaNet was not part of the IEN proposal.
10:27:14	12	Q. (BY MR. PATTERSON) I understand. It
10:27:16	13	was not part of the IEN, in other words?
10:27:16	14	A. An IdaNet replacement network was part
10:27:20	15	of the IEN proposal.
10:27:21	16	Q. Okay. Under the IEN proposal strike
10:27:27	17	that. Under the IEN RFP, when you say they were
10:27:33	18	looking for an end-to-end solution, what I heard
10:27:36	19	you saying was that was a single carrier of
10:27:39	20	record. Now, am I hearing that wrong?
10:27:42	21	A. So, when and it's a good point for
10:27:46	22	clarification. When we talk about the IEN
10:27:49	23	project, overwhelmingly throughout these
10:27:53	24	depositions and in everybody's questions, it
10:27:56	25	really is regarding the E-rate portion, the
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		Page 63
10:27:59	1	end-to-end solution that dealt with schools.
10:28:03	2	There was an appendage, a sidebar in the overall
10:28:07	3	project, which was the IdaNet replacement.
10:28:12	4	Now, the proposal asked for an
10:28:16	5	end-to-end solution. It did not bifurcate those
10:28:19	6	two into two different solutions, but they one
10:28:23	7	is an E-rate billable event, one is not. So, it
10:28:28	8	depends on how you look at it. It could be two
10:28:31	9	solutions or it could be an end-to-end solution
10:28:36	10	from the fact that only one person can sign an
10:28:38	11	RFP response.
10:28:45	12	Q. I think I get it.
10:28:47	13	A. Okay.
10:28:48	14	Q. Let me test just to be sure.
10:28:57	15	A. Okay.
10:28:57	16	Q. Only one person can sign an RFP
10:28:59	17	response. So, in terms of the end-to-end
10:29:02	18	solution, you're only identifying in the response
10:29:07	19	one carrier of record; is that what you're saying
10:29:11	20	to me?
10:29:12	21	A. No, you're putting words in my mouth. I
10:29:16	22	said only one person can sign the response. And
10:29:20	23	the response was for a portfolio of services.
10:29:24	24	Q. Right. Let's try this a different way
10:29:27	25	and make sure I'm understanding. ENA is not a

		Page 64
10:29:28	1	carrier.
10:29:29	2	A. Correct.
10:29:29	3	Q. Right. So, when we talk about carrier
10:29:32	4	of record, we're talking about communications
10:29:35	5	connectivity services?
10:29:35	6	A. Not correct. ENA is not a carrier, but
10:29:38	7	they most certainly can be and are the carrier of
10:29:42	8	record in this case for E-rate.
10:29:43	9	Q. All right. And in terms of providing
10:29:45	10	connectivity services, as you've distinguished
10:29:48	11	for me what ENA does in terms of content and
10:29:53	12	logistics from what Syringa does in terms of
10:29:56	13	connectivity services, the carrier of record
10:29:58	14	under ENA as proposed in the IEN Alliance was
10:30:04	15	Syringa to provide the connectivity services?
10:30:07	16	A. Well, not correct. So, when ENA signed
10:30:11	17	that proposal and when ENA became the E-rate
10:30:14	18	designee, they were the carrier of record from a
10:30:18	19	billing perspective.
10:30:21	20	Q. Yeah, I'm not communicating.
10:30:23	21	A. Okay.
10:30:24	22	Q. I understand that. I get your point on
10:30:26	23	that.
10:30:26	24	A. From ENA's view so, we come off of
10:30:30	25	that view and now I'm from ENA looking down?
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		Page 65
10:30:34	1	Q. Right.
10:30:35	2	A. Syringa Networks would have been the
10:30:37	3	carrier of record for back for all
10:30:39	4	connectivity where we had the most advantaged
10:30:43	5	price per our teaming agreement.
10:30:47	6	Q. All right, we'll come back to that. I
10:30:49	7	get it now, though.
10:30:51	8	A. Okay.
10:30:52	9	Q. All right. So, we start on the IEN.
10:31:05	10	Let's talk about that for a minute. You come
10:31:08	11	onboard in September of '08. And I know that on
10:31:11	12	December the 4th of '08 you had a conversation
10:31:15	13	with Jason Kreizenbeck about the Idaho Education
10:31:25	14	Network.
10:31:27	15	A. Among other things, yes.
10:31:28	16	Q. All right. Did you know about the IEN
10:31:30	17	before you came onboard at Syringa?
10:31:34	18	A. Before I came onboard at Syringa? No.
10:31:37	19	Q. How were you introduced, then, to the
10:31:40	20	IEN?
10:31:42	21	A. I don't remember exactly, but at the
10:31:44	22	time I came onboard, it was a transitional
10:31:48	23	period. And there was an RFI that was either
10:31:51	24	just going out the door or had just gone out the
10:31:55	25	door or was just about to go out the door as I'm

IN	THE	DISTRI	CT C	OURT	OF	THE	FC	URTH	JUI	DICIAL	DIST	TRICT
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SYRINGA NETWORKS, LLC, an Idaho	)	
limited liability company,	)	
Plaintiff,	)	Case No. CV OC 0923757
vs.	)	
IDAHO DEPARTMENT OF	)	VOLUME I
ADMINISTRATION, et al.,	)	(Pages 1 through 216)
Defendants.	)	

VIDEOTAPED DEPOSITION OF ROBERT M. COLLIE, III

TAKEN SEPTEMBER 29, 2010

REPORTED BY:

SHERI FOOTE, CSR No. 90, RPR, CRR

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				Page 67
:	10:52:18	1	Α.	Correct.
:	10:52:19	2	Q.	And the response had a cover letter that
]	10:52:23	3	said that	it was presented on behalf of the Idaho
]	L0:52:28	4	Education	Alliance, I think; right?
:	10:52:30	5	Α.	The IEN Alliance.
] ]	10:52:33	6	Q.	IEN Alliance, okay. And the IEN
]	LO:52:34	7	Alliance	was composed of whom?
]	10:52:36	8	Α.	Principally of ENA and Syringa.
1	0:52:38	9	Q.	So, in connection with the end-to-end
]	0:52:43	10	solution,	why did you structure the IEN Alliance
1	.0:52:52	11	as descri	bed in the response to the request for
1	.0:52:54	12	proposals	to satisfy the end-to-end solution?
1	0:52:57	13	A.	Why did I
1	.0:53:02	14		MR. SCHOSSBERGER: Object to form.
1	.0:53:02	15		MR. PATTERSON: The same objection.
1	.0:53:04	16	Q.	(BY MR. LOMBARDI) Why did you structure
1	.0:53:06	17	the propo	sal the way you did with Syringa?
1	.0:53:09	18		MR. PATTERSON: The same objection.
1	0:53:11	19		MR. SCHOSSBERGER: Join.
] 1	0:53:13	20		THE WITNESS: Because we thought that it
1	.0:53:14	21	would be	the best response that was received.
1	.0:53:23	22	Q.	(BY MR. LOMBARDI) How did you believe
1	0:53:27	23	the struct	ture described in the response to the
] 1	.0:53:30	24	RFP would	provide the end-to-end solution?
1	.0:53:33	25	Α.	We thought obviously in submitting

		Page 68
10:53:38	1	it, we thought that we had the best package of
10:53:41	2	services, service providers, and pricing that the
10:53:45	3	State would receive.
10:53:47	4	Q. Can you take a look at Exhibit No. 22,
10:54:01	5	please.
10:54:01	6	A. (Witness complied.)
10:54:14	7	Q. So, what's Exhibit No. 22?
10:54:17	8	A. You're asking me?
10:54:19	9	Q. Yes.
10:54:20	10	A. It appears to be our response to the
10:54:23	11	RFP.
10:54:30	12	Q. Did you have any involvement in
10:55:39	13	preparing the cover letter to Exhibit No. 22?
10:55:43	14	A. Yes.
10:55:43	15	Q. What involvement did you have?
10:55:45	16	A. I reviewed it.
10:55:46	17	Q. And did you suggest any changes?
10:55:49	18	A. I may have.
10:55:51	19	Q. Now, do you recall the request for
10:55:57	20	proposals encouraging partnerships in response?
10:56:02	21	A. Yes.
10:56:03	22	Q. What was your understanding of the
10:56:04	23	reason why partnerships were encouraged?
10:56:07	24	A. My understanding was that no one service
10:56:10	25	provider could on its own serve the entire state.

		Page 69
10:56:16	1	Q. Now, in the response to the RFP, were
10:56:20	2	you trying to convince the State that one service
10:56:23	3	provider could service the entire state?
10:56:27	4	A. Our response was that leading a team of
10:56:31	5	service providers, we could serve the entire
10:56:34	6	state.
10:56:41	7	Q. Can you tell me, what was the structure
10:56:44	8	of that team to be?
10:56:47	9	A. A wide variety of equipment,
10:56:52	10	telecommunications, and service providers working
10:56:57	11	together on a common objective.
10:56:59	12	Q. Well, was ENA going to provide any of
10:57:03	13	the connectivity components?
10:57:05	14	A. No.
10:57:06	15	Q. What was ENA going to provide?
10:57:09	16	A. We were going to provide the management,
10:57:11	17	the customer relationship management, the network
10:57:15	18	management, the E-rate management, and leverage
10:57:19	19	our expertise in serving K-12.
10:57:22	20	Q. So, then, was it in the proposal that
10:57:29	21	ENA was to be the primary contact for services?
10:57:33	22	A. Yes.
10:57:33	23	Q. And then the idea was or was the
10:57:38	24	idea, then, that the connectivity provider, such
10:57:41	25	as Syringa, would be providing connectivity to

## IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an	)	
Idaho limited liability	)	
company,	)	
Plaintiff,	)	
vs.	)	Case No.
IDAHO DEPARTMENT OF	)	OC 0923757
ADMINISTRATION, et al.,	)	
Defendants.	)	VOLUME I
	)	(Pages 1-225

VIDEOTAPED DEPOSITION OF J. MICHAEL GWARTNEY
SEPTEMBER 2, 2010

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

		Page 156
14:22:53	1	needed to go.
14:22:55	2	Q. So he briefed those two and then those
14:22:57	3	two briefed you?
14:22:59	4	A. Yes.
14:23:03	5	Q. Did they tell you the outcome in terms
14:23:06	6	of the points for each of the bidders?
14:23:10	7	A. That telephone call, I don't think
14:23:12	8	they specifically talked about the points. They
14:23:14	9	talked about the reasons that they wanted to split
14:23:17	10	the bid.
14:23:19	11	Q. Did they tell you that ENA had the
14:23:20	12	most points by more than 200?
14:23:22	13	A. I don't recall that they told me that.
14:23:23	14	Q. Okay. And what do you mean by "split
14:23:26	15	the bid"?
14:23:29	16	A. I mean that ENA and Qwest were asked
14:23:34	17	to be partners and to go ahead and put this
14:23:37	18	project in place.
14:23:40	19	Q. What do you mean "ENA and Qwest were
14:23:42	20	asked to be partners"?
14:23:46	21	A. What I mean is that both of them in
14:23:49	22	order to get the project completed.
14:23:58	23	Q. That both of them would be getting the
14:24:01	24	project completed means that they would be like
14:24:06	25	the photocopier contractors that we talked about

		Page 157
14:24:13	1	earlier where in one location it might be more
14:24:16	2	convenient for one to provide the service and in
14:24:18	3	another location it might be more convenient for
14:24:21	4	the other?
14:24:22	5	A. No. What it means is they bring
14:24:25	6	different skills to the game. And they can get
14:24:28	7	together and utilize those skills efficiently.
14:24:32	8	Q. Can you explain your answer to me.
14:24:34	9	What do you mean by they each bring different
14:24:37	10	skills?
14:24:37	11	A. Well, ENA had a very good skill in the
14:24:40	12	E-Rate, acquiring E-Rate money, and also had
14:24:46	13	experience in putting these systems in through
14:24:48	14	other states.
14:24:49	15	Q. Uh-huh.
14:24:50	16	A. Qwest had the technical expertise to
14:24:52	17	dig the holes and put the cables in.
14:24:55	18	Q. Okay. So then was it your
14:24:59	19	understanding and your meaning when you say
14:25:01	20	"partnering" that you were essentially going to
14:25:08	21	take ENA and combine it with Qwest for the purpose
14:25:14	22	of doing the IEN project?
14:25:19	23	A. My definition of "partnering" was to
14:25:21	24	work together to get this done.
14:25:26	25	Q. Well, was it your intention that ENA

		Page 158
14:25:28	1	would do part of the project and Qwest would do
14:25:32	2	part of the project?
14:25:38	3	MR. OBERRECHT: Objection. Form.
14:25:38	4	THE WITNESS: It was our intention that
14:25:40	5	they work together, communicate well, utilize
14:25:42	6	their individual expertise to the best of their
14:25:45	7	abilities.
14:25:48	8	Q. (BY MR. LOMBARDI): Was it well, I
14:25:50	9	guess this wasn't your intention, this was
14:25:51	10	somebody else, wasn't it?
14:25:54	11	A. I'm sorry. Explain your question.
14:25:58	12	Q. Was it your intention that the award
14:26:00	13	should be split?
14:26:03	14	A. No, I didn't have any preconceived
14:26:04	15	intentions about the award being split.
14:26:08	16	Q. Who recommended that the award be
14:26:11	17	split?
14:26:14	18	A. During a telephone call the
14:26:17	19	recommendation came from that team that was in the
14:26:20	20	room. And as I understand, the evaluators had
14:26:24	21	that recommendation also.
14:26:25	22	Q. You didn't speak to the evaluators to
14:26:28	23	find out yourself?
14:26:28	24	A. I did not.
14:26:29	25	Q. Okay. So you don't actually have any
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		Page 159
14:26:31	1	direct knowledge concerning what the evaluators
14:26:33	2	recommended?
14:26:34	3	A. I do not.
14:26:35	4	Q. Was Laura Hill in on the conversation?
14:26:40	5	A. I don't believe so.
14:26:41	6	Q. Okay. You would certainly expect that
14:26:44	7	Laura Hill would know about the recommendation of
14:26:47	8	the evaluators, wouldn't you?
14:26:49	9	A. I would expect so, yes.
14:26:51	10	Q. Okay. And you would certainly expect
14:26:52	11	that she would have participated in the decision
14:26:54	12	to split the award between two contractors,
14:26:59	13	wouldn't you?
14:27:01	14	A. I expect that she did, yes.
14:27:04	15	Q. Okay. Would you agree that the IEN
14:27:13	16	project and the contracts that were ultimately
14:27:18	17	let, in simple terms, involve E-Rate and
14:27:27	18	connectivity as two separate elements?
14:27:33	19	A. I would agree that those are two
14:27:36	20	critical elements, yes.
14:27:37	21	Q. Okay. And one of those elements was,
14:27:42	22	according to this split, to be provided by ENA?
14:27:48	23	A. Yes.
14:27:49	24	Q. And that was the E-Rate component;
14:27:51	25	correct?

		Page 160
14:27:53	1	A. Among other things, but that was their
14:27:56	2	special skill, yeah.
14:27:57	3	Q. Okay. And it was the connectivity
14:28:01	4	component that is, actually making the
14:28:03	5	connections and providing the broadband that
14:28:07	6	was to be exclusively Qwest under this bid split?
14:28:13	7	A. Qwest and/or whoever they authorized
14:28:15	8	to work with, whatever other words there are.
14:28:21	9	Q. Okay. And that was the intent of the
14:28:24	10	letter of intent dated January 20, 2009?
14:28:28	11	A. You're back to Exhibit 27?
14:28:31	12	Q. Yes.
14:28:31	13	A. Yes.
14:28:37	14	Q. Where does it say that the award in
14:28:41	15	the contracts would be split in that fashion on
14:28:44	16	Exhibit 27?
14:28:45	17	A. It doesn't say that.
14:29:15	18	Q. Do you know how the split that you've
14:29:19	19	just described for me, which generally involves
14:29:22	20	E-Rate going to ENA and Internet connectivity
14:29:26	21	going to Qwest, was communicated to ENA?
14:29:34	22	A. Do I know when?
14:29:35	23	Q. How?
14:29:38	24	A. How? I don't know specifically, no.
14:29:40	25	Q. Okay. Well, do you know generally?

		Page 161
14:29:45	1	A. They sat down in a meeting and talked
14:29:47	2	about it.
14:29:48	3	Q. Okay. Were you in attendance at any
14:29:51	4	meetings where it was discussed?
14:29:57	5	A. I'm sure I was, but I don't remember
14:30:00	6	specifics.
14:30:01	7	Q. Okay.
14:30:01	8	A. I can't name a date or something like
14:30:04	9	that.
14:30:05	10	Q. Okay. Can you recall any of the
14:30:06	11	conversations that took place?
14:30:14	12	A. No. My role was to I congratulated
14:30:19	13	them and urged them to work closely together to
14:30:21	14	get this very important project done. And that
14:30:24	15	was pretty much my involvement in the meetings.
14:30:30	16	Q. Was there a there was a deadline
14:30:32	17	coming up, wasn't there, for the E-Rate
14:30:34	18	application to be submitted?
14:30:36	19	A. Yes.
14:30:37	20	Q. Do you recall what that deadline was?
14:30:39	21	A. No.
14:30:40	22	Q. It was imminent, though, wasn't it?
14:30:43	23	A. It was imminent, yes.
14:30:44	24	Q. And that's the reason why you had
14:30:46	25	asked Mr. Burns to declare an emergency so you

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SYRINGA NETWORKS, LLC, an Idaho	)	
limited liability company,	)	Case No. CV OC 0923757
Plaintiff,	)	VOLUME I
vs.	)	(Pages 1 through 222
IDAHO DEPARTMENT OF	)	
ADMINISTRATION, et al.,	)	(Contains redactions
Defendants.	)	of Highly Confidentia
	)	Testimony)

VIDEOTAPED DEPOSITION OF BRADY N. KRAFT TAKEN NOVEMBER 15, 2010

REPORTED BY:

SHERI FOOTE, CSR No. 90, RPR, CRR

		Page 67
11:27:21	1	that was related to me.
11:27:22	2	Q. (BY MR. LOMBARDI) A six-year contract?
11:27:24	3	A. Six-year contract.
11:27:25	4	Q. And that was a six-year contract that
11:27:27	5	predated the RFP; isn't that true?
11:27:31	6	A. That is not true. Prior to the well,
11:27:33	7	I'm sorry, I do not believe it was prior to the
11:27:36	8	RFP. Prior to the execution of the IEN, Qwest
11:27:42	9	was, as has been reported to me, the Internet
11:27:46	10	service provider to Blaine County.
11:27:54	11	Q. I've seen reference to things called
11:28:01	12	Visio diagrams.
11:28:03	13	A. Yes.
11:28:03	14	Q. What are those?
11:28:04	15	A. A Visio diagram is a drawing that ENA
11:28:08	16	prepares for me that reflects the architecture
11:28:14	17	for each of the school districts prior to the IEN
11:28:18	18	and then the proposed architecture for
11:28:20	19	implementation and then they provided me with a
11:28:24	20	final one after the school is connected.
11:29:04	21	MR. LOMBARDI: Can we mark that as the
11:29:06	22	next exhibit, please.
11:29:08	23	(Exhibit 169 marked.)
11:29:36	24	Q. (BY MR. LOMBARDI) Can you tell me what
11:29:38	25	Exhibit No. 169 is?

		Page 86
11:57:07	1	Q. (BY MR. LOMBARDI) Why not?
11:57:08	2	A. Sometimes they've been connected in the
11:57:10	3	past and they've changed service providers. We
11:57:12	4	find dark fiber all over.
11:57:15	5	Q. So, you don't know whether Qwest has
11:57:18	6	fiber in the ground or not to the Blaine County
11:57:22	7	School District; correct?
11:57:22	8	A. I do not.
11:57:36	9	Q. So, when you came aboard in March I
11:57:40	10	think it was March?
11:57:41	11	A. May.
11:57:41	12	Q May of 2009, was ENA in the process
11:57:51	13	of performing any kind of inventory of what the
11:57:56	14	current status of connectivity to the school
11:58:01	15	districts was?
11:58:03	16	A. ENA had a status, I do not know if they
11:58:09	17	were in the process of working on that, but they
11:58:11	18	had a basic set of information that they may have
11:58:15	19	collected prior to the RFP or they may have been
11:58:18	20	collecting it in May of 2009.
11:58:23	21	Q. So, when you came aboard, were any
11:58:26	22	schools hooked up?
11:58:28	23	A. No.
11:58:28	24	Q. When you came aboard, was the price
11:58:30	25	determined for hookups to any schools?

		Page 87
11:58:34	1	A. It was shortly after I came aboard, ENA
11:58:39	2	provided a list of all of the schools with the
11:58:43	3	cost to connect them to the IEN.
11:58:46	4	Q. When you arrived, were there any
11:58:48	5	preexisting lists that indicated price, school,
11:58:54	6	and megabits or and bandwidth to be delivered?
11:58:59	7	A. Not that I'm aware of.
11:59:06	8	Q. Had anyone at the IEN been responsible
11:59:10	9	for implementation of the IEN between the time
11:59:13	10	that Laura Hill left in February of 2009 and the
11:59:17	11	time you arrived?
11:59:20	12	A. I believe I'm sure Greg Zickau as
11:59:33	13	Laura's immediate supervisor assumed those duties
11:59:37	14	and he may have assigned them to other people,
11:59:40	15	but I'm not aware of which specific duties were
11:59:42	16	distributed where.
11:59:43	17	Q. So, you don't know who, if anyone, was
11:59:46	18	responsible during that couple of month period?
11:59:49	19	A. It would be Greg Zickau.
11:59:53	20	Q. Okay. There's a spreadsheet that we've
11:59:56	21	marked as Exhibit No. 166. Did you prepare that
12:00:03	22	exhibit?
12:00:03	23	A. I did.
12:00:05	24	Q. Where did you derive the data from?
12:00:12	25	A. The data comes from a number of sources.

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			Page 122
	14:16:26	1	providers listed on the same spreadsheet in this
	14:16:29	2	form.
	14:16:30	3	Q. All right.
	14:16:30	4	MR. THOMAS: Is that an exhibit number,
	14:16:32	5	David?
	14:16:33	6	MR. LOMBARDI: No, it's not. I gave a
	14:16:35	7	document number.
	14:16:36	8	MR. THOMAS: I wondered. I've got
	14:16:38	9	19231; is that correct? The Bates?
	14:16:40	10	THE WITNESS: 1931.
	14:16:43	11	MR. LOMBARDI: 1931. It's ENA 1931.
	14:16:47	12	MR. THOMAS: Thank you.
	14:16:49	13	Q. (BY MR. LOMBARDI) Can you describe for
	14:16:55	14	me the first pricing information that you recall
	14:17:00	15	receiving when you came aboard in your job with
	14:17:06	16	the IEN.
	14:17:08	17	A. The first pricing I received would have
I	14:17:10	18	been within the first two weeks. And it was a
I	14:17:14	19	spreadsheet that listed the schools the
	14:17:22	20	districts, the schools, their address, their
I	14:17:29	21	locations, and I believe the projected total cost
	14:17:45	22	for that individual location.
	14:17:50	23	Q. Was that provided to you by ENA?
	14:17:52	24	A. Yes.
	14:17:53	25	Q. Did that break out the ENA management
1			

		Page 123
14:17:59	1	cost per district?
14:18:03	2	A. No.
14:18:04	3	Q. When did you first learn the ENA
14:18:11	4	management fee per district?
14:18:14	5	A. I don't remember the exact date, but it
14:18:27	6	was in the same time frame when I identified that
14:18:30	7	there were high cost locations, which would have
14:18:36	8	been probably in the August of 2009 time frame.
14:18:42	9	And part of it was as a result of trying to
14:18:47	10	determine what would make one site be so
14:18:52	11	significantly higher than another location, that
14:18:56	12	I started inquiring about a breakdown of the
14:18:59	13	total cost to the IEN.
14:19:06	14	Q. Did you request a revision of the
14:19:14	15	amended blanket purchase order in order to obtain
14:19:21	16	a breakdown of the costs between ENA and Qwest?
14:19:27	17	A. I did not.
14:19:27	18	Q. Do you know if the blanket purchase
14:19:33	19	orders were amended to allow a breakdown of the
14:19:40	20	respective charges of Qwest and ENA?
14:19:44	21	A. Yes, they were.
14:19:45	22	Q. Why?
14:19:45	23	A. To ensure that the State had the ability
14:19:53	24	to review ENA's calculations and Qwest's
14:20:01	25	calculations as part of our contract oversight.
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		Page 148
15:19:25	1	What's the relevance to your analysis that you
15:19:27	2	just told us about the responses to the RFPs?
15:19:31	3	A. I probably misstated the "responses to
15:19:36	4	the RFPs." It's been testimony that we brought
15:19:38	5	up earlier that the contracts was awarded based
15:19:42	6	off of a price of \$571,000 recurring monthly
15:19:48	7	cost. Now, those contracts were awarded based
15:19:53	8	off of information that was provided by the RFPs
15:19:59	9	to be able to build out the IEN to those schools
15:20:02	10	that were listed.
15:20:03	11	Q. Did you know that the \$571,000 price was
15:20:06	12	the price that was proposed by ENA in conjunction
15:20:11	13	with Syringa?
15:20:13	14	MR. PERFREMENT: Objection to the form
15:20:16	15	of the question.
15:20:17	16	THE WITNESS: I have been told that.
15:20:19	17	Q. (BY MR. LOMBARDI) Now, I guess with
15:20:34	18	your approval and Qwest's approval, ENA can order
15:20:39	19	direct from Syringa?
15:20:40	20	MR. PERFREMENT: Objection to the form
15:20:41	21	of the question.
15:20:42	22	Q. (BY MR. LOMBARDI) As you did in Salmon?
15:20:49	23	THE WITNESS: Would you read that back,
15:20:50	24	please.
15:20:59	25	(Record read back.)
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		Page 149
15:21:00	1	THE WITNESS: Yes.
15:21:00	2	Q. (BY MR. LOMBARDI) Are the intervention
15:21:15	3	schools all in non-Qwest ILEC territories?
15:21:25	4	MR. PERFREMENT: Can I have the question
15:21:26	5	again.
15:21:33	6	(Record read back.)
15:21:49	7	MR. PERFREMENT: Thank you.
15:21:49	8	THE WITNESS: Yes.
15:21:49	9	Q. (BY MR. LOMBARDI) So, do you know what
15:21:53	10	prices have been quoted to Qwest by those ILECs
15:21:59	11	for last mile?
15:22:02	12	A. No.
15:22:03	13	Q. Do you know what margin Qwest has added,
15:22:08	14	if any, to those ILEC quotes in its proposals to
15:22:15	15	ENA and the IEN?
15:22:18	16	A. No.
15:22:20	17	Q. Why doesn't the IEN seek direct price
15:22:25	18	quotes from non-Qwest ILECs?
15:22:31	19	A. The IEN has a contract with Qwest and
15:22:35	20	Qwest is the communication or the connectivity
15:22:39	21	agent for the Idaho Education Network.
15:22:44	22	Q. There was a provision in the teaming
15:22:46	23	agreement between ENA and Syringa that provided
15:22:51	24	that Syringa companies could have a preference
15:22:55	25	for last-mile connectivity but that they would

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SYRINGA NETWORKS, LLC, an Idaho	)	
limited liability company,	)	Case No. CV OC 0923757
Plaintiff,	)	
vs.	)	VOLUME I
IDAHO DEPARTMENT OF	)	(Pages 1 through 182)
ADMINISTRATION, et al.,	)	
Defendants.	)	
	)	

VIDEOTAPED DEPOSITION OF JACK G. "GREG" ZICKAU

TAKEN SEPTEMBER 20, 2010

REPORTED BY:

SHERI FOOTE, CSR No. 90, RPR, CRR

		Page 53
10:59:55	1	Q. (BY MR. LOMBARDI) Why not?
10:59:57	2	A. It's my understanding that, and this is
11:00:01	3	based on advice from our Attorney General or
11:00:04	4	guidance from our Attorney General, that we had
11:00:09	5	under the contracts the opportunity to buy all,
11:00:14	6	some, or none of services that were offered.
11:00:26	7	Q. Could you buy all, some, or none of the
11:00:29	8	services that were offered by Qwest under the
11:00:31	9	Qwest SBPO?
11:00:36	10	A. That was my understanding.
11:00:37	11	Q. And could you buy all, some, or none of
11:00:40	12	the services provided by ENA under the original
11:00:46	13	statewide blanket purchase order?
11:00:48	14	A. That was my understanding.
11:01:09	15	Q. Given that you could purchase all, some,
11:01:13	16	or none of the IEN services from either Qwest or
11:01:18	17	ENA following the issuance of Exhibit Nos. 31 and
11:01:20	18	32, what factors would determine from whom you
11:01:29	19	made the purchase?
11:01:45	20	A. It's my understanding there are a number
11:01:48	21	of factors that would be required that are I have
11:01:56	22	since learned in the statute, but some would be
11:01:59	23	cost, availability, suitability of whatever
11:02:06	24	service we're purchasing. Availability, I don't
11:02:14	25	know if I already said that one.

		rage 00
11:33:58	1	Q. Do you recall seeing several drafts?
11:34:03	2	A. I don't recall seeing several drafts. I
11:34:06	3	recall reviewing at least one draft.
11:34:08	4	Q. All right. What was the purpose of
11:34:13	5	amending the ENA statewide blanket purchase order
11:34:17	6	as reflected on Exhibit No. 50?
11:34:20	7	A. To begin to assign responsibilities for
11:34:24	8	how we would reach our goal of an end-to-end
11:34:29	9	service.
11:34:30	10	Q. Why was it necessary to assign
11:34:33	11	responsibilities in order to meet the end-to-end
11:34:37	12	service, provide end-to-end service?
11:34:41	13	A. To clarify roles and responsibilities.
11:34:52	14	Q. Why was it necessary to do that?
11:34:59	15	MR. CLARK: Object to the form.
11:35:10	16	THE WITNESS: I guess I don't understand
11:35:13	17	how I can answer that further than to say it was
11:35:15	18	to clarify.
11:35:20	19	Q. (BY MR. LOMBARDI) Well, you knew at the
11:35:24	20	time these amendments to the statewide blanket
11:35:28	21	purchase orders were signed by Mr. Little on
11:35:36	22	February 28 let's see, February 26th; wasn't
11:35:45	23	it?
11:35:47	24	A. I don't recall. I
11:35:56	25	Q. Well, actually, yes, February 26, 2009,
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		Page 99
13:30:05	1	protocols that we've talked about, one through
13:30:08	2	ENA/Syringa, the other through Qwest, were
13:30:16	3	premised upon ENA being the listed service
13:30:19	4	provider?
13:30:21	5	A. As we discussed them here, yes. I don't
13:30:28	6	know that that's exactly how we determined things
13:30:32	7	at that point in time.
13:30:33	8	Q. Now, the original statewide blanket
13:30:41	9	purchase orders that well, first of all, they
13:30:44	10	were let; weren't they? They were signed by
13:30:48	11	Mr. Little before the determination was made
13:30:50	12	concerning who was going to be the listed E-rate
13:30:53	13	provider for the Idaho Education Network;
13:30:55	14	correct?
13:30:55	15	A. That is correct.
13:30:56	16	Q. So that at the time the original
13:31:00	17	statewide blanket purchase orders were issued,
13:31:04	18	either Qwest or ENA could be the listed service
13:31:09	19	provider; correct?
13:31:11	20	A. I believe so, yes.
13:31:15	21	Q. So, then, at least theoretically either
13:31:23	22	Qwest or ENA strike that.
13:31:29	23	So, theoretically, Qwest and ENA were
13:31:33	24	competing under the first statewide blanket
13:31:41	25	purchase orders to provide Idaho Education

		Page 100
13:31:43	1	Network services?
13:31:44	2	MR. CLARK: Object to the form.
13:31:52	3	THE WITNESS: No, I don't believe that's
13:31:54	4	correct.
13:31:54	5	Q. (BY MR. LOMBARDI) Why is that not
13:31:56	6	correct?
13:31:56	7	A. I believe the competition was through
13:32:00	8	the procurement process, the procurement process
13:32:05	9	up to the point where the statewide blanket
13:32:08	10	purchase orders were issued. After that it was
13:32:12	11	up to the State to determine what best met its
13:32:17	12	needs in order to determine what to actually
13:32:21	13	purchase.
13:32:27	14	Q. Why didn't the State select Qwest?
13:32:36	15	A. I believe I already said that we
13:32:38	16	believed it was in our best interests to select
13:32:42	17	ENA as the listed service provider.
13:32:47	18	Q. Why was it in the State's best interest?
13:32:50	19	A. Our understanding at the time one of
13:32:53	20	the factors was cost, and our understanding at
13:32:55	21	the time was that ENA's response was better from
13:33:01	22	a cost perspective.
13:33:05	23	Q. What part of ENA's response was better
13:33:11	24	from a cost perspective?
13:33:16	25	A. I would swear you've asked this question

IN	THE	DISTRI	CT ·	COURT	OF	TH	E FO	DURTH	I JUI	DICIAL	DIST	rrici
OF	THE	STATE	OF	IDAHO	), <u>:</u>	IN .	AND	FOR	THE	COUNTY	OF	ADA

SYRINGA NETWORKS, LLC, an Idaho	)
limited liability company,	)
Plaintiff,	) Case No. CV OC 0923757
vs.	)
IDAHO DEPARTMENT OF	) VOLUME II
ADMINISTRATION, et al.,	) (Pages 183-373)
Defendants.	)
	•

CONTINUED VIDEOTAPED DEPOSITION OF JACK G. "GREG" ZICKAU TAKEN NOVEMBER 11, 2010

REPORTED BY:

BEVERLY A. BENJAMIN, CSR No. 710, RPR Notary Public

Page 190 09:44:14 believed was incorrect. And one of the reasons I 09:44:16 was reviewing the RFP was to see what language 09:44:19 might be in there that he could possibly have 09:44:21 construed, and I found none. 09:44:24 But I did find in section 2.0 the 09:44:27 statement that the State reserved the right -- to 09:44:29 the effect that the State reserves the right to 09:44:36 accept or reject in whole or in part any or all 09:44:41 responses or to award a multiple award in whole 09:44:45 10 or in part. 09:44:46 What was it about section 10.0 that Ο. 09:44:51 12 caused you to spend more time reviewing it? 09:44:53 13 I had also noticed in the course of 09:44:58 14 depositions by others that there was particular 09:45:01 15 attention paid to the concept of the 10 megabits 09:45:05 16 per second. And in discussions with Laura Hill 09:45:09 17 prior to the RFP being issued, we had discussed 09:45:12 18 the 10 meg per second as a means to set a 09:45:16 baseline, that it would not necessarily be the 19 09:45:21 20 actual bandwidth that we ordered. 09:45:22 21 I wondered if that had been articulated 09:45:25 22 in the RFP. And indeed, in section 10.0 it 09:45:29 23 specifically states that while to the effect --09:45:32 24 we probably should pull it out and read it -- but 09:45:34 25 to the effect that we would basically order what

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			Page 191
	09:45:37	1	we needed based on the State's needs. It might
	09:45:40	2	not be that minimum that they were used, that
	09:45:43	3	those examples of bandwidth quantities were for
١	09:45:47	4	the sole purpose of helping the respondents to
	09:45:50	5	provide a coherent response to the RFP.
	09:45:53	6	Q. Was the 10 megabit per second standard
	09:46:00	7	also defined as an ME?
	09:46:03	8	A. I don't recall.
	09:46:06	9	Q. What does an ME mean in the RFP?
	09:46:10	10	A. Well, the "M" would mean that it must be
	09:46:13	11	responded to in the RFP, and the "E" would mean
	09:46:17	12	it's going to be evaluated and scored in some
	09:46:20	13	fashion.
	09:46:21	14	Q. What response was required for
	09:46:28	15	respondents who did not state they would provide
ļ	09:46:35	16	10 megabits per second?
	09:46:36	17	A. They had to explain.
	09:46:42	18	Q. I think the RFP is Exhibit 14. So why
	09:46:47	19	don't we pull that.
	09:47:20	20	In addition to reviewing the RFP, have
	09:47:25	21	you taken a look or taken a new look at any other
	09:47:30	22	documents since your last deposition?
	09:47:35	23	A. Not for the purposes of preparing for
	09:47:38	24	the deposition.
	09:47:39	25	Q. All right. Have you reviewed any
1			

		Page 226
10:47:0	)9 1	without changing the underlying architecture.
10:47:1	12 2	In that case that you gave as your
10:47:1	14 3	example for home, they were able to increase the
10:47:1	18 4	quantity that was being delivered to you or the
10:47:2	20 5	capacity of your circuit without changing
10:47:2	23 6	underlying architecture, yes.
10:47:2	2.4 7	Q. Okay. Thank you.
10:47:2	26 8	One of the other things you mentioned
10:47:2	27 9	was the lowest cost per megabit. What do you
10:47:3	10	mean by that?
10:47:3	31 11	A. Well, I mentioned lowest cost per
10:47:3	55 12	megabit in terms of value to the State. That
10:47:3	7 13	would be one of the factors that we would
10:47:3	8 14	consider in value. In trying to get the best
10:47:4	1 15	value, we would seek the lowest practicable cost
10:47:4	6 16	per megabit.
10:47:5	5 17	MR. SCHOSSBERGER: Dave, can we take a
10:47:5	18	short break?
10:47:5	7 19	MR. LOMBARDI: Sure.
10:47:5	8 20	THE VIDEOGRAPHER: The time is 10:47 and
10:48:0	0 21	we're off the record.
10:48:0	2 22	(Recess taken.)
10:58:5	0 23	THE VIDEOGRAPHER: The time is 10:58 and
10:58:5	1 24	we're on the record.
10:58:5	2 25	Q. (BY MR. LOMBARDI) Mr. Zickau, I'd like

1		Page 227
10:58:57	1	to direct your attention for a few moments to the
10:59:01	2	second page of Exhibit 156. It talks about
10:59:04	3	survey/assessment results. It refers to
10:59:09	4	districts having submitted their surveys. Can
10:59:12	5	you tell me, what was that process that was going
10:59:14	6	on, this survey/assessment process?
10:59:16	7	A. Well, my understanding is that ENA had
10:59:30	8	offered for free to survey the districts as far
10:59:36	9	as their connectivity. They had some kind of a
10:59:42	10	form that they asked them to fill out, asked the
10:59:46	11	district technical people to fill out. I'm not
10:59:49	12	sure exactly how they conducted it or what
10:59:53	13	questions they asked.
10:59:54	14	Q. So just to kind of restate it to make
10:59:58	15	sure that I'm understanding what you are telling
11:00:00	16	me: Was this kind of a post-contract assessment
11:00:09	17	of existing conditions and needs for the purposes
11:00:16	18	of the IEN?
11:00:18	19	A. I don't know that it addressed needs. I
11:00:20	20	think it was looking at technical conditions.
11:00:23	21	Q. So that is to see what was the
11:00:25	22	infrastructure that existed.
11:00:26	23	A. Yes.
11:00:27	24	Q. Do you know if they were also trying to
11:00:31	25	assess what it was that each of the individual

		Page 282
13:38:54	1	Q. Paragraph 1 of
13:38:56	2	A of 6201?
13:38:57	3	Q. Yes, I am. Thank you.
13:38:59	4	A. (Reviewing document.) I think it means
13:39:11	5	what it says, that "Qwest will be the general
13:39:13	6	contractor for all IEN technical network
13:39:16	7	services."
13:39:17	8	Q. Does ENA Mr. Collie has testified
13:39:21	9	that ENA was required or was directed to use
13:39:29	10	Qwest exclusively for IEN technical network
13:39:33	11	services.
13:39:36	12	A. Well, I sat through Mr. Collie's
13:39:39	13	deposition and I don't recall him saying that.
13:39:41	14	And I can say categorically he's never been
13:39:44	15	directed to use Qwest exclusively or not to use
13:39:47	16	any other contractor.
13:39:48	17	Q. So can ENA is ENA free to use Syringa
13:40:06	18	to provide IEN services?
13:40:09	19	MR. SCHOSSBERGER: Object to form;
13:40:10	20	ambiguous.
13:40:11	21	MR. THOMAS: Join.
13:40:12	22	MS. HAYES: Join.
13:40:14	23	Q. (BY MR. LOMBARDI) Go ahead.
13:40:16	24	A. ENA has contractual responsibilities
13:40:18	25	that they need to work within and those are

		Page 283
13:40:21	1	specified in the amendment to their contract.
13:40:23	2	Q. Was ENA directed by the State to work
13:41:12	3	with Qwest for the connectivity portion of the
13:41:15	4	IEN project?
13:41:18	5	A. The responsibilities of ENA are outlined
13:41:41	6	in their amendment.
13:41:43	7	Q. Mr. Collie has testified ENA was
13:41:46	8	directed to work with Qwest for the connectivity
13:41:49	9	portions of the project.
13:41:53	10	MR. THOMAS: Give us the page and line.
13:41:54	11	Please.
13:41:57	12	MR. LOMBARDI: Page 96, line 8.
13:41:59	13	MR. THOMAS: Thank you.
13:41:59	14	THE WITNESS: I'm not sure what he means
13:42:00	15	by that. They have been instructed to work
13:42:03	16	within the constraints of the amendments to the
13:42:05	17	contract.
13:42:06	18	Q. (BY MR. LOMBARDI) How did the
13:42:07	19	constraints contained in the amendment of the
13:42:08	20	contract come into existence?
13:42:10	21	A. Well, the constraints are an inherent
13:42:15	22	part of the contract. They require coordination
13:42:20	23	of Qwest in some cases or Qwest to work in
13:42:24	24	coordination with ENA.
13:42:25	25	Q. What does it mean that "Qwest will be

		Page 284
13:42:33	1	the general contractor for all IEN technical
13:42:36	2	network services"?
13:42:38	3	A. It means exactly that.
13:42:40	4	Q. What are "technical network services"?
13:42:45	5	A. The technical network services would be
13:42:50	6	the services that we're purchasing to
13:42:53	7	interconnect the schools.
13:42:54	8	Q. That would include the physical media
13:43:07	9	that we talked about this morning?
13:43:09	10	A. Yes.
13:43:11	11	Q. That would include the backbone we
13:43:14	12	talked about this morning?
13:43:15	13	A. Yes.
13:43:15	14	Q. That would include the architecture we
13:43:17	15	talked about this morning?
13:43:18	16	A. Yes.
13:43:22	17	Q. It would include the means by which the
13:43:28	18	content for the IEN is delivered to schools;
13:43:33	19	right?
13:43:33	20	A. Yes.
13:43:37	21	Q. Now, by saying that Qwest is to be the
13:43:41	22	general contractor, that means, doesn't it, that
13:43:45	23	Qwest is responsible for either providing all of
13:43:49	24	those services or arranging for those services?
13:43:55	25	A. Not solely. They must do so in

		Page 285
13:44:10	1	coordination with ENA.
13:44:13	2	Q. But ENA can't coordinate with anyone
13:44:16	3	else for the delivery of IEN technical services,
13:44:21	4	can they?
13:44:22	5	MR. SCHOSSBERGER: Object to form.
13:44:25	6	MR. THOMAS: Join.
13:44:26	7	THE WITNESS: I believe they could, as
13:44:28	8	long as Qwest was in agreement.
13:44:30	9	Q. (BY MR. LOMBARDI) So Qwest can't
13:44:33	10	coordinate with any other providers unless Qwest
13:44:38	11	agrees to the use of other providers to deliver
13:44:43	12	IEN technical network services; is that right?
13:44:46	13	MR. THOMAS: Object to form.
13:44:48	14	THE WITNESS: Yes.
13:44:52	15	MR. SCHOSSBERGER: Dave, I believe you
13:44:52	16	misspoke. You said: "So Qwest can't coordinate
13:44:54	17	with any other providers unless Qwest agrees to
13:44:56	18	the use of other providers to deliver IEN
13:44:56	19	technical network services."
13:44:56	20	MR. LOMBARDI: Thank you. I'll reask
13:45:01	21	the question.
13:45:01	22	Q. (BY MR. LOMBARDI) So that ENA cannot
13:45:04	23	coordinate with any other telecommunications
13:45:09	24	providers than Qwest for the provision of IEN
13:45:13	25	technical network services unless Qwest agrees?

		Page 286
13:45:18	1	A. I think the services must be delivered
13:45:22	2	in coordination with Qwest. I don't see anything
13:45:26	3	exclusive in there.
13:45:27	4	Q. Coordination with Qwest, you've already
13:45:29	5	told me, requires Qwest to agree; right?
13:45:32	6	A. That is what I believe, yes.
13:45:33	7	Q. So how was the decision made that Qwest
13:45:46	8	would be the general contractor for all IEN
13:45:50	9	technical network services?
13:45:52	10	A. Well, in great part through process of
13:46:10	11	elimination. We would otherwise liked to have
13:46:15	12	had Syringa in a role in there, but again, Greg
13:46:19	13	Lowe refused to participate on anybody's own
13:46:22	14	terms, being all or none, or he's getting all of
13:46:26	15	it. It made no sense whatsoever from a business
13:46:32	16	perspective to the State, from an operational
13:46:34	17	perspective to the State, from a contractual
13:46:36	18	perspective to the State.
13:46:38	19	Q. Do you have or does there exist, to your
13:46:44	20	knowledge, any documentation demonstrating the
13:46:52	21	refusal that you have just stated?
13:47:00	22	A. Not directly, no.
13:47:14	23	Q. Is there any documentation indirectly
13:47:16	24	that documents or evidences this position that
13:47:21	25	you've attributed to Mr. Lowe?
1		





C.L. "BUTCH" OTTER
GOVERNOT
MIKE GWARTNEY
Director

# State of Idaho

Department of Administration

650 West State Street, Room 100 P.O. Box 83720 BOISE, ID 83720-0003 Telephone (208) 332-1824 or FAX (208) 334-2307 http://www.adm.idaho.gov

July 24, 2009

Greg Lowe Syringa Networks, LLC 3795 So. Development Ave., Ste. 100 Boise, ID 83715

Dear Greg:



As you recall, you and I met last Thursday, July 16<sup>th</sup>, to discuss various concerns that you had regarding the Idaho Education Network ("IEN") contract awards. At the conclusion of our meeting, I committed that I would respond to your concerns by the end of the week.

In general, you requested an explanation of why the contract was awarded to both ENA and Qwest; and in the end, you requested that ENA be awarded the technical services (i.e., the backbone) work under the contract. In the alternative, you asked that Administration require that ENA and Qwest be required to seek bids or pricing from the market for each of the schools (or the local loops). During our conversation, you also asserted that Administration has told ENA not to use Syringa Networks, LLC ("Syringa").

This correspondence addresses your requests and allegations. However, before I do address your requests and allegations, I think it's important for you to understand that Administration does not recognize Syringa as a proposer or a contractor. Administration contracted with ENA and Qwest, not Syringa. Syringa is a subcontractor of ENA; it is not the contracting entity, nor the responsible party on the contract itself. While many of your allegations center around your belief that Administration has a contract with Syringa, the State does not have nor does it recognize that it has a contract or any contractual relationship with Syringa related to IEN.

In other words, in the interest of reaching some closure regarding your complaints and concerns, and in the interest of open government, I am providing you an explanation of the Administration's decision to award the IEN contract to multiple vendors. However, it should in no way be construed as an admission or acknowledgement that Syringa has standing to challenge the multi-vendor award. Contrary to Syringa's position, it is Administration's position that only





ENA, Qwest, and Verizon (the three responsive proposers) had statutory rights to protest the awards.

That being said, as Greg Zickau, Chief Technology Officer, and I explained during our meeting last week, Administration's decision to award the contract to multiple vendors was based on the evaluators' recommendations and the subsequent determination that a multi-vendor award was in the State's best interest. Awarding the contract to more than one vendor was contemplated as early as November 2008, when Purchasing and the Office of Chief Information Officer ("OCIO") met to discuss general concerns that one single vendor may not be able to reasonably complete all of the work contemplated in the RFP within the time constraints. The RFP clearly set out that the State was contemplating awarding the IEN contract to more than one vendor. For example, in Section 2.0, the State then "reserve[d] the right ... to award to multiple bidders in whole or in part." Further, Section 5.3, as amended, stated "Any resulting contract from this solicitation may be awarded to up to four providers." Further examples in the RFP demonstrating Administration's intent to award the contract to more than one vendor are found in Amendment 3, Question and Answer 5, as well as the attached MS PowerPoint presentation; and in Amendment 4, Question and Answer 1 and 25.



After the initial award, Administration then unitaterally determined how best to divide the work between the two awardees/contractors. Administration's determination was based upon the individual strengths of each awardees/contractors' proposals. For example, ENA had expertise in providing E-rate services and providing video teleconferencing operations. Qwest had expertise in providing the technical operations (i.e., the backbone). Before Amendment 1 to SBPO 01308 and SBPO 01309 were issued, Administration contemplated various ways to divide the responsibilities between Qwest and ENA, including but not limited to dividing the services to be provided by Qwest and ENA regionally. However, the division of responsibilities reflected in the Amendment 1s is a reflection of what Administration believed would best serve the State of Idaho and the schools.

I would note here that in our meeting, you made some insinuation that Administration conspired with either ENA or Qwest to avoid the teaming agreement that Syringa and ENA had signed. I asked Administration's Deputy Attorney General to look into that allegation specifically. Since our meeting, she has spoken to Administration staff and ENA, and I am now confident that there was no such conspiracy to avoid your teaming agreement with ENA. ENA confirmed that it had not been consulted about the division of responsibilities until it received a draft of Amendment 1 in February. ENA also confirmed that it had not provided a copy of or the information in the teaming agreement to the State prior to the Deputy Attorney General's request for the same on July 17, 2009.

While I understand Syringa's frustration, the fact is that Qwest was awarded the technical services portion of IEN (i.e., the backbone). ENA was not. Just as both Syringa and IRON, the other backbone partner in ENA's proposal, are not directly benefitting from the IEN contract, because of the division of responsibilities, some of Qwest's listed partners are not directly benefitting from its IEN contract (e.g., Cisco Systems, Inc.). Ref. Qwest's Technical Proposal,



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pg. 4-6. This is not the result of some conspiracy to "shut out" Syringa, IRON, or even Cisco; it is simply the natural consequence of the division of work under the contracts.

Based upon this information and my review of the multi-vendor award decision, Administration will not alter its original decision nor will it alter the division of responsibilities set out in the Amendment 1s.

As an alternative, you asked that Syringa and other vendors be allowed to bid on the local loops. After careful consideration of this request, and multiple conversations with Purchasing, the OCIO and IEN staff, and Administration's Deputy Attorney General, I find that I cannot agree to require ENA or Qwest to seek bids to provide local access (also known as the "last mile" or the "local loop"). If I agreed to this requirement, Administration would be violating its contracts with Qwest and ENA. Requiring Administration's two (2) contractors to seek bids for every school would allow vendors who have not and did not participate in the competitive bidding process when the RFP was issued, to now come in and undercut the two (2) contractors who did participate in the process, particularly since the proposers' costs are now known. Administration would not allow this type of price undercutting in any other procurement, and we will not require it here.



It is, however, not only in the State's best interest, but also in Qwest and ENA's interests to keep the costs of providing services to the schools low. If costs are too high, fewer schools will be served by Qwest, ENA, their respective partners, and the local providers. As a part of ongoing contract monitoring, the State will continue to monitor the cost of providing services to individual schools, and when a cost anomaly is identified the State may, at its discretion, ask Qwest or ENA to seek alternatives. However, Administration will not direct Qwest or ENA to seek competitive bids for each school nor will it direct ENA or Qwest to use a specific provider.

As a backbone provider, if Syringa believes that it can provide services to a specific school district cheaper, I would encourage you to contact Clint Berry at Qwest, at (208) 364-3977. I note that according to Qwest's proposal, "Qwest Wholesale has fully negotiated Interconnection Agreements with Syringa Network companies that include: ..." indicating that you have an existing agreement with Qwest. Ref. Qwest Technical Proposal, pg. 4.

Finally, you allege that either I or one of my staff have directed ENA and/or Qwest to <u>not</u> use Syringa. I take this allegation very seriously, and I asked Administration's Deputy Attorney General to look into this allegation as well. As I stated in our meeting last week, I have never directed either ENA or Qwest to not use Syringa. I have not directed my staff to tell or infer to ENA or Qwest to not use Syringa either.

Additionally, I have learned that no Administration staff have directed or inferred to either ENA or Qwest not to use Syringa. In fact, Administration's staff confirm that they have not been told by me, Greg Zickau, or any other member of management to use or not to use any specific provider; and they have not told ENA or Qwest to use or not to use any specific provider. I have also learned that both ENA and Qwest confirm that they have not been directed by



Administration to not use Syringa, and both confirm that Administration has not directed either of them to use or not to use any specific provider.

I would like to thank you for sharing your concerns with me. While I recognize that these are not the answers you were seeking, it is nonetheless my hope that Syringa will continue to be a partner with the State of Idaho in providing network and telecommunication services to the State.

Sincerely,

J. MICHAEL GWARTNEY

muchan Granty

Director

Cc Greg Zickau, Chief Technology Officer

Teresa Luna, Chief of Staff

Melissa Vandenberg, Deputy Attorney General

#### TEAMING AGREEMENT

This teaming agreement is dated January 7, 2009 between Education Networks of America, Inc., a Delaware corporation and its wholly-owned subsidiary ENA Services, LLC, a Delaware limited liability corporation (collectively "ENA"), and Syringa Networks, LLC, an Idaho limited liability company ("Syringa").

#### 1. Definitions

- (a) Confidential Information. "Confidential Information" means any information that is not generally available to the public, whether of a technical, business, or other nature and that the receiving party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing party. Confidential Information includes the Proposal and the terms of this agreement. Confidential Information does not include information that is in the public domain through no breach of this Agreement by the receiving party or that is already known or is independently developed by the receiving party.
- (b) Prime Contract. "Prime Contract" means the resultant contract(s) between ENA and/or Syringa with the State of Idaho regarding the Project.
- (c) Project. "Project" means that certain request for proposal, request for quotation, invitation for bid, or similar invitation for (i) the provision of products or services in connection with the State of Idaho Request for Proposal #RFP02160 to construct the Idaho Education Network ("IEN") and (ii) services provided under the Prime Contract.
  - (d) Proposal. "Proposal" means the written response to the Project.
- (e) Syringa Members. "Syringa Members" refers to the companies that are members and owners of Syringa Networks, LLC upon execution of this Agreement.

#### 2. Teaming

- (a) Purpose. ENA is seeking to become either (i) the prime contractor for the Project or (ii) the prime contractor for the portion of the Project which provides all services to schools and libraries. If ENA or Syringa are awarded the Prime Contract, ENA and Syringa shall enter into an agreement pursuant to which Syringa shall provide connectivity services statewide to ENA. The purpose of this agreement is to define the parties' respective rights and obligations in connection with the Proposal, the Project, and the Prime Contract.
- (b) Relationship. The parties agree that, as between the parties, ENA will be the prime contractor for either (i) the Project or (ii) the prime contractor for the portion of the Project wich provides all services to schools and libraries, and, if ENA wins the Prime Contract, Syringa will provide connectivity services in connection with the Project. The parties are and will be independent contractors with respect to this agreement and the Project.
- (c) Proposal. ENA shall assume the lead role in preparing the Proposal. Syringa shall provide such input, review and information into the Proposal as is required to complete all requirements of the Request for Proposal.
- (d) Communications. As between the parties, ENA will assume the lead role for external communications regarding the Project and the Proposal, unless mutually agreed to by both parties. Syringa shall promptly notify ENA and obtain ENA's authorization prior to any response by Syringa in the event the customer or any employee or officer of the executive or legislative branch of the State of Idaho contacts Syringa or vice-versa concerning the Proposal.
- (e) Joint Participation. Neither party shall participate in efforts related to submitting a Proposal, whether by itself as a prime contractor or with another party, independently of the other party without the other party's prior written consent. Nothing in this agreement however, is intended to preclude either party from fulfilling its existing obligations, or from independently submitting proposals or performing work, unrelated to the Project.

- 1 -

Exh. No. 6

Date 4/5/10

Name Lowe

M&M Court Reporting

EXHIBIT\_2

W

- (f) Existing and Future Customer Relationships. Nothing in this agreement is intended to preclude either party from fulfilling its existing obligations to provide service under existing contracts or service agreements with customers that may be eligible to receive service under the Project regardless if such obligations may be in conflict with Section 2(e) above. Neither party shall enter into a new contract or future arrangement with any customer that may be eligible to receive service under the Project without written approval of the other party, which shall not be unreasonably withheld should the requesting party be able to prove that such a contract or service arrangement will not be entered into in bad faith to the goals of the Project or the other party.
- (g) Confidentiality. Neither party shall disclose to any third party, or use for any purpose other than in furtherance of ENA's efforts to win the Prime Contract, any Confidential Information of the other party.
  - (h) Termination. This agreement will terminate without liability upon any of the following events:
    - (i) the customer formally and finally rejects the Proposal or cancels the Project;
    - (ii) Either party notifies the other that it is ceasing its efforts with respect to the Project, however such a notification shall not absolve either party of its obligations under Section 2(e) and 2(g) above;
    - (iii) the anniversary of this agreement in the absence of an award, extension, cancellation, or withdrawal of the Project;
    - (iv) mutual written agreement of the parties; or
    - (v) execution of the service agreement contemplated in Section 3(a) below.

## 3. Service Agreement

- (a) Generally. If ENA wins the Prime Contract as provided in Section 2(a) above, the parties shall execute a partnership agreement as specified in this agreement that will also include any required flow-down provisions or other appropriate terms similar to those set forth in the Prime Contract.
- (b) ENA Responsibilities. If ENA wins the Project as provided in Section 2(a) above, in connection with performing the Prime Contract, ENA shall be responsible for the following functions for all participating schools and libraries: (i) procuring and owning all customer premises equipment, (ii) coordinating field service, (iii) managing the customer relationship, (iv) serving as the fiscal and contracting agent, including responsibility for invoicing and collections, (v) management of E-Rate funds, and (vi) procuring, managing, and provisioning last mile circuits.
- (c) Syringa Responsibilities. If ENA wins the Project as provided in Section 2(a) above, in connection with performing the Prime Contract, Syringa shall be responsible for (i) providing the statewide backbone for the services, (ii) providing and operating a network operations center for the backbone, (iii) providing for co-location of core network equipment, (iv) procuring and owning all customer premises equipment not provided by ENA, (v) coordinating field service for non-school or library sites, (vi) managing the customer relationship for non-school or library sites, and (vii) procuring, managing and provisioning last mile circuits for non-school or library sites.

In addition, Syringa and Syringa Members shall have the first opportunity and first right of refusal to provide last mile circuits delivered by ENA as part of this Project. ENA shall notify Syringa of all last mile circuits needed for the Project. Syringa and Syringa Members shall have the first opportunity to provide ENA a cost estimate, a statement of service and quality requirements of the last mile circuits proposed to be provided by Syringa or Syringa Members and a timeline for providing such last mile circuits. After reviewing the Syringa or Syringa Member proposal(s), ENA may seek proposals from other providers. ENA shall award the contract for last mile circuits to Syringa or Syringa Members unless the following conditions are met: (i) such other providers can provide such last mile circuits meeting or exceeding the quality requirements requested by ENA and (ii) such other providers can provide such last mile circuits at a better price than that proposed by Syringa or Syringa

Members; after Syringa and Syringa Members have an opportunity to match the lower price point or (iii) if the timeframe for providing such last mile circuits proposed by Syringa or Syringa Members would result in a prime contract default for inability to deliver service in a timely manner. In soliciting proposals from any other providers, ENA shall maintain the confidentiality of Syringa or Syringa Members' proposal.

- (d) Joint Responsibilities. If ENA wins the Project, in connection with performing the Prime Contract, the parties shall jointly be responsible for (i) leveraging the best price from existing carrier relationships, (ii) developing additional carrier relationship for the purposes of this project and (iii) interfacing between last mile circuits and Syringa's backbone. Additionally, if selected for the Project, the parties shall also have Project review meetings, in a location and manner to be agreed upon in advance of the meeting, to ensure successful execution and high levels of customer satisfaction; such meetings shall occur not less than once per calendar quarter.
- 4. General. The parties can amend this agreement only by a written agreement of the parties that identifies itself as an amendment to this agreement. The parties can waive this agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. Each party shall pay its own fees and expenses (including, without limitation, the fees and expenses of its agents, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution, delivery, and performance of this agreement and the transactions it contemplates. Neither party may assign any of its rights under this agreement, except with the prior written consent of the other party. All assignments of rights are prohibited under the preceding sentence, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law or any other manner. Any change of control transaction is deemed an assignment hereunder. Neither party may delegate any performance under this agreement. Any purported assignment of rights or delegation of performance in violation of this agreement is void.

ENA		Syringa
By:	onally	By:
Print:	Robert M Gilie	Print: GREG LOWE
Title:	CTO/SYVÍ	Title: CEO



State of Ideho Idaho Division of Purchasing 5569 Kendali PO Box 83720 Bolee ID. 83720-0075



### Request for Proposal

Mon Dec 15, 12:51:31 P.M. MST 2008 HH:MM:SS adjusted to system server hh:mm:ss

Solicitation Nbr: RFP02160

Regulation Nbr: REQ011462

Reference Number:

**Document Nbr: PREQ15608** 

IMPORTANT NOTIFICATION: You have not yet responded to this Solicitation

Solicitation Date of Issue: MON DEC 15, 2008

Solicitation CLOSING (Due) Date: MON JAN 12, 2009 05:00:00 PM MST

IN: 28 Days 4 Hours 8 minutes 25 seconds

THIS SOLICITATION REQUIRES A RESPONSE TO ALL **ITEMS** 

Start of Service Date: 07/01/2009

End of Service Date: 06/30/2014

Freight: Freight / Handling included in Price FOB: Destination

**Delivery Point: VARIOUS** 

Name 1: State of Idaho Various Agencies

Address 1: \*\*\*

Name 2: Various State Agencies

Address 2:

Name 3: located throughout idaho

City, State & Zip: Various, ID \$3701

Contact Person: MARK LITTLE

Email: mark.little@adm.idaho.gov

Phone Nbr: 206-332-1611

Buyer: MARK LITTLE

Email: mark.ittle@adm.idaho.gov

Phone Nbr: 208-332-1611

Fax Nbr: 208-327-7320

Header File Attachments: NO HEADER FILES ATTACHED

SPECIAL INSTRUCTIONS

STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS AND SOLICITATION INSTRUCTIONS TO VENDORS: The State of Idaho Standard Contract Terms and Conditions and Solicitation instructions to Vendors are hereby incorporated by reference into this solicitation as if set forth herein in their entirety, and are located on the internet at

http://adm.idaho.gov/purchasing/purchasingrules.html. If you do not have internet access, you may contact the Div. of Purchasing at 208-327-7465 to obtain a copy. The Standard Contract Terms and Conditions and Solicitation instructions to Vendors shall apply to this solicitation and the State of idaho Standard Contract Terms and Conditions shall apply to any contract resulting from this solicitation. Fallure by any submitting vendor to obtain a copy of such shall in no way constitute or be deemed a waiver by the State of either document, or any part of them. No liability will be assumed by the Division of Purchasing for a submitting vendor's failure to consider the State of Idaho Standard Contract Terms and Conditions in its response to the solicitation.

RFP DOWNLOAD INSTRUCTIONS: Offerors must download attachments (open, save, or print document(s) on their own computer system), enter pricing where indicated, complete any other required information, sign the Request for Proposal (RFP) signature page, and return the completed solicitation response package to the Idaho Division of Purchasing on or before the proposal closing date and time.

NEGOTIATIONS: The State may, following receipt and evaluation of bids or proposals and any allowed Best and Final Offer procedures, negotiate with the apparent low responsive and responsible bidder. Prior to authorizing negotiations the Administrator, Division of Purchasing, shall determine in writing that negotiations may be in the best interest of the State. In addition to any other negotiation criteria described in the specifications, the State may, for example, negotiate to ensure the submitting vendor has a clear understanding of the scope of work required and requirements that must be met, ensure that the vendor will make available the required personnel and facilities to satisfactorily perform the contract, or agree to any clarifications regarding scope of work or other contract terms. During negotiation, adequate procedures will be used to ensure that disclosure of any information, including price, from competing proposals is not revealed. If negotiations are unsuccessful, they shall be formally terminated and the State may undertake negotiations with the next ranked submitting vendor.

BEST AND FINAL OFFERS: The State may, at its sole option, either accept an offerors initial proposal by award of a contract or enter into discussions with offerors whose proposals are deemed to be reasonably susceptible of being considered for award. Offerors should submit their best proposals initially as there is no guarantee the State will conduct discussions. During the initial evaluation process, offerors proposals desmed incapable of meeting the scope & needs of the RFP in a satisfactory manner may be removed from further consideration during any best & final offer phase. During the evaluation phase & any discussions conducted, adequate procedures will be used to ensure that the contents of the offerors proposals are kept under strict security & disclosure of any information from competing proposals is prohibited. If discussions are deemed necessary, they may be used to determine in greater detail the offerors qualifications, explore with the offeror the scope & nature of the project, determine that the offeror will make available the necessary personnel & facilities to perform within the required time, or discuss compensation which is fair & reasonable. The primary purpose of any such discussions will be to assure that the offeror has full understanding of the solicitation requirements.

The State will schedule a time for the discussions & provide a date & time for receipt of best & final offers. If during discussions there is a need for clarification or change of the RFP it shall be amended to incorporate such clarification or change.

Offerors will be accorded fair & equal treatment with respect to any opportunity for discussions & revisions of proposals. If the offeror does not submit a notice of withdrawai or a best & final offer, once a date & time has been established for receipt of best and final offers, the offerors initial or immediate previous offer will be construed as its best & final offer.

Shipping: Prices must be stated as FOB-Destination, unless otherwise indicated in the

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<b>6</b> :	Executive Order 2007-09 [http://gov.idaho.gov/mediacenter/execorders/eo07/eo_2007_09.html] requires the Division of Purchasing in the Department of Administration to develop policies and procedures to ensure that all vendors seeking to enter into a service contract with the State or a contract to develop, sell or lease software to the State of Idaho disclose where work will be performed. If bid, quote, or proposal is for services or the development, lease/licensing of software, the proposer must submit a completed disclosure form located at http://adm.idaho.gov/purchasing/TCs/instructions_Executive_Order_2007-09.pdf. No contract can be awarded to a supplier until the Division of Purchasing has this completed form.
7:	PUBLIC AGENCY CLAUSE: Contract prices shall be extended to other "Public Agencies" as defined in Section #67-2327 of the Idaho Code, which reads: "Public Agency" means any city or political subdivision of this state, including, but not limited to countles; school districts; highway districts; port authorities; instrumentalities of countles; cities or any political subdivision created under the laws of the State of idaho. It will be the responsibility of the Public Agency to independently contract (i.e., issue purchase orders) with the vendor and/or comply with any other applicable provisions of Idaho Code governing public contracts.  Question: Will you honor this Public Agency clause? Please clearly indicate answer in the "Comments" field.
8:	Quantities given are estimated for bidding purposes only. Actual quantities ordered may vary. The State does not guarantee and shall not be held liable for the estimated quantities in the solicitation.
9:	Award will be ALL-OR-NONE based on grand total of extended unit prices bid.
10:	ELECTRONIC RESPONSE: Unless otherwise specified, this solicitation may be responded to electronically by scrolling down to the bottom of the page and submitting a price, entering any comments, and uploading any required documents.  MANUAL RESPONSE: If it is necessary for you to respond manually, you must contact the buyer and request that a special signature page be mailed, e-mailed, or faxed to you. If responding manually, print this entire solicitation document including any attachments, enter your pricing, and send it with the manually signed and completed signature page and any other required documents to the buyer at the Division of Purchasing so that it is delivered by the closing date and time listed above. DO NOT FAX your response. If mailed, address it to: Division of Purchasing, P O Box 83720, Bolse, ID 83720-0075. If hand delivered or sent by courier service, deliver or send it to: Division of Purchasing, 5569 Kendali Street, Bolse, ID 83706-1231.
11:	DO NOT SUBMIT ELECTRONIC RESPONSES. FOLLOW THE INSTRUCTIONS FOR MANUAL SUBMISSION CONTAINED IN THE RFP. NOTE THE BIDDERS' CONFERENCE INFORMATION CONTAINED IN THE RFP. ENSURE YOU DOWNLOAD THE TELECOMMUNICATIONS SPECIAL TERMS AND CONDITIONS.
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Discount Terms:	Terms Text:

		example: 5.25% / 30 net 31 days = <b>30 net 31</b> solicitation. Changing the amount changes it for ALL items
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C.L. "BUTCH" OTTER

Governor
MIKE GWARTNEY
Director
BILL BURNS
Administrator

**SEALED BID** 

Please type or Print Name

# State of Idaho

Department of Administration Division of Purchasing 650 West State Street (83702) P. O. Box 83720

Boise, ID 83720-0075 Telephone (208) 327-7465 FAX (208) 327-7320

http://www.adm.idaho.gov/purchasing/

SIGNATURE PAGE For Use with a Manually Submitted Invitation to Bid (ITB) or Request for Proposal (RFP) Response

Bids or proposals and pricing information shall be prepared by typewriter or in ink and shall be signed in ink by an authorized representative of the submitting vendor. Two (2) copies of the bid or proposal shall be submitted, one (1) original and one (1) photocopy of the original, unless the RFP solicitation instructions specify otherwise. AT LEAST ONE BID OR PROPOSAL SUBMITTED BY THE VENDOR MUST BE AN ORIGINAL (NOT PHOTOCOPIED) SIGNATURE.

NO LIABILITY WILL BE ASSUMED BY THE DIVISION OF PURCHASING FOR A VENDOR'S FAILURE TO OBTAIN THE TERMS AND CONDITIONS AND ANY PROPERLY ISSUED SOLICITATION ADDENDUMS IN A TIMELY MANNER FOR USE IN THE VENDOR'S RESPONSE TO THIS SOLICITATION OR ANY OTHER FAILURE BY THE VENDOR TO CONSIDER THE TERMS, CONDITIONS, AND ANY ADDENDUMS IN THE VENDOR'S RESPONSE TO THE SOLICITATION.

The words "SEALED BID" and the bid number must be noted on the outside of your SEALED BID package. To insure that your SEALED BID is handled properly, the following information must be placed in the lower left corner of your bid package:

BUYER: SEALED BID FOR: BID NUMBER: CLOSES:		
Send your sealed bid package to:	Division of Purchasing PO Box 83720 Boise, ID 83720-0075	
When sending packages by FedEx, UPS, o	r other Couriers: Division of Purchasing 650 West State Street Boise, ID 83702	
below. By my signature below I accept the SOLICITIATION INSTRUCTIONS TO VENI	STATE OF IDAHO STANDARD CONTRACT DORS dated 10/02/07 as incorporated by refering response for the Bidder or Offeror. I further	of the specified Bid Number and Title detailed TERMS AND CONDITIONS and the erence into this solicitation. As the undersigned, racknowledge I am responsible for reviewing
Please complete the following information:		
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ADDRESS	BID T	itle:
CITY, ST, ZIP		
TOLL FREE	PHONE	
FAX	E-Mail	
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	ED WITH AN ORIGINAL HANDWRITTEN SIC SAL FOR YOUR BID OR PROPOSAL TO BE	
Original Signature (Manually Signed in Ink)	Date	

Title

# Disclosure Pursuant to Executive Order 2007-09

Applies only to Bids, Quotes, or Proposals offering services or the development, sale or lease/licensing of software. If your Bid, Quote, or Proposal does not involve one of those, do not complete.

Name of Vendor	BID Number:
Pursuant to Executive Order 2007-09,	the vendor named above hereby discloses:
	ing contract, or related to the development sale or lease/licensing of computer will be performed by vendor in the following countries (including the United States
Country	Description of work
By subcontractor(s): Services under a computer software under any resulting (including the United States):	ny resulting contract, or related to the development, sale or lease/licensing of contract will be performed by subcontractors of vendor in the following countries
Country	Description of work and subcontractor name
**************************************	

The selected exceptions to Executive Order 2007-09 should apply. The vendor or its subcontractor provides a unique service or software and no comparable domestically provided service or software can adequately match the unique features of that provided by the vendor or its subcontractor, or The vendor or its subcontractor is a foreign firm hired to market Idaho services or products to a foreign country; or The vendor or its subcontractor maintains a significant business presence in the United States and will perform only a de minimus portion of work under the contract outside the United States. Please provide a brief narrative to explain each of the exceptions identified. Add additional pages if necessary.



# STATE OF IDAHO

- REQUEST FOR PROPOSALS (RFP) -

IDAHO EDUCATION NETWORK (IEN)

**RFP02160** 

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# 1.0 SCHEDULE OF EVENTS

The following dates are tentative and subject to amendment

**BIDDERS Conference: 29 December 2008** 

Deadline to Receive Emailed Questions on RFP02160: 5 January 2008

RFP02160 Closing Date and Time: 12 January 2009, 5PM MST

# 2.0 DEFINITIONS

24 x 7 x 52: Stands for "twenty-four hours a day, seven days a week, and fifty-two weeks per year." When used, this term describes access, services or support that is expected to be available at all times during a year.

Access Point: A physical connection between a User's private network and the commercial Internet that facilitates exchanging e-mail, transferring files, viewing public web pages, delivering streaming audio and video, using voice over IP ("VoIP") and enabling other value-added hosted services.

Appropriation: Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

Award: All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the Request for Proposal. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State.

Bell Schedules: Public School terminology for the scheduling of daily classes. Bell Schedules need to be taken into account when it comes to scheduling of Synchronous Distance Learning experiences and other distance learning programs\activities that are real-time dependent.

Bid Bond: Ensures that bidder will enter into the contract and is retained by the State from the date of the bid opening to the date of contract signing.

Business: Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

Calendar Day: Every day shown on the calendar, Saturday, Sundays and holidays included.

Children's Internet Protection Act (CIPA): The Children's Internet Protection Act (CIPA) is a federal law enacted by Congress to address concerns about access to offensive content over the Internet on school and library computers. CIPA imposes certain types of requirements on any school or library that receives funding for Internet access or internal connections from the E-rate program —a program that makes certain communications technology more affordable for eligible schools and libraries.

CMFONI: A high speed, fiber-optic-based network serving the Capitol Mall. CMFONI facilitates state agencies' connectivity to a variety of networked-based services including the commercial Internet.

Cost Effective: Defined as meeting both the economic needs of the State, and is a solution that is leading edge in terms of networking equipment, associated system protocols and industry best practices.

Contract: The agreement between the Contractor and the State. Contract shall be comprised of the Proposer's proposal in its entirety, the Request for proposal document and all attachments either written or electronic, and the terms and conditions set forth for the Request for proposal within sicommnet (stated and referenced).

Contractor: The Vendor to whom the State awards a Contract for this purchase.

Customer Owned and Maintained Equipment ("COAM"): Telecommunications, networking or server equipment owned, operated and maintained by a Mandatory or Voluntary User and which connects a User's private network to a Proposer's commercial Internet Service. COAM may be located in a building occupied by Users or in co-location facilities operated by a Proposer. In any case, the User retains title to such equipment and is responsible for insuring it against damage or loss.

Education Entity: As defined by 67-5745D, Idaho Education Network, an education entity is any public school district; including public Charter schools, educational service units, libraries; community college; state college; or nonprofit private postsecondary educational institutions.

**E-Rate**: E-Rate is a Federal Funding program administered by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) on behalf of the Federal Communications Commission (FCC) that provides financial discounts to help schools obtain affordable telecommunications and Internet access.

Evaluated: A requirement or specification that will receive evaluation points that will be used in determining the award(s).

Flexible: Vendors proposals for proposed IEN network designs need to be flexible in terms of leveraging existing legacy technologies (e.g. Microwave systems, IdaNet, etc.) and also in terms of interfacing with State Core Network Core Legacy equipment (e.g. Cisco routers\switches\ASRs, Checkpoint firewalls, Polycom and TANDBURG VTC equipment etc).

IAW: In Accordance With (IAW)

IEN: Idaho Education Network (IEN)

IEN RFP HIGHLIGHTED AREAS: Highlighted areas within the base document (minus attached appendixes) of this RFP are provided to guide respondents in their efforts to prepare their respective RFP responses, as mandatory requirements have been identified in these select areas for Vendors to provide the State in submission of their proposals. Note that vendors are highly encouraged to provide additional information in other areas not specifically tagged as mandatory information items.

ITRMC: Information Technology Resource Management Council. ITRMC reviews and evaluates the information technology and telecommunications systems presently in use by State agencies, recommends and establishes statewide policies, and prepares statewide short and long-range information technology and telecommunications plans.

Idaho Optical Network (IRON): A commercial broadband provider that will facilitate advanced networking among institutions in Idaho and the Northern Tier States. Participants include institutions of research, education, health care, state government, and partner organizations that support research, education, and economic development in Idaho and the States of the Northern Tier. Specific network information concerning IRON can be found at the following URL: http://ironforidaho.net/.

(M): Where a specification or requirement has an assigned code of (M), indicating that compliance is mandatory, non-compliance will result in immediate disqualification and no further evaluation of the proposal will occur. The State reserves the right to determine whether the proposal meets the specification stated within this solicitation.

(ME): Where a specification or requirement has an assigned code of (ME), indicating that compliance is mandatory, and will also be evaluated and scored; non-compliance will result in immediate disqualification and no further evaluation of the proposal will occur. The State reserves the right to determine whether the proposal meets the specification stated within this solicitation.

Mandatory User(s): Mandatory User(s) are all departments and institutions of state government referenced in Idaho Code § 67-5747(a)(i), including but not limited to departments, agencies, commissions, councils and boards, which must be provided Internet services under this RFP and any awarded contract.

OCIO: Office of the CIO, State of Idaho.

**Proposer:** A vendor who has submitted a proposal in response to this request for proposals for property to be acquired by the state.

**Property**: Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights

and interests in such property. This term also includes concession services and rights to access or use state property or facilities for business purposes.

**Proposal:** A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which proposal is considered an offer to perform a contract in full response to the request for proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award.

Proprietary Information: Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose.

Public Agency: Has the meaning set forth in Idaho Code §67-2327. The term generally refers to any political subdivision of the state of Idaho, including, but not limited to, counties; cities; school districts; highway districts; and port authorities; instrumentalities of counties, cities or any political subdivision created under the laws of the state of Idaho.

QoS: Quality of Service. QoS refers to the capability of a network to provide better service to selected network traffic over various technologies, including Frame Relay, Asynchronous Transfer Mode (ATM), Ethernet and 802.1 networks, SONET, and IP-routed networks that may use any or all of these underlying technologies.

Representative: Includes an agent, an officer of a corporation or association, a trustee, executor or administrator of an estate, or any other person legally empowered to act for another.

Request for Proposal (RFP): All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals.

Responsible Proposer: A proposer who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

Responsive Proposer: A proposer that has submitted a timely proposal or offer that conforms in all material respects with the submission and format requirements of the RFP, and has not qualified or conditioned their proposal or offer.

Sicommnet or Sicomm: State's e-Procurement applications service provider.

Scalable: Proposed Vendor solutions need to be scalable in terms of future growth, without major build outs or "fork lift" equipment upgrades required in later Phases of this IEN project. It must also be scalable in terms of providing quality services support (e.g. QoS, Bandwidth, reliability, etc.) to all areas of the State of Idaho, where education, library and State entities are located.

Shall: Denotes the imperative, required, compulsory or obligatory.

Solicitation: The process of notifying prospective bidders or offerors that the State of Idaho wishes to receive proposals for furnishing services. The process may consist of public advertising, posting notices, or mailing Request for Proposals and/or Request for Proposal announcement letters to prospective bidders, or all of these.

State: State of Idaho government.

Users: Mandatory or Voluntary User(s), as defined herein, or both, as the case may be.

Vendor Owned and Managed Equipment ("VOME"): Telecommunications, networking or server equipment owned, operated and maintained by the Proposer, or its partners, which is integral to a Proposer's provisioning of basic or value-added commercial Internet services. VOME may be located in a building occupied by a User, in co-location facilities operated by the Proposer, or in the Proposer's backbone. In any case, the Proposer retains title to such equipment and is responsible for insuring it against damage or loss.

Voluntary User(s): Voluntary User(s) are institutions of higher education and elected officers in the executive department, as referenced in Idaho Code § 67-5747(a)(ii) and the legislative and judicial departments as referenced in Idaho Code § 67-5747(a)(iii) along with a Public Agency, as defined herein, which may be provided commercial Internet services under this RFP and any awarded contract.

VTC: Video Teleconferencing

WAN: Wide Area Network. A communications network that connects computing devices over geographically dispersed locations.

# 3.0 GENERAL INFORMATION

#### 3.1 EXECUTIVE SUMMARY

High-speed broadband access and connectivity are vital for economic growth, global competitiveness, education, innovation and creativity. Ensuring high-speed broadband access for all students has become a critical national issue especially when considering preparing our students for work and life in the 21<sup>st</sup> Century. The Governor and our legislature, as well as members of our greater Idaho educational community, recognize the need for providing robust high-speed broadband access to all of our state public schools, as it will accelerate our teachers' ability to teach and our students' ability to learn. Through recent legislative efforts, several key issues facing our educational institutions have been identified as well as specific requirements for our state and public school districts to meet in implementing high-speed broadband access in their schools.

# Key Issues:

- Our Idaho public schools need high-speed broadband access to effectively create rigorous, technology-infused learning environments.
- Our teachers need guaranteed, long-term access to high-speed broadband to enrich the curriculum to include technology applications such as videoconferencing and distance learning.
- Our teachers also need high-speed broadband access for professional development—
  "currently the supply of certified teachers in the State of Idaho does not meet the demand;
  additionally, our rural schools struggle to fill their classified staff positions due to low salary
  wages established by current funding formulas"!
- Our Administrators need high-speed broadband access to conduct on-line assessments and to access data for effective decision making.
- Our students need high-speed broadband access in their schools to take advantage of a wide range of new and rich educational tools and resources available for anytime, anywhere learning.
- Our students also need high-speed broadband access to overcome the digital divide in rural and low socio-economic areas.
- Our ability to provide adequate funding to support our public schools remains a
  critical issue in our abilities to execute this IEN initiative, as the State of Idaho is
  currently mandating even more severe budget cuts to all state entities given the weak
  state of our economy; however that said, the Governor and Legislators, supporting of
  this IEN project are pressing forward with a conservative 2010 IEN budget request,
  given the fact that our children our Idaho's economic future and we must continue to
  invest in their future success.

1 Idaho Rural Education Task Force, 2008 Legislative Report

#### Vision:

The State of Idaho will actively pursue and contract for a total solution, education-focused managed internet network service provider that can leverage existing state infrastructure and contracts with multiple telecommunications, cable and utility providers to provide the essential foundation and associated services support for our IEN network. Recent studies of other successful statewide implementation efforts have shown that this model is the most cost effective and expeditious means to provide a cohesive, statewide, education-centric network that best meets the current and future requirements of high-speed connectivity, service offerings and enterprise management services.

## Approach:

A phased implementation approach has been established per Idaho House Bill No. 543 – Idaho Education Network. Specifically, the First Phase will connect each public high school with a scalable, high-bandwidth connection, including connections to institutions of higher education as necessary; Subsequent Phase Considerations include:

- Connectivity to each elementary and middle school.
- The addition of libraries to the IEN.
- The migration of state agency locations from current technology and services.

# Funding Methodology:

Given the current state budgetary constraints, coupled with the urgency to qualify for Federal Government E-Rate funding, for this IEN effort, the State is releasing this RFP with limited funding. The work outlined in this RFP, and therefore any award, is contingent upon approval of legislative appropriations. It is also contingent upon the Federal Government approving the State's E-Rate application (due Feb 1, 2009). The State is requesting legislative appropriations in 2009 for FY 2010. Any contract arising from this RFP shall be contingent upon approval of the appropriation, the State's qualification for Federal E-rate funding, and the selected service providers meeting the Federal E-Rate funding qualifications. Anticipated approval and release of State funding would be 1 Jul 09, along with any associated E-Rate dollars.

Because of these contingencies, the service provider shall not begin work until after 7-1-09, and then only if the above contingencies are met (unless a supplemental appropriation is approved by the legislature before 7-1-09). The state does not expect or require the successful service provider to do any work specified by this RFP prior to 7-1-09, and the successful service provider shall not make any reliance or have any claim for work performed prior to 7-1-09, or prior to the named contingencies being met.

# Summary:

Preparing our students for the increasingly competitive global marketplace of the 21st century is critical to improving our state's economy. Education stakeholders, especially teachers and students, must have reliable and high speed access to networked tools to improve their ability to communicate and learn in a more collaborative environment. Development of a high-speed broadband, scalable communications infrastructure that leverages existing State resources to aggregate disparate networks into a multipurpose IEN backbone infrastructure extending from the Southern part of Idaho, to the

Central, Eastern and Northern Panhandle regions of the State will significantly enhance broadband communications to every public school and library entity in the State.

Follow-on phases of this IEN initiative include migration of our state agencies onto this IEN backbone and enhancement of rural bandwidth to public entities through aggregation of this bandwidth. Benefits of the proposed Idaho Education Network model include lower network costs, greater efficiency, interoperability of systems providing video courses and opportunities, more affordable Internet access, and better use of Federal E-Rate and other government funding resources.

## 3.2 (ME) SCOPE OF PURCHASE

The State of Idaho desires to contract with a qualified industry partner or partners to establish a long-term relationship to design and implement the Idaho Education Network (IEN).

The objective of this RFP, as stated in the Executive Summary above, is to create a network environment that will meet the needs of K-12 distance learning environment, as defined in 67-5745D, and passed by the Idaho Legislature. This will include video services (Interactive and Streaming), Internet services, and wide area data transport. In addition to serving the K-12 institutions and our State Libraries (See Appendix A), it will also be used to serve entities that are not E-Rate eligible, such as higher education (community colleges, state colleges and universities) and State Agencies. Only E-Rate eligible entities will apply for E-Rate discounts.

The intent of this RFP process is to seek proposals from industry experts for achieving the purpose and goals of the IEN as established by the legislature. Rather than defining a specific technology, architecture or network design, the Department of Administration is providing broad guidelines only and relying on industry expertise to design and propose a network capable of meeting these requirements.

Within the context of this RFP, the State is asking potential industry partners to describe a business model that they will initiate to service the State of Idaho IEN network. As stated above the State is looking for an industry partner or partners who will take the initiative in areas of network design, network management to include operations, maintenance and accounting processes. It should be noted that highest consideration will be given to the Partner or Partners presenting the best and most cost effective "total end-to-end service support solution" and supporting network architecture, which is also compliant with the specifications of this RFP.

Bidders must also have a service provider identification number from the Universal Service Administrative Company and be eligible to participate in the Universal Service Fund discount program for telecommunications services provided to the E-Rate eligible entities. Bidders agree to provide any discounts, including any accrued credits, for which the entity is eligible under the Universal Service Fund for school telecommunications services. Bidders will, at their own expense, prepare and file all carrier documents and reports required for the eligible entities to receive the benefit of such discounts and credits. Proposer's Service Provider Identification Number (SPIN), issued to Bidders by the Universal Service Administrative Company, must be included in the responding bid.

Bidders are required to identify strategies to the State on how Bidders intend to transition the current contractual environment of the entities to their proposed solutions (See Appendix 4). Currently, there

is a myriad of different broadband service provider contracts associated with each K12 school, library listed in Appendix A. Each of these has their own contract expiration dates, which Bidders will have to <u>identify</u> and develop an appropriate transition plan accordingly. Bidders are encouraged to partner, whenever possible with these local service providers, in the development of their transition plans. Copies of these proposed migration plans need to be included in Bidders RFP responses.

#### 3.2.1 Project Overview

The objective of this section of the RFP is to identify a Contractor or Contractors that will design, develop, and implement high-speed data connectivity that will meet the current and future telecommunications needs of eligible participants over the term of the contract. The successful Contractor or Contractors will provide a cost-effective, scalable, and flexible high-speed data transport service that can interconnect all entities listed in Appendix A. This RFP is for the first phase of a multi-phase project for connectivity to the Idaho Education Network (IEN). Connectivity in subsequent phases of this project will include public elementary, middle schools, state libraries with connections to higher educational institutions as required. The final phase of this project will include migration of state government entities to this IEN network backbone, with the exception of IdaNet, which may need to be migrated earlier, given the current end of life status concerning its major network equipment components (e.g. MGX's).

The State will analyze proposals for all planned IEN Phase sites with an emphasis on cost savings and technical approach. As providers of this service, the State believes that potential providers are in the best position to make this determination and present a proposal to the State. Current K-12, library broadband costs are provided to assist contractors in making a logical and cost effective proposal to the State not only for Phase I sites but for subsequent project Phase entities (e.g. elementary, middle, and library locations). These can be found in Appendix D. Note that State agency migrations will be determined at a later date, with the RFP modified in subsequent revisions to address those specific requirements. Vendors just need to remain cognizant that these State agency migrations are part of our long range IEN strategy and need to reflect that accordingly in their proposal submissions.

The State requires the Contractor to bid a multi-purpose transport connection methodology to interconnect the listed institutions along with the corresponding services that considers present, as well as future, state-of-the-art technologies. The extent to which these segments are included in the network cloud that covers the geography of Idaho is important both to the economic development goals, as defined by the Idaho Legislature (67-5745D), and in meeting the rural education initiatives proposed by the Idaho Rural Education Task Force, to the Idaho Legislature in January 2008.

## 3.3 (ME) REQUIRED QUALIFICATIONS

- a) Experience. Bidders must demonstrate and provide examples of their experience engineering, installing/implementing and maintaining large-scale, statewide education networks, including skills and experience in working with all aspects of the Federal E-Rate Process.
- b) Partnerships. Strong consideration will be given to proposals that incorporate partnerships between multiple providers. Vendors must explain their partnering plan within their RFP response.
- c) Idaho presence. Bidders must demonstrate and provide examples to show a substantial Idaho presence.
- d) Long-term commitment. IEN will serve as the foundation for the broadband needs of the State for education and other purposes as envisioned by the legislature. Therefore, Bidders

- must demonstrate a long-term commitment to Idaho. Bidders must cite examples of providing services to the State of Idaho and other government and education entities in Idaho.
- e) Economic Impact. Bidders must demonstrate and provide examples of how their proposal will positively impact the state's economy. Proposal should outline how operating costs associated with both the build out, administrative, and daily maintenance of their proposed IEN solution(s) are decreased for the state; and how these proposed network "build outs" will benefit our local communities, especially in our more remote rural districts.
- f) Competitive Advantage. Vendor must demonstrate or communicate the value their solution brings to the State of Idaho, vice their competitors' capabilities.
- g) Low Risk Transition. Vendors must plan to tell the State how they are going to mitigate the risk of migrating current broadband users (educational, libraries, and State Agency customers) to this new IEN network. This information should include how the vendor will minimize service disruptions in their RFP migration plan submission to ensure continuity of operations for our supported customer base.

## 3.4 LEGISLATIVE DIRECTION

The legislature (Idaho Code 67-5745D) determined that:

- a) Idaho does not have a statewide coordinated and funded high-bandwidth education network;
- b) Such a network will enable required and advanced courses, concurrent enrollment and teacher training to be deliverable to all public high schools through an efficiently-managed statewide infrastructure; and
- c) Aggregating and leveraging demand at the statewide level will provide overall benefits and efficiencies in the procurement of telecommunications services, including high-bandwidth connectivity, internet access, purchases of equipment, federal subsidy program expertise and other related services.

## 3.5 GOALS

In developing proposals, please consider the following goals as established by the legislature:

- a) Idaho will utilize technology to facilitate comparable access to educational opportunities for all students:
- b) Idaho will be a leader in the use of technology to deliver advanced high school curricula, concurrent college credit, and ongoing teacher training on an equitable basis throughout the state; and
- c) Idaho will leverage its statewide purchasing power for the IEN to promote private sector investment in telecommunications infrastructure that will benefit other technology applications such as telemedicine, telecommuting, telegovernment and economic development.

#### 3.5.1 (ME) General Requirements

In developing proposals the vendors must submit in writing how they will address each of the following general requirements as established by the legislature:

a) Coordinate the development, outsourcing and implementation of a statewide network for education, which shall include high-bandwidth connectivity, two-way interactive video and internet access, using primarily fiber optic and other high-bandwidth transmission media;

- b) Consider statewide economic development impacts in the design and implementation of the
  educational telecommunications infrastructure [to include providing in your RFP response a
  detailed case study involving how a remote Idaho school district and community could
  benefit from installation of IEN capabilities];
- c) Coordinate and support the telecommunications needs, other than basic voice communications of public education;
- d) Procure high-quality, cost-effective internet access and appropriate interface equipment to public education facilities:
- e) Procure telecommunications services and equipment on behalf of public education;
- f) Procure and implement technology and equipment for the delivery of distance learning;
- g) In conjunction with the state department of education, apply for state and federal funding for technology on behalf of IEN services;
- h) Work with the private sector to deliver high-quality, cost-effective services statewide; and
- i) Cooperate with state and local governmental and educational entities and provide leadership and consulting for telecommunications for education.

#### 3.5.2 (ME) Phase 1 Requirements.

Provide a detailed proposal for accomplishing the requirements of Phase I (including, but not limited to: Last-mile connections, backbone network, Internet Access, Related Equipment needs, Video Conferencing equipment, Network operations and monitoring, Video operations and monitoring).

#### Specifically:

The department of administration shall follow an implementation plan that:

- a) In the <u>first phase</u>, will connect each public high school with a scalable, high-bandwidth connection, including connections to each institution of higher education as necessary, thereby allowing any location on IEN to share educational resources with any other location.
- b) Upon completion of the first phase, shall provide that each public high school will be served with high-bandwidth connectivity, internet access and equipment in at least one (1) two-way interactive (synchronous) video teleconferencing capability.
- Provide a scalable (e.g. a minimum 10 Mbps up to 100 Mbps) high-bandwidth connection, preferably fiber optics, to each public high school listed in appendix A: if additional bandwidth is desired by the supported customer, school districts will have the option to add additional bandwidth at their own expense, they will also have, in coordination with the OCIO office, the option to decrease bandwidth requirements in cases of extremely small student populations or during the summer months; Schools Districts will also have the option to designate their own centralized distribution locations in coordination with the OCIO office and the Vendor; also, if a scale of economies can be realized to install connectivity to the most centrally located building within a given school district utilizing a hub and spoke methodology, Vendors need to factor this into their proposed build out plans and coordinate with both the affected School District and OCIO for implementation; Vendors will also be required to request in writing detailed justifications and alternative solutions to the OCIO if they are unable to meet specified State minimum bandwidth requirements (10Mbs) for a particular high school location; Vendors are also highly encouraged to present in their proposals, best practices and models for allocations of Bandwidth assignments based on student populations and projected community growth over a 5-7 year period to include estimated technology upgrades and associated costs.
- A connection to each institution of higher education, listed in Appendix A, to enable twoway interactive video;

- e) The ability of any location on IEN to share educational resources with any other location; i.e. any site on the network can both originate and receive two-way interactive video instruction:
- f) Internet access to each public high school listed in Appendix A;
- g) Network connectivity and bandwidth to enable IEN Phase 1 high schools to conduct at least one (1) two-way interactive video classroom session.
- h) A backbone network capable of providing access to the public Internet, delivering real-time instructor-led education courses and streaming media to classrooms, and other data needs of the network;
- i) Scalable service pricing options;
- j) One-time special construction costs, if any, for the backbone and last mile connections;
- k) Network monitoring;
- l) Video operations and monitoring;
- m) Other design considerations and costs;
- n) E-Rate eligibility estimates for services proposed and impacts on pricing (E-Rate eligibility is a requirement); and
- o) Provide a proposed transition/implementation plan and timeline (detailed and final transition and implementation plans will be developed by the winning bidder in conjunction with the Department of Administration).

## 3.5.3 (ME) Subsequent Phase Considerations

In subsequent phases, [the department of administration] will evaluate and make recommendations to the legislature for:

- (a) Connectivity to each elementary and middle school;
- (b) The addition of libraries to the IEN; and
- (c) The migration of state agency locations from current technology and services.

Provide a discussion as to how your proposed solution for Phase I can support each of the potential subsequent phases to include initial cost estimates and a proposed implementation plan.

#### 3.6 ISSUING OFFICE & SUBMISSION OF QUESTIONS

This solicitation is issued by the Division of Purchasing via Sicommnet. The Division of Purchasing is the only contact for this solicitation. Questions and request for clarifications shall be submitted via email only to:

Mark Little, CPPO
State Purchasing Manager
State of Idaho, Division of Purchasing
E-mail: Mark.Little@adm.idaho.gov

Written questions are due at the close of business (5PM,MST) on the date indicated in the schedule of events in Section 1.0.

Verbal responses from the STATE are not binding upon the STATE. BIDDER assumes full responsibility for any action taken upon a verbal response from the STATE.

The Deadline for receipt of Questions is listed in 1.0 Schedule of Events. To be considered, Questions must be received via Email by 5 P.M. Mountain Time on the Scheduled Due Date.

## 3.7 Validity of Proposal

Bid proposals are to remain valid for One Hundred and Eighty (180) calendar days after the scheduled closing date. Proposals submitted with a less than 180 day validity will be found non-responsive and will not be considered.

## 3.8 Bidder Notifications

Prior to the closing and opening of the solicitation, all BIDDER notifications will be released in Sicommnet as amendments. All questions submitted will be answered via amendment for all BIDDER's review.

#### 3.9 SUBMISSION OF PROPOSALS

Reference Section 5. TECHNICAL AND COST PROPOSAL SUBMISSION, REQUIREMENTS, & FORMAT.

#### 3.10 Evaluation, Intent to Award Letters, and Award

There might be variations to the following, but as a general rule, the following procedure is followed.

Once the RFP closing date and time have passed and PROPOSALS have been opened, the copies of the Technical PROPOSALS are forwarded to the agency for evaluation. Once the agency has completed its technical evaluation and scored the PROPOSALS, the evaluation summary and scoring are forwarded to the Division of Purchasing for review. The Division of Purchasing verifies the fairness and integrity of the technical evaluation process. The Cost PROPOSALS and copies are then opened, and the copies forwarded to the agency for evaluation. Both the agency and the Division of Purchasing participate in this evaluation and its scoring. The scoring of the cost evaluation is then added to the scoring of the technical evaluation to arrive at a total PROPOSAL scoring, thus identifying the best qualified BIDDER based on the specifications and criteria set forth in the RFP. The Division of Purchasing then issues a Letter of Intent to Award to all BIDDERS, notifying them of the STATE's intent to award the best qualified BIDDER as identified through the evaluation process. After the passage of the time set by Idaho Statute 67-5733 for appeals, and the resolution of any appeals received, the Division of Purchasing contracts for the purchase.

The STATE has the time set forth in Section 3.7 Validity of PROPOSAL to complete the evaluation and award the purchase. The STATE will greatly appreciate the BIDDERS' understanding that the evaluation requires time, and not solicit the STATE for unnecessary updates regarding the evaluation. The STATE will take the time to ensure a fair and complete evaluation. Additionally and to ensure the integrity and fairness of the evaluation process, during the evaluation and up and until the time the Division of Purchasing issues the Intent to Award letter, no information regarding the content of the PROPOSALS is released.

## 3.11 TERMS AND CONDISIONS OF THE AGREEMENT

The State of Idaho Standard Contract Terms and Conditions, State of Idaho Solicitation Instructions To Vendors, and the Telecommunication Services Special Terms and Conditions listed below apply to this RFP and the resulting AGREEMENT, unless modified by the State via amendment to the RFP. All requests for clarifications or modifications to these terms must be received by the deadline to receive written questions regarding this RFP (refer to Clause 19 of SOLICITATION INSTRUCTIONS TO VENDORS.) These documents are available on the State's website (www.idaho.gov), under the Department of Administration, Division of Purchasing (or by selecting the hyperlink contained in the Sicommnet document). Requests for clarification or modification are to be submitted per the instructions under 3.6 ISSUING OFFICE & SUBMISSION OF QUESTIONS above. The Division of Purchasing will address those requests received via an amendment that will be released in Sicommnet prior to closing. That amendment will be the STATE's final determination regarding any modification of the State's terms.

NOTE: PROPOSALS RECEIVED WHICH QUALIFY THE PROPOSER'S OFFER BASED UPON THE STATE ACCEPTING BIDDER TERMS OR CONDITIONS, OR MODIFICATIONS TO THE STATE'S TERMS AND CONDITIONS NOT ACCEPTED BY AMENDMENT, WILL BE FOUND NON-RESPONSIVE AND RECEIVE NO FURTHER CONSIDERATION.

#### 4.0 EVALUATION AND AWARD

## 4.1 THE PROCESS

Upon opening, but not limited to, the Division of Purchasing will inspect the PROPOSAL for the following:

• That the PROPOSAL was timely per the published closing date and time;

- That the PROPOSAL includes a signed State of Idaho Signature page (attached in Sicommnet as XXX Signature Page RFP.pdf);
- That the PROPOSAL has not been qualified by the BIDDER, meaning that the BIDDER has
  not conditioned their PROPOSAL based upon the STATE accepting terms or conditions
  established by the BIDDER;
- That the COST PROPOSAL is present and sealed separately from the TECHNICAL PROPOSAL;
- That the PROPOSAL contains all required information;
- Other unforeseen conditions that might deem the PROPOSAL non-responsive upon opening.

Purchasing will forward all responsive TECHNICAL PROPOSALS to the purchasing agency for evaluation. The agency will establish an evaluation team comprised of STATE employees. This team will evaluate and score the TECHNICAL PROPOSALS based on the evaluation criteria listed in this RFP. The team will then forward their scoring and ranking of the TECHNICAL PROPOSALS to the Division of Purchasing for review and validation of the process. Upon completion of the validation of the Technical Evaluation by the Division of Purchasing, the Division of Purchasing then opens the COST PROPOSALS for evaluation and scoring. COST PROPOSAL scores are then added to the TECHNICAL PROPOSAL scores identifying the Apparent Successful Bidder (ASB). The Division of Purchasing will then issue a Letter of Intent to Award to all responsive, responsible BIDDERS notifying them of the State's intent to contract with the ASB. It is at this point that the STATE will consider requests for Public Information. After the passage of the time set by Idaho Statute 67-5733 for appeals, and the resolution of any appeals received, the Division of Purchasing contracts with the ASB for the purchase.

The STATE has the time set forth in 3.7 VALIDITY OF PROPOSALS to complete the evaluation and award the purchase. The STATE will greatly appreciate the BIDDERS understanding that the evaluation requires time, and not solicit the STATE for unnecessary updates regarding the evaluation. The STATE will take the time to ensure a fair and complete evaluation. Additionally and to ensure the integrity and fairness of the evaluation process, during the evaluation and up and until the time the Division of Purchasing issues the Intent to Award letter, no information regarding the content of the PROPOSALS is released.

#### 4.2 EVALUATION CODES

Each evaluated specification or requirement has an assigned code. The codes and their meanings are as follows:

(M) - Mandatory Requirement. The BIDDER shall meet this requirement. The determination as to whether the BIDDER meets the mandatory specification rests solely with the STATE. If the STATE determines that a BIDDER does not meet a mandatory requirement as specified, the PROPOSAL shall be deemed non-responsive, and no further evaluation will occur. A letter of determination of non-responsiveness will be issued by the Division of Purchasing to the BIDDER, and the BIDDER shall be removed from further consideration. A BIDDER who has been deemed non-responsive does have certain appeal rights per STATE Statute 67-5733.

- (E) Evaluated. BIDDERS are expected to provide a comprehensive written response to the specification. Points will be awarded based on the degree to which the BIDDER meets the requirement. A BIDDER not responding to the specification will receive zero points for that specification.
- (ME)- Mandatory and Evaluated Requirement. The BIDDER shall meet this requirement.

#### 4.3 SCORING

Specifications/requirements with an assigned code of (M) will be evaluated on a PASS/FAIL basis. Any specification/requirement with the word "shall", "must", or "will" is a mandatory specification or requirement. Any PROPOSAL that fails to meet any single mandatory specification or requirement will be deemed non-responsive. BIDDERS who meet mandatory specifications/requirements may then have their response to the mandatory specification/requirement evaluated and scored as to how the BIDDER's solution meets the IT environment of the STATE.

Solicitation specifications/requirements with an assigned code of (E) will be evaluated and awarded points. Pricing will be evaluated using a cost model that offers the STATE the best possible value over either the initial term of the contract, or the life of the contract. The cost evaluation model may also include any costs incurred by the STATE in conjunction with the proposed service offering.

Solicitation specifications/requirements with an assigned code of (ME) will be evaluated not only on a PASS/FAIL basis, but also be awarded points. Any specification/requirement with the word "shall", "must", or "will" is a mandatory specification or requirement. Any PROPOSAL that fails to meet any single mandatory specification/requirement or evaluated area will be deemed non-responsive. Bidders who meet mandatory specifications/requirements and evaluated areas may then have their response to the mandatory specification/requirement evaluated and scored as to how the BIDDER's solution meets the State of Idaho's IEN Requirements to include how it meets the overall IT environment of the STATE.

The following table identifies those solicitation sections evaluated on a PASS/FAIL basis and/or those which are awarded points:

Ranking	<b>Evaluated Sections</b>	Maximum Possible Points
1.	Cost of E-Rate Eligible Goods & Services	400
2.	Prior Experience (Ed Networks, E-Rate, Personal Qualifications)	200
3.	Management Capability	100
4.	Other Cost Factors (including price of ineligible goods and services, price of changing providers, price for breaking contract, etc)	100
5.	Legislative Initiatives (Partnerships,	100

Idaho Presence, Economic Impact)
Financial Reports and Risk Mitigation
TOTAL POINTS

100 1**000** 

#### 4.4 EVALUATION CRITERIA

- (a) Ability to meet the goals and requirements established by the legislature for Phase I;
- (b) Statewide economic development impacts of the proposed network;
- (c) Potential to meet the requirements of subsequent phases;
- (d) One-time costs for equipment;
- (e) One-time costs for network connections;
- (f) Recurring network costs;
- (g) Recurring Internet access costs;
- (h) Prior experience specific to building and supporting Education Networks including E-Rate expertise;
- (i) Strategic Partnerships to include Local Vendors;
- (j) Management Capability;
- (k) Personnel Qualifications;
- (I) Network and video operations; and
- (m) Other costs

6.

While cost will be a primary factor during the evaluation of these proposals in order for us to qualify for E-Rate discounts, other relevant factors will also be considered to include: long-term impacts on education, benefits to economic development, and other potential applications of the network, as envisioned by the legislature, will be given significant weight as depicted above.

#### 5.0 SPECIAL TERMS AND CONDITIONS

These Special Terms and Conditions are in addition to those found in the Sicommnet solicitation document, State of Idaho Standard Contract Terms and Conditions, State of Idaho Solicitation Instructions To Vendors, and particular to this purchase. Where conflict occurs, these Special Terms and Conditions shall take precedence.

## 5.1 (ME) E-RATE ELIGIBILITY

Qualifying schools and libraries as Voluntary Users may acquire Internet Services through any contracts arising from this RFP. The Proposer must participate in the Universal Service

Administrative Company's telecommunications support programs for eligible schools and libraries, and E-Rate discounts must apply.

## 5.2 (M) IDAHO STATE GOVERNMENT STANDARDS

All delivered services must comply with applicable standards and policies of the Information Technology Resource Management Council ("ITRMC"). A description of ITRMC and its standards and policies may be viewed on-line at www.idaho.gov/itrmc.

## 5.3 PRICING, LENGTH OF THE AGREEMENT AND RENEWALS

Contract is for a 5 year time period, with three extensions of five years each for a total of 20 Years.

Any resulting contract from this solicitation will be awarded to up to four providers. Under no circumstances however will work begin prior to July 2009, because such work as specified by this RFP is contingent upon Legislative appropriation approval (unless a supplemental appropriation is approved by the Legislature prior to July 1, 2009). The services provided pursuant to a contract awarded based on this RFP would be available to any "Public agency" as defined by Idaho Code 67-2327.

#### 5.4 BIDDER'S CONFLICTING AND SUPPLEMENTAL TERMS

Where terms and conditions, including BIDDER agreements and assumptions, specified in the BIDDER's Proposal differ from the State of Idaho Standard Contract Terms and Conditions or the Special Terms and Conditions of this RFP, the State's Terms and Conditions and the bid's Special Terms and Conditions shall apply. Where terms and conditions specified in the BIDDER's Proposal, including BIDDER agreements and assumptions, supplement the terms and conditions in this RFP, the supplemental terms and conditions shall apply only if specifically accepted by the State's Division of Purchasing in writing. BIDDER's are recommended to review the STATE's Solicitation Instructions to Vendors, Clause 19 at the following website.

http://adm.idaho.gov/purchasing/stwidecntrcs.html

#### 5.5 PUBLIC AGENCY CLAUSE

Contract prices shall be extended to other "Public Agencies" as defined in Section 67-2327 of the Idaho Code, which reads: "Public Agency" means any city or political subdivision of this state, including, but not limited to counties; school districts; highway districts; port authorities; instrumentalities of counties; cities or any political subdivision created under the laws of the State of Idaho. It will be the responsibility of the Public Agency to independently contract with the CONTRACTOR and/or comply with any other applicable provisions of Idaho Code governing public contracts.

#### 5.6 ADMINISTRATIVE FEE

The prices to be paid by the State shall be the prices bid by the CONTRACTOR plus one and one-quarter percent (1.25%). The additional percentage shall represent the State's Contract Usage Administrative Fee. No more than quarterly, the CONTRACTOR shall remit to the State through its Division of Purchasing, an amount equal to the one and one-quarter percent (1.25%) of the CONTRACTOR's quarterly contract or agreement sales.

#### 5.7 REPORTS

The CONTRACTOR will be required to submit, to the Office of the CIO, Attention IEN Project Manager, quarterly reports that provide the following minimum information.

- a. Usage reports by Agency and by Agency receiving location, indicating the product received and total cost of the order.
- b. When possible, reports should be in the same format as the product bidding schedule(s). Electronic reports in Excel or Text Format are encouraged.
- c. Custom reports that may be requested from time to time by the Division of Purchasing.

Reports will be due to the Division of Purchasing at the end of the first quarter (90 days) of the contract and each quarterly anniversary thereafter.

## 6.0 MECHANICS OF SUBMISSION

Proposals are to be hand-delivered, US mailed, or carrier shipped. Proposals must be received at the offices of the Division of Purchasing and time stamped using the Division's time stamp, no later than the date and time set forth for the closing of the RFP in Sicommnet.

Proposals must be sealed and labeled per the instructions in the State of Idaho Division of Purchasing Signature Page (file attached to RFP in Sicommnet).

#### 6.1 TECHNICAL AND PRICE PROPOSALS

Proposals shall consist of a Technical Proposal and a Price Proposal. Both the Technical Proposal and the Price Proposal shall be sealed in a single shipping container. The Technical Proposal and the Price Proposal collectively are the proposal.

#### 6.1.1 Technical Proposal

The Technical Proposal shall consist of:

 A signed State of Idaho Division of Purchasing Signature Page. Any alterations or additions to this page shall deem the proposal non-responsive;

- An Executive Summary. Proposals must contain an executive summary that provides an overview of the proposal, highlighting the deliverables and benefits. If partnerships are being utilized, the Executive Summary is to include executive summaries of all partners.
- Technical responses to the following sections within this RFP:
  - o 8.0 Service Requirements
  - o 9.0 Vendor Requirements

Bidders must restate each RFP Section, listing the mandatory or evaluated specification number, and providing a detail response of how the proposer meets the specification. Responses <u>are not</u> to direct evaluators to a brochure or data sheet in substitution to providing a detailed response. To do so on a (M) Mandatory Requirement will deem the proposal non-responsive. To do so on a (E) Evaluated Requirement will result in fewer or zero points being awarded. Brochures and data sheets shall be used in support of a detailed response only.

#### 6.1.2 Price Proposal

The proposer shall submit its pricing in a separate sealed envelope. Pricing schedules are located in RFP Section 10.8. Pricing shall be opened only after the technical evaluation has been completed on the Technical Proposal. Pricing will be evaluated by comparing the total cost of offered solutions. A solution's total cost is the sum of the pricing shown in the pricing schedules PLUS applicable taxes, surcharges and fees PLUS any direct implementation costs incurred by the state.

#### 6.2 ACCURACY AND CONCISENESS

Proposals must be accurate and concise. They must be submitted in a three-ring or similar binder with each section separated by tabs that are clearly marked. Avoid extraneous attachments and superfluous information that may detract from substantive information in the Proposal.

## 6.3 QUANTITY

Bidders will submit the following:

- One (1) original of the proposer's technical proposal marked "Original". Must contain
  a signed and completed State of Idaho Signature page. Signature page is to be the first
  page of the technical proposal; Vendors need to submit using standard Microsoft
  productivity software (Word, Excel, etc.)
- Five (5) copies of the technical proposal;
- One (1) original of the price proposal along with one (1) copy. The price proposal and copy are to be sealed separate from the technical proposal.
- One (1) electronic copy of the technical and price proposal, and project schedule (if requested per the specifications) on a CD or USB device.

One (1) complete Redacted Copy of their entire proposal. Specifically on CD or USB device.

All materials may be shipped in a single shipping container.

#### 7.0 CURRENT EXISTING STATE NETWORK INFRASTRUCTURES

The State of Idaho currently has three (3) significant, existing networks with connections in numerous locations throughout the state, and one (1) Metro network located in the Capitol Mall. Details of these specific State network infrastructures are listed below:

#### 7.1 IdaNet

The IdaNet network is comprised of a combination of Master Service Agreements and physical ATM circuits connecting Cisco MGX switches in Boise (2), Meridian (1), Lewiston (1), and Coeur D'Alene (1). The ATM circuits allow for IdaNet to form a self-healing ring connecting the switches in each city. The state anticipates life cycle replacement of the Cisco MGX switches by 2011.

IdaNet serves 57 state organizations utilizing 247 virtual circuits provisioned at layer 2. Classes of service are CBR, VBR nrt, and UBR. Rates vary according to class of service, and beginning in FY10, by geographic area. Annual operating costs are approximately \$600,000, including circuit costs and switch maintenance. The network is monitored and managed by the Department of Labor. Billing is managed by the Office of the ClO.

See accompanying document, located at Appendix B, Schedule 1, IdaNet for further information on state agency locations connected through IdaNet.

## 7.2 IDAHO TRANSPORTATION DEPARTMENT

The Idaho Transportation Department (ITD) maintains a significant state owned, IP based routed network that supports ITD Highways, Division of Motor Vehicles (DMV) and partner agency operations. The original network was put in place to interface with the citizens of Idaho across 44 county locations in order to conduct business with the State DMV. Today the ITD network supports Idaho State Police, Secretary of State, Eastern Idaho Technical College, County Courts, 911 Emergency Services, redundant communications for state and county/tribal Emergency Operations Centers (EOCs) and more.

The ITD network is constantly changing and expanding to meet the business needs of ITD and its partners, and carries a wide array of network traffic including voice, video and traditional information based data used in file sharing and database access.

Security is also a major area of focus on the ITD network based on the sensitivity of the information used by the DMV, which contains personal information of citizens. Furthermore, partner agencies carry sensitive and confidential information relating to public voting, police operations and homeland security operations.

The ITD network is managed by four full-time State employees consisting of two Network Analysts and two Senior Network Analysts, reporting under the Infrastructure and operation section of ITD's Enterprise Technology Services group.

See accompanying document, located at Appendix B, Schedule 2, Idaho Transportation Department for further information on state agency locations connected through ITD.

#### 7.3 IDAHO BUREAU OF HOMELAND SECURITY

The Idaho Bureau of Homeland Security (BHS) has responsibility for State emergency communications and operations. In support of those communication needs, BHS maintains a statewide digital microwave system supporting radio, voice, video and data infrastructure to state, local, and tribal government entities. There is a current BHS project to install secure broadband communication links from the State Emergency Operations Center (EOC) to each respective County/Tribal EOC facility, providing IOMBS of capacity to these sites. This project is currently underway and anticipated completion to be December 2009. Support is provided by Public Safety Communications with a staff of administrative and technical personnel (23 total). There is IP transport capacity available throughout the microwave infrastructure to supplement an IEN concept, particularly in rural Idaho locations.

See accompanying document located at Appendix B, Schedule 3, Idaho Bureau of Homeland Security for information related to organizations and connections through a public safety related network operated by the Idaho Bureau of Homeland Security

## 7.4 CAPITOL MALL FIBER NETWORK (CMFONI)

CMFONI is the fiber optic network that provides connectivity to state agencies within the Capitol Mall. The majority of the network consists of state owned and vendor leased multi-mode fiber with some state-owned limited installations of single-mode fiber.

See accompanying document located at Appendix B, Schedule 4, Capitol Mall Fiber Network (CMFONI) for information related to the CMFONI network maintained by the Department of Administration.

#### 8.0 SERVICE REQUIREMENTS

Public High Schools designated in Phase I to migrate to this new IEN service must be converted NLT 1 February 2010, with all IP addresses routing through the Internet. The conversion from the current Internet Service Provider should be as transparent as possible. The State of Idaho is cognizant of a growing demand for bandwidth. The State is interested in identifying a Contractor who will meet the current and future telecommunications needs of eligible participants over the term of the contract. The successful Contractor will provide a cost-effective, scalable, and flexible transport service that will be able to meet the demands of the network participants and it is expected the services would meet any future needs of other eligible participants as deemed appropriate. Bidders will identify services that are a

normal part of their offering without additional fees and optional services that are being offered for an additional fee (i.e., automatic trouble ticket generation, trouble notification, etc). The State requires a complete description of those services and fees to be included in the RFP response.

# 8.1 (ME) TECHNICAL REQUIREMENTS

- The Vendor will maintain an ingress internet bandwidth capacity at the main hub site of an amount no less than 50% of the sum of transport bandwidth provided to all local sites. As IEN sites are added and/or deleted or local site bandwidth is increased or decreased, the egress bandwidth capacity at the main hub site(s) will be modified to maintain the 50% requirement. Increases or reductions in costs for the main hub site(s) ingress Internet bandwidth will be included in the costs provided to the State when adding or deleting a site and making local site bandwidth modifications. Internet2 bandwidth will not be included in the 50% requirement.
- The Vendor will provide the option for IEN users to reduce the available regional Internet ingress bandwidth, from the period of June 15 to August 15, each of the five years, during the term of the contract. The amount of the reduction will be 50% of the total amount available at the time of the reduction. The Respondent is directed to indicate, of the Proposal Response Form, the dollar amount that IEN users would save by initiating the temporary reduction in available Internet bandwidth. After August 15 the regional Internet ingress bandwidth will return to its previous level. IEN users will not be required to exercise this option.
- The Vendor shall provide the ability to make small incremental bandwidth increases within two business days (for example, going from 512K to 1.5 Mbps). All other proposed bandwidth increases will need to be approved by the State OCIO in coordination with the affected customer.
- The Vendor shall provide assistance to the State of Idaho OCIO office and our public school districts\libraries, upon approval of funding by the State Legislature, to inventory and catalog all existing distance learning, networking, and video conferencing equipment, currently deployed throughout their schools in order to determine actual customer IEN requirements. This "network communications" inventory will also be used to determine the supportability of standards-based H.323, and\or Session Initiation Protocol (SIP) video conferencing capabilities (See Appendix E). It will also be used to determine actual requirements for other high bandwidth and QoS distance learning and tracking applications (e.g. Unitedstreaming, netTrekker, Blackboard, Moodle, interactive weblogs\podcasts, and support for a new State of Idaho "Longitudinal Data Network" tracking system) across the IEN network, to see if new equipment or additional bandwidth may need to be procured and installed.
- The Vendor will also provide installation and technical virtual help desk and possible onsite assistance to school districts in the support of their respective video teleconferencing programs. Specifically, high quality, reliable video teleconferencing (VTC) is essential for conducting effective Distance Education classes. Circuit-switched connections using Integrated Services Digital Network (ISDN) have provided, and continue to provide, network transport necessary for VTC applications, within the State of Idaho, but several limitations exist in using circuit-switched services, such as their cost and sometimes poor service reliability. Fortunately, recent advances in VTC technology have significantly improved VTC capabilities through reduction in size, operational complexity, and cost of VTC equipment. Additionally, the ability to conduct quality VTC over Internet Protocol (IP) networks is now

available. As a consequence of these developments, Vendors are highly encouraged to explain in their RFP responses, specifically: how they will support both legacy (ISDN based) VTC networks, while simultaneously offering enhanced VTC IP based support capabilities to new users. Also Vendors will articulate in writing how they will migrate existing ISDN based VTC customers to these new IP based technologies, wherever feasible.

- Vendors in support of VTC operations will provide a network infrastructure capable of providing full screen, high quality video at a minimum of 30 frames per second, with 60 interlaced fields per second (i.e. resolution and frame rates equivalent to that of the National Television System Committee [NTSC] television) for viewing people in the teleconference or up to 1024 x 768 [19] for viewing graphic images on computer monitors. See Appendix E, Video Teleconferencing Goals and Proposed Classroom Equipment Specifications, for additional information concerning the minimum base standards that the State will be considering in their efforts to develop viable VTC support packages in support of our public Phase I High Schools, and subsequent Phase II Elementary and Middle Schools.
- The Vendor shall work with the State of Idaho OCIO Office during Phase I, to identify specific initial pilot school candidates within the respective counties that the IEN Task Force has identified per Appendix C, to demonstrate some IEN "Proof of Concept" network installations, which are geographically dispersed throughout key areas in the State, during the initial phase of this project.
- All connections must be "full duplex" in nature, and to the limit allowed by the technology of
  the proposed circuit, the entire capacity of the physical circuit must be available unless
  otherwise indicated.
- Anticipated acceptable physical circuits are OC-3, OC-12, Fast Ethernet, Gigabit Ethernet, but other options will be considered. Ethernet options will have a preference.
- The vendor will also need to leverage in their network design and planned IEN build-outs, wherever applicable, all available State of Idaho IP transport capabilities to include available Idaho Bureau of Homeland Security microwave infrastructure capabilities, which are in the process of undergoing significant network upgrades, with the infusion of high speed IP transport technologies into this core network infrastructure (See Appendix A, Schedule 3), to supplement our IEN concept, particularly in remote rural Idaho locations. Additionally, vendors will need to provide support for emerging educational applications that have large bandwidth and QoS requirements (e.g. Blackboard, Idaho Longitudinal Data Student Tracking System, etc.) as additional required bandwidth to run these applications becomes available.
- For the duration of the contract, the Vendor must maintain adequate internet capacity within their network(s) to meet the capacity obligations of this RFP.
- If the circuit provided by the vendor has any redundant characteristics that will help reduce the exposure to equipment or circuit failure, please provide an overview of the redundant capabilities.
- The Vendor will provide sufficient bandwidth at Internet gateway sites to ensure that over any two successive five minute polling intervals, the utilization of the links is less than 80% capacity and provide written documentation and verification to identify anytime the 80% capacity is breached, to include bursting and/or multiple users.
- It is required that the Vendor assumes all responsibility for the maintenance and overall
  operation of the Vendor supplied equipment and services. Vendor access to required Idaho
  Education Network locations will be coordinated directly between the Vendor and IEN
  customer location(s).
- The Vendor will monitor and maintain relevant circuits and equipment related to this service
  on a 7x24x52 basis. Vendors will also develop a procedure that will make available real-time
  views into all service components among all sites covered by this contract, leveraging
  currently available network monitoring tools, and extending those monitoring capabilities to

the Idaho OCIO and other educational entities as directed. Real-time "viewing" access will allow the Idaho Office of the CIO and others, to ensure high standards of service support are being met IAW established SLAs, and to meet customer requirements for support. It is desired that Vendors will also provide training (remote, or onsite), at no cost to the state, on these monitoring capabilities, upon request. Current State Network monitoring capabilities include the use of a product called "Spectrum", but Vendors are encouraged to propose alternate solutions.

- The Vendor will respond (e.g. contact and begin troubleshooting efforts with the affected customer(s)) to any outages or interruptions in service within one (1) hour of a detected or reported problem. For prolonged network outages (beyond 1 hour), the Vendor will notify the Idaho OCIO office of the issue and keep the Idaho OCIO office appraised of ongoing efforts to fix the problem. A complete record of this extended network outage, troubleshooting "after action" report, will be forwarded to the Office of the OCIO office, via Email or other agreed upon electronic means, within 24 hours of problem resolution by the Vendor.
- Spare Vendor supplied equipment must be available in a reasonable time period depending on
  the location of the outage (e.g. large metropolitan areas, a 4 hour response time is required; in
  more rural areas, a 8 hour response time would be acceptable in cases of an equipment failure;
  however, onsite spares, would be a preferred course of action to expeditiously resolve network
  problems for these remote locations).
- When planned network maintenance activities are conducted by the Vendor which runs the risk of interrupting or diminishing service, the Idaho Office of the CIO must be notified of the event at least three (3) business days in advance. Additionally, the Vendor agrees to work with the entities to find an alternate date or time for the maintenance if the proposed time(s) would be particularly harmful.
- The Vendor will provide security on offered services against hackers, viruses and other threats
  to this IEN network. Vendors will articulate in writing how they intend to secure our IEN
  network to include associated equipment technologies, policies and software.
- The vendor shall provide one or more network maps showing how the traffic will flow across the Vendor's backbone (e.g. examples include network diagrams depicting internet access, video connectivity, from the schools back into IEN core, etc.)
- Given the inherent complexities of our current State of Idaho legacy networks, Vendors need to ensure that supporting network engineering staff have the experience and caliber needed to design, maintain and upgrade our IEN network. Designated support engineers must also demonstrate a proficiency in maintaining our current legacy equipment, as depicted in Appendix B. Additionally, it is desired that skilled engineers demonstrate proficiencies in the areas of core routing and switching, security, voice, video, and Multi Protocol Label Switching (MPLS), with an expectation that these engineers will be the ones doing the design, operation, maintenance and accreditation of this IEN network. Vendors will include resumes of potential IEN engineering support staff as part of their RFP response, to include a comprehensive list of all network certifications and years of experience.
- Vendor proposed Ethernet Solutions must also support connectivity over the National LambdaRail Infrastructure (NLR) and INTERNET2 (12) networks, helping to expand the State's theoretical and experimental research capabilities as they relate to both K-12 and higher education. Given the current Economic situation in Idaho and in keeping with Legislative directives to reduce costs and Ieverage existing State resources, wherever possible, it is highly desired that Vendors submit a detailed technical plan in their RFP response that specifically addresses how they would leverage legacy State of Idaho networks to include the Idaho Regional Optical Network (IRON), in providing this service, particularly to our higher education institutions who desire these services (e.g. BSU, University of Idaho, etc).

- The Idaho OCIO Office will maintain a complete set of Internet routing tables for information and security purposes. The Vendor agrees to provide that information to our routers through BGP routing protocols.
- Vendors must also demonstrate an ability to support multiple applications, from content
  delivery and Internet access to IP Telephony, video, audio, web conferencing, storage and
  unified collaboration. This includes understanding "Bell Schedules" and working with the
  Department of Education to work out scheduling of associated technology assets (e.g. Video
  Teleconferencing capabilities) to support customer requirements for services, at differing
  times.
- Vendors must also be capable of providing burstable connections (25% or higher) with the
  ability to effectively manage short periods of high usage (2-4 hours). Specifically, the Vendor
  will provide bursting capability to allow sites to exceed allocated bandwidth when 80%
  capacity is reached, in order to track and identify additional bandwidth needs at individual
  sites.
- The Vendor will outline its ability to provide robust communication services that protect IEN
  customers from interruption of services during the business day and ensure resiliency of the
  services being offered.
- Vendors will provide capacity increases and outline costs associated with these changes that
  must be completed within 45 days of the Idaho OCIOs request.
- Our K-12 schools, libraries, and state agencies have various IP address class sizes. By
  responding to this proposal, Vendors must understand and agree that they are willing to route
  these addresses at the request of these school districts. Vendors will also ensure that all
  assigned engineering personnel working on our IEN network are compliant with CIPA
  policies concerning the protection of Children to include vendor certified background checks.
- Vendor proposed solutions must also address connectivity methodologies to both public
  Internet protocol (IP) networks and private backbones, as both students and instructors will
  need access to internal web portals for student and administrative services, as well as partner
  institution web portals for educational research.
- The Vendor will provide basic content filtering for all sites in accordance with CIPA guidelines to ensure compliance with E-Rate policies for Internet Access.
- Vendors must work with respective School Districts and libraries concerning policies and
  actions regarding the filtering of sites or content, such restrictions and filters also need to be
  documented in your monthly reports back to the State OCIO office. Note, however, that this
  section is not intended to prevent any Internet Service Provider (ISP) from limiting traffic
  from a site causing harm to the Internet or any of its customers. Note that any filtering or DNS
  changes done by Vendors must be documented and approved by the Idaho State OCIO office.
- The Vendor will also provide a network design in which:
  - a. Layer 2 QoS tags pass unimpeded through the network
  - b. Layer 2 performance will be adequate to support jitter and low-latency sensitive applications (i.e. Video over IP)
  - c. IEEE 802.1q VLANs can be established at the request of the Idaho OCIO office.
  - d. Vendor, Idaho OCIO Office and/or eligible participants will manage the IP addressing and IP routing in a cooperative fashion, by actively participating in monthly OCIO sponsored IEN change management meetings.
- The Vendor will also:
  - a. Indicate what layer 2 QoS capabilities the network will honor and support, (i.e.802.1p queuing)
  - b. Indicate availability of real time performance metrics (i.e. SNMP) access to a State-provided list of authorized monitoring stations.

- c. Articulate the way in which overall cloud utilization will be monitored and under what conditions and within what timeframes upgrades will be implemented to ensure that the purchased bandwidth is available on demand to participants.
- d. Indicate the timeframe in which requests for virtual networks or layer 2 QoS changes will be honored.
- To account for schools, libraries who wish to deploy more services and utilize more bandwidth as compared to schools and libraries that do not, vendors shall respond with two different deployment standards. One standard with a "high bandwidth edge router" and one with a "low bandwidth edge router". This is an area that will be included in our evaluation criteria concerning the technical merits of submitted proposals, in enabling our supported IEN customers to pursue additional network upgrades.
- The Vendor will provide for all bundled Internet services to be upgraded as needed within the timeframe identified in section 8.2. Shared services will be allocated or reallocated based on use or need and at no cost to the State, with future configurations being kept in line with E-Rate eligibility standards for all services through a coordinated process with the OCIO office and must adhere to the 80% capacity rule per site.
- The Vendor will provide monthly written reports by the 15<sup>th</sup> of the following month on utilization, network traffic capacity and performance tuning, service usage (broken down by institution and protocol) and other network utilization as needed by the Department of Administration, OCIO office for reporting to the Legislature.
- The Vendor will provide written monthly reports, including agreed upon metrics that verify or indicate service levels are being met, NLT 15 of each Month to the OCIO.
- The Vendor will provide real-time Web access to monthly reports of all trouble ticket activity involving customer support to the OCIO and other educational entities that request this information.
- The Vendor will meet all E-Rate guidelines and stay in good standing with the program by filing forms and meeting established Federal E-Rate deadlines.
- The Vendor will develop a procedure for providing our supported educational entities and state customer, IEN network "knowledge transfer" classes, in collaboration with the Idaho State CIO office. The resulting procedure will be disseminated to IEN customers through workshops for technical support held twice a year (IEN Day) at designated locations throughout the state and at no cost to the State.
- The Vendor will provide customer interaction through a customer service representative. IVR
  and other machine interactions are not acceptable, with the exception of voice mail when the
  staff is currently helping other customers.
- The Vendor will interact with customers to provide advanced engineering services (i.e. support
  to individual district network managers for troubleshooting district area network exchanges
  with the performance of the bundle Internet access).
- Vendors are encouraged to supply any additional information (charts, graphs, testimonials, reviews, and comparisons of your company to others in the industry, traffic statistics, etc.) which would be of use in determining both the quality of the company, and the quality of the Vendor's connections and services, to include articulation of any competitive advantages to other potential IEN proposals to include areas of innovation in terms of existing network migration strategies, economical aggregation of bandwidth, etc).
- If the Vendor cannot comply with any one or more of the requirements set forth in any of the above paragraphs, the Vendor will include with their Proposal a clear, concise, and complete narrative stating the reason(s) why exception must be taken. The reason(s) may be economic, technical, etc. The IEN proposal evaluation team will make the final determination as to the acceptability of Proposals which take exception to the requirements set forth herein.

It is understood and expected that existing conditions may occasionally be the cause
of a mutually agreed to compromise of some of the requirements set forth herein. The
Vendors are encouraged to advance all opportunities which will provide an
acceptable system at the lowest possible cost.

## 8.2 (ME) TECHNOLOGY REFRESHMENT CLAUSE

The State and the Contractor will work in partnership to ensure the services provided under this contract will be continuously refreshed as technologies evolve and user needs grow. The State of Idaho Chief Information Office, in conjunction with or on behalf of all other participants, will assume the primary role in seeking and proposing new technologies and enhancements. This technology refreshment clause will be a required condition of the contract. As a portion of the response to this RFP, bidders shall identify and define any pertinent new services currently being considered for deployment. Anticipated deployment dates shall also be identified. The State and the Contractor will conduct periodic reviews of the contract at specific milestones during the term of the contract to review service offerings and pricing. These reviews may result in expanding the services offered by the Contractor to include new pricing elements or pricing modifications associated with improved economies of scale and/or technological innovations. Changes in the industry related to regulation and/or pricing mechanisms may also result in modification of rates identified in the services offered by the Contractor. These review periods will commence no later than the 24th month (~February 1, 2011) from the effective date of the contract; the 36th month (~February 1, 2012) from the effective date of the contract.

## 8.3 (ME) SERVICE LEVEL GUARANTEES

This network must support production applications that require a high degree of reliability and must operate with little or no service disruptions for twenty-four (24) hours a day, seven (7) days a week. Contractors will provide solutions with the necessary redundancy, backup systems, and/or other disaster avoidance and recovery capabilities to support these needs. Contractors must have the necessary staff for the installation and maintenance of their network responsibilities and necessary staff to assist the State in its installation and maintenance of critical network services. The Contractor will provide an explanation of any redundancy that is available as part of the proposed system that will assure the required availability of the services. The following performance specifications are required service level guarantees. The Contractor will conform to these service level agreements, which are to include details concerning restoration procedures and goals, escalation procedures, and non-conformance penalties.

# 8.4 (ME) SPECIFICATIONS

At a minimum, Internet and circuit availability will be 99.95% or greater as measured over twelve consecutive months.

Mean time to repair (MTTR) a failed transport backbone network element, measured over twelve consecutive months, will be 4 hours for Large Metropolitan Areas; 8 hours for Remote Support Areas.

End-to-End Network MTTR: 4 hours for Large Metropolitan Areas; 8 hours for Remote Support Areas.

Following the final system acceptance by the State, the Contractor shall guarantee overall network performance in accordance with RFP mandated requirements. Any outages and/or diminished QoS that are not resolved prior to the expiration of the four hour MTTR (Mean Time To Repair) for Large Metropolitan Areas; or 8 hours for Remote Support Areas, shall result in a credit to the State equal to four (4) days credit of service and one (1) day credit of service for each additional hour of outage and/or diminished QoS on the same circuit or network component. Repeated outages and/or diminished QoS on the same circuit or network segment greater than four (4) occurrences per month shall receive a full month credit for that circuit or network segment.

## 8.5 (ME) PROJECT PLANNING AND MANAGEMENT

The State of Idaho acknowledges that project management and implementation procedures will require alignment and adjustment of work processes for the Contractor's organizations, the educational entities, and the State. The alignment will be part of the contract finalization, however the Contractor will respond to this RFP assuming the following responsibilities listed below. Specifically, the State of Idaho and educational entity management staff will:

- Provide overall project direction and program management.
- Review and approve all project plans and deliverables.
- Ensure that technical assistance and support are provided during the Contractor's implementation phases and ongoing upgrade design of this project.
- Establish project management guidelines by meeting with the Contractor's project management team as needed.
- Review and approve all project specific documentation standards and requirements for the
  various types of reports, technical/procedural documentation, and management materials that
  will be produced during the project.
- Coordinate other resources as needed to support the implementation process.
- Provide on-site assistance, as needed during the implementation phases of the project.
- The State of Idaho IEN management staff will also assist the Contractor in identifying eligible
  participants in the network as well as establishing guidelines with the Contractor for ordering,
  moving, adding or changing services.

#### Vendor Responsibilities:

- The Contractor will coordinate and administer the requirements of the network service(s) that are proposed with any subcontractors and the participants.
- The Contractor will maintain a project management office in the State (preferably at a location that is within one (1) hour access of Boise Idaho), during the design and cutover phases of this project. The office will be responsible for administrative functions, project design/development and the required installation.
- The Contractor will maintain toll free lines for voice and facsimile from the State to
  operational facilities for order entry and after hours help desk support. Installation and
  maintenance may be subcontracted to one or more third parties to adequately cover the
  locations of the core transport backbone sites and to provide for rapid response in the event of

a service disruption. The Contractor will provide information regarding intent to maintain its facilities after project implementation has been completed.

- The Contractor will maintain toll free voice lines for after hours helpdesk support for the
  duration of the contract. This point of contact will serve as the single point of contact for all
  services and equipment provided by the contract, including services and equipment
  subcontracted to another vendor.
- The Contractor will furnish with its proposal technical information, graphs, charts, maps, photographs, block diagrams, operating manuals, and other information that will clearly show that the services offered are in full compliance with the minimum requirements of this RFP. In the event that the documentation furnished is at variance with the requirements of this RFP, the Contractor will explain in detail, with full engineering support data, the reasons why the proposed services meet the RFP requirements and should not be considered an exception.
- The technical proposal will include detailed network diagrams and drawings that clearly
  illustrate the network configuration and the functional relationships, as they are associated
  with the proposed services. These network diagrams will be available to the State
  electronically in a format agreed upon by the Contractor and the State to allow for import into
  various computer programs.
- The Contractor will provide basic technical specifications for each item of equipment included in the proposal. The information to be provided will be in the form of published specification sheets or other illustrative literature.

# 9.0 VENDOR REQUIREMENTS

#### 9.1 (ME) PROPOSER'S BACKBONE

Describe in detail the Proposer's backbone in both narrative and graphic form. Include the overall architecture, number and location of points of presence ("POPs"), link capacities connecting POPs, descriptions of carrier-class routing/switching equipment, redundancy, fault tolerance, routing policies including BGP, current and planned support for IPv6, the number of direct network administrative and engineering staff supporting the Proposer's backbone, in-place physical and electronic security measures, and any other materially relevant information. Proposers in their proposal should also include historical data documenting at a minimum availability, latency and packet loss statistics for their backbone over the last 12 months.

# 9.2 (ME) PEERING AND TRANSIT RELATIONSHIPS

Describe in detail the Proposer's peering and transit relationships in both narrative and graphic form. Include the locations and link capacities of peering/transit points, describe typical peering and transit service level agreements, and describe peering and transit policies. Specifically describe how the Proposer will avoid disruption to Users' Internet services as a result of disputes between providers, such as the recent dispute between Level 3 and Cogent Communications. Proposers in their proposal should also include historical data documenting at a minimum availability, latency and packet loss statistics for their peering and transit points over the last 12 months.

# 9.3 (ME) SERVICE LEVEL AGREEMENTS FOR CUSTOMERS ("SLAs")

Include in your proposal a copy of the Proposer's standard service level agreement for customers, taking into account the metrics established in 8.4 Specifications for Internet and VTC Quality of Service. Ensure that the percentage availability goal of the Proposer's backbone is included. Also describe the Proposer's capacity planning process that is used to ensure the Proposer meets or exceeds established SLAs.

## 9.4 (ME) TRACE ROUTE AND PING TESTS

Include in your proposal the results of select trace route and ping tests. It is recommended that providers use "pathping" to produce these results for their respective RFP responses. The destinations to be tested follow:

Coeur d'Alene School District http://www.cdaschools.org/

Lewiston School District http://www.lewiston.k12.id.us/

University of Idaho http://www.uidaho.edu/

Meridian School District http://www.meridianschools.org/

Boise State University http://www.idbsu.edu/

Twin Falls School District http://www.tfsd.k12.id.us

College of Southern Idaho http://www.csi.edu/

Idaho State University http://www.isu.edu/

Idaho Falls School District http://www.d91.k12.id.us/

Salmon School District http://www.salmon.k12.id.us/

# 9.5 (E) PROFESSIONAL AFFILIATIONS

Describe professional associations related to Internet services (e.g., NANOG) in which the Proposer actively contributes and participates.

## 9.6 (E) ORGANIZATION

Describe your organizational structure and explain how your organization qualifies to be responsive to the management, administrative, engineering and technical requirements of this RFP. Elaborate in detail on your technical staff's training and familiarity with the design, administration and repair of a Cisco-based networking architecture.

## 9.7 (E) QUALIFICATIONS AND EXPERIENCE

Describe the Proposer's experience in managing, engineering, staffing and providing commercial Internet services to others of similar size and scope. Describe your qualifications and experience providing similar services, as required in this RFP, to other customers. Include a list of all customers.

## 9.8 (E) REFERENCES

Include in your proposal a minimum of three (3) trade references including names of persons who may be contacted, their positions, addresses, and phone numbers where services similar in scope to the requirements of this RFP have been provided. The Proposer is responsible to ensure the accuracy and relevancy of provided references.

For partnerships used by the proposer in the supplying of the service, for each partner used, the proposer must provide a minimum of three (3) trade references, including names of persons who may be contacted, their positions, addresses, and phone numbers where services similar in scope to the requirements of this RFP have been provided. The Proposer is responsible to ensure the accuracy and relevancy of provided references for the partners.

#### 9.9 (ME) FINANCIALS

Include in your proposal copies of the latest two years' audited annual financial statements, and all partners proposed for the supply of this service. This information is for evaluation purposes only, should demonstrate the Proposer's financial stability and must include balance sheets, income statements, credit ratings, lines of credit, or other financial arrangements sufficient to enable the Proposer to be capable of meeting the requirements of this RFP. This information will be held in confidence to the extent that law allows.

If audited financial data are unavailable, fully explain the reason and provide the latest non-audited financial information including balance sheets, income statements, lines of credit, statements of cash flow, and changes in financial position. Include information to attest to the accuracy of the information provided.

## 9.10 (E) BIOGRAPHICAL INFORMATION

Provide biographical information for each staff member responsible for design, implementation, project management, or other positions identified in the requirements of the RFP. Include relevant education, experience and licensing or certification.

## 9.11 (ME) IMPLEMENTATION PLAN

The Contractor will submit to the State of Idaho CIO Office an implementation plan for the deployment of the services, along with proposed pricing schemes that reflect the services to be included in the associated contract resulting from the award of this RFP for deployment of services. Specifically, it is envisioned that Vendors shall provide written details of an IEN Phased Deployment plan that will include: Network Discovery (e.g. assisting the State in the inventory of already existing legacy public school, libraries and state agency networks to include network equipment, connectivity, facilities, use of E-Rate Funding, etc); Analysis of Survey findings (to identify actual network build out requirements); School Participation\IEN Marketing Plan; Pilot program "Proof of Concept" installations to validate requirements; "Go live" Phase I for installation of services support to all Idaho Public High Schools; An Operations and Maintenance plan; followed by future IEN Phased Deployments (Elementary, Middle schools, Libraries, State agencies) and Technology refreshment plans.

## 9.12 (E) DEPLOYMENT STATUS REPORTS

The Contractor's designated project manager will provide weekly reports of the status of any deployment schedules to the State's designated IEN project manager. Deployment status reports will provide weekly information related to the adherence to the deployment schedule identified in Appendix A, identification of issues affecting the deployment schedule, and recommended resolution(s) to any identified barriers to network deployment.

## 9.13 (E) BILLING

The State will provide detailed billing instructions for each order as placed. In some cases the billed entity will be a consolidated billing to the State in an electronic format.

For E-Rate eligible entities, the contractor will be instructed to bill the E-Rate processing organization directly (USAC, Service Provider Invoice, Form 474) in accordance with established E-Rate policies to ensure that appropriate E-Rate processing can be accomplished. The contractor must comply with all applicable E-Rate requirements. The State may request a copy or summary of billings to other entities.

## 9.14 (E) CERTIFICATION

The State requires that the bidder be certificated by the Idaho Division of Purchasing Commission to provide the services outlined in this Section of this RFP. The Bidders must elaborate on whether they would be willing to file Tariffs with Division of Purchasing specific to the network proposed in their bid. The Bidder must elaborate on whether they are willing to accept direct payment for USF and NUSF contributions to their proposed network and whether they are

willing to deduct these contributions from the State's monetary obligations toward a contract resulting from this RFP.

## 9.15 (ME) PROOF OF PERFORMANCE

Vendors will provide in writing detailed plans for testing of the IEN core network, following the installation and activation of all equipment, to include testing of each link to insure and verify proper transmission speeds and low latency. Vendors will also provide a plan on how they will document these tests and present their findings to the State IEN OCIO office. Note the results of all these tests will be documented by the contractor, given to the State and become a part of the Vendors Maintenance records, along with required monthly status reports specified in sections 8.1 and 9.12.

#### 10.0 PRICING SCHEDULES

The Bidder will clearly identify each offered service (by service type) and be specific on all elements, processes, fees, etc. included in the cost Bid proposals will address the impact of normal growth, as well as planned and unplanned network expansion or service enhancement. All prices shall be proposed on a "per unit" as a recurring or nonrecurring basis. All bidder costs must be reflected in either the monthly recurring or nonrecurring charges. No additional charges will be accepted. The State shall not be required to purchase any specific service or minimum quantities of network services. The quantities provided in this RFP as examples are for the sole purpose of assisting the Bidders in preparation of their proposals and for the State to evaluate the feasibility of the proposed network solutions. The State shall not be responsible for any cost that is not identified in the Bidders proposal.

#### 10.1 (E) NETWORK EQUIPMENT AND HARDWARE COSTS (NON-CPE)

Network equipment and hardware (non-CPE) will be part of and included in the itemized transport circuit costs. Circuit costs will be bundled costs, including all hardware.

## 10.2 (E) INSTALLATION COSTS

If one-time installation/set-up charges are applicable, these rates shall be delineated in the cost portion of the proposal. This cost for the circuit installation shall include all one-time costs associated with termination to the demarcation point from the network side and/or fees associated with interconnection to local exchange carriers.

#### 10.3 (E) SOFTWARE, WARRANTY, AND MAINTENANCE COSTS

The Bidder will include costs for software, warranty, and maintenance of the provided circuits in the service rates. Software includes any initial or upgraded software required by each item of equipment proposed for the network to perform as a fully functional, integrated part of the Contractor's network and associated service rates. The software costs shall include all of the following applicable costs:

- a) Initial purchase and installation costs.
- b) Use and licensing fees.
- Software maintenance costs, including upgrades.
- d) All other costs relative to the network such as acquiring and using the software for the life of the network.
- e) Costs and procedures related to the transfer of the software from damaged or out of service equipment to new equipment and the reprogramming of the software to place equipment spares into service and to meet changing network needs.

## 10.4 (M) OPTIONAL SERVICES

It is anticipated the Contractor may wish to offer optional services at an additional fee, i.e. network monitoring, project management, etc. These services will be identified and described in detail with the appropriate cost per unit (hour, month, circuit, service, etc.) delineated.

## 10.5 (E) TOTAL COSTS

The Bidder will provide a detail description and list of services being proposed in the attached Schedules. Monthly costs, installation, and any other charges are to be explicitly stated in order for the State to evaluate the proposed services incorporated in the proposal and the associated charges. Additionally, vendors are encouraged to:

- Minimize any "transport" or "backhaul" charges in support of a stable per megabit pricing algorithm.
- Specify all fees for activation, termination and/or processing if allowable changes in capacity
  are requested during the life of the contract.
  - Provide a means to clearly determine the monthly recurring costs associated to the amount of Internet capacity purchased or consumed.
  - Indicate the availability and any associated pricing details for the State to obtain additional TCP/IP address ranges during the term of the contract.

# 10.6 (E) COST AND SERVICE OFFERING REVIEWS DURING THE CONTRACT

The State and the Contractor will conduct periodic reviews of the contract at specific milestones during the term of the contract to review service offerings and pricing as specified under item 8.2 Technology Refreshment.

# 10.7 (E) PROPOSAL COST EVALUATION

The proposal cost will be evaluated based on the monthly recurring costs multiplied by the applicable length of contract in months, not to include extensions, plus the one-time non-recurring costs.

## 10.8 (E) PRICING SCHEDULES

Schedule C: Bandwidth for IEN Users (RFP Section 8.1)

Monthly

One-time Recurring charge (\$) Charge (\$)

Item no. Description

Fixed bandwidth (indicate units)

2 Burstable bandwidth (indicate units)

Schedule D: Value-added Services for IEN Users (RFP Section 10.4)

Monthly

One-time Recurring

Item no. Description

Item no. Description

charge (\$) Charge (\$)

Notes

Notes

I DNS Caching

2 Network Security

- 3 Application Level Monitoring
- 4 Content Filtering
- 5 IP Maintenance
- 6 E-Mail & Archiving Services
- 7 Managed Firewall Services
- 8 Traffic Prioritization Services
- 9 Other value-added services

Schedule E: Charge For Performance and Usage Reports (RFP Section 8.1)

Monthly

One-time Recurring

charge (\$) Charge (\$)

**Notes** 

All pricing schedules must be complete and accurate, containing all costs related to provisioning Internet services. Pricing in these schedules must reflect the Proposer's pricing <u>before</u> the application of any taxes, fees, surcharges or volume discounts.

All schedules contained in the electronic version of this RFP are embedded Excel worksheets. Please contact the Division of Purchasing if you desire to use or require assistance in using these worksheets.

Schedule A: Proposed V	endor IEN So	olution (RFP Section	n 3.5.2)
		Monthly	
	One-time	Recurring	
tem no. Description	charge (\$)	Charge (\$)	Notes
I TOTAL PRICE			
2 Breakdown of Total Price:			

Taxes, Fees, and Surcharges  While the State is generally except from payment of taxes, identify and explain the various existing taxes, fees and surcharges that apply to offered Internet services.  Provide an average overall percentage markup that may be applied to the Proposer's pricing in the preceding schedules that reflects the taxes, fees and surcharges that Users will pay.
Volume Discounts  Identify and explain any volume discounts the Proposer is willing to offer and the basis for qualifying for them (e.g., revenue, usage, number of access points).

# APPENDIX A

# SCHEDULE 1: LIST OF IEN PHASE ONE PUBLIC HIGH SCHOOLS

Cascade District #422 Cascade High School		
Cascade High School		
Cassia District #151		
Burley High School		
Declo High School		
Raft River High School		
Cassia Regional Technical Center		
Castleford District #417		
Castleford High		
Cour d'Alene District #271		
Cour d'Alene High School		
Lake City High School		
Project CDA Alternative High School		
Riverbend Technical Academy		
Cottonwood Joint District #242		
Prairie High School		
Council District #13		
Coucil High School		
Dietrich District #314		
Emmett District #221		
Emmett High School		
Fremont County Joint District #215		
South Fremont High School		
Genesee Joint District #282		
Glenns Ferry Joint District #192		
Glenns Ferry High School		
Gooding Joint District #231		
Gooding High School		
Idaho School for the Deaf and Blind		



C.L. "Butch" OTTER

Governor
MIKE GWARTNEY
Director
BILL BURNS
Administrator

# State of Idaho

Department of Administration Division of Purchasing

650 W State Street, Room B15 P. O. Box 83720 Bolse, ID 83720-0075 Telephone (208) 327-7465 FAX (208) 327-7320 http://adm.kla.ho.gow/nurches/hg

January 20, 2009

Education Networks of America, Inc./ENA Services, LLC Attn: David Pierce
1101 McGavock St.
Nashville, TN 37203

Via Facsimile (615) 312-6099 Original via USPS

RE: RFP02160, Idaho Education Network, for the State of Idaho, RFP closed January 12, 2009.

Dear Mr. Pierce:

Your proposal has been received and been evaluated based on pre-determined criteria by subject matter experts. Below is a comparison of the scores each proposal received.

Criteria	Points	Qwest	ENA	Verizon	
Prior Experience	200	110	145	65	
Legislative Intent	100	_ 73	83	15	
Management Capability	100	56	72	35	
Financial & Risk	100	29	82	35	
Subtotal	500	268	382	150	
E-Rate Cost(1)	400	267	400	278	
Non-E-Rate Cost(1)	100	100	74	64	
TOTAL	1000	635	856	492	

Cost points were determined by dividing any Non-reoccurring (one-time) charges (if any) by the length
of the contract (60 months) and adding that amortized monthly cost to the monthly reoccurring charges.

Please consider this as a Letter of Intent to award to <u>Owest Communications Company LLC and Education Networks of America, Inc./ENA Services, LLC</u> for being awarded the most points.

Do not take any action until you receive a Purchase Order or Contract from the Division of Purchasing and in accordance with the provisions of the RFP.

State Purchasing Manager

CC: OCIO

Exh. No. 27
Date 9/1/0
Name Gunthey
M&M Court Reporting

"Serving Idaho citizens through effective services to their governmental agencies"

Bill To: State of Idaho Various Agencies Various State Agencies located throughout Idaho

Address 2 Various, ID 83701



# State of Idaho Various Agencies

Statewide Blanket Purchase Order

THIS NUMBER MIST APPEAR
ON ALL DOCUMENTS

Statewide Blanket Purchase Order SBPO1308

Date: Wed Jan 28, 2009

F.O.B: Destination

Terms: N30

VENDOR:

QWEST COMMUNICATIONS CORPORATION 1801 California Street Denver, CO 80202

Attn: Director-Business Development richard.fernandez@qwest.com

Phone: 800 899-7780 Fax: 303 672-5901

DELIVER TO: State of Idaho Various Agencies

Various, ID 83701

Address 2

Various State Agencies located throughout idaho

Mark.Little@adm.idaho.gov

Account Number: P00000067075

Start of Service Wed Jan 28, 2009 Date

Mon Jan 27, 2014

End of Service Date:

> RFQ#: RFP02160 DOC#: PREQ15608

Exh. No. 3 |
Date 1/2/10
Name GWA/12 f
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File Attached: C IEN\_Bdders\_Conference.doc

C IEN\_RFP\_29

Dec\_08\_Changes\_and\_or\_Updates.docx

- C IEN\_Bidders\_conf\_QA\_29 Dec\_08.docx
- ← APPENDIX\_FandG\_to\_RFP02160.docx
- RFP\_IEN\_Briefing\_29\_Dec\_08.pptx
- ← AMENDMENT4\_RFP02160.doc← RFP02160\_WITH\_APPEN\_A.doc
- C RFP02160 APPEN C THRU E.doc

Buyer: MARK LITTLE 208-332-1611

Item No	Description	Quantity UOM	Unit Price	EXTENSION		
000	BLANKET PURCHASE AGREEMENT ( line item particulars follow)	1 lot		5000000.00		
	Total:			5000000.00		
Blanket Comments:	Contract for the Idaho Education Network (IEN) for the benefit of the State of Idaho eligible schools, political subdivisions, or public agencies as defined by Idaho Code, Section 67-2327. The Division of Purchasing or the requisitioning agency will issue individual releases (delivery or purchase orders) against this Contract on an as needed basis per the IEN Strategic implementation Plan for a period of five (5) year commencing January 28, 2009 ending January 27, 2014, with the option to renew for three (3) additional five (5) year periods.					
Item No	Uescription 1)	antity JOM	Unit Price	EXTENSION		

001	COMMUNICATIONS AND RELATED SERVICESIdaho Education Network related services  (915-51) (nt)	5 YEAR	1000000.00	5000000.00
Comments:	Contract for the Idaho Education Network (IEN) per State of Idaho RFP 2160 f schools, agencies, institutions, and departments and eligible political subdividence by Idaho Code, Saction 67-2327. The Division of Purchasing or the re individual releases (delivery or purchase orders) against this Contract on an with the IEN strategic Implementation plan.  The Contract TERM is for a period of five (5) years commencing January 28, 2 the option to renew for three (3) additional five (5) year periods.  Contract Title:	isions or g quisitionin as needed 2009 endir 2009 endir cannot be rders, requ of the Cont ad), CONS	RING AGENC guaranteed uirements, o tract.	es as il issue cordance 7, 2014, with The actual r tasks given E STATE OF
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	$\Delta$	By: MAR	KLITTLE	109
		/	<del>//-</del>	

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Q.,

Bill To: State of Idaho Various Agencies Various State Agencies located throughout Idaho

DELIVER TO: State of klaho Various Agencies

Address 2 Various, ID 83701

Various State Agencies located throughout idaho

Mark.Little@adm.idaho.gov

Address 2 Various, ID 83701



### State of Idaho Various Agencies

Statewide Blanket Purchase Order

THIS HUNGER HUST APPEAR
ON ALL DOCUMENTS

Statewide Blanket Purchase Order 8BPO1309

Date: Wed Jan 28, 2009

F.O.B: Deatination

Terms: N 30

**VENDOR:** 

EDUCATION NETWORKS OF AMERICA 1101 McGavock St Nashville, TH 37203 Attn: Vice President gnelson@una.com Phone: 703-727-0866

gnelson@ena.com Phone: 703-727-0866 Fax: 615-312-6099 Account Number: P00000074671 Start of Service Wed Jan 28, 2009 Date

Mon Jan 27, 2014

End of Service Date:

> RFQ#: RFP02166 DOC#: PREQ15758

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File Attached: C IEN\_Buders\_Conference.doc

C IEN RFP 29

Dec\_08\_Changes\_and\_or\_Updates.docx

- C IEN\_Bidders\_conf\_QA\_29 Dec\_08.docx
- APPENDIX\_FandG\_to\_RFP02160.docx
- ☐ RFP\_IEN\_Briefing\_29\_Dec\_08.pptx
- C AMENDMENT4\_RFP02160.doc
- C RFP02180\_WITH\_APPEN\_A.doc
- C RFP02160 APPEN C THRU E.doc

Buyer: MARK LITTLE 208-332-1611

Item No	Description	Quantity UOM	Unit Price	EXTENSION			
000	BLANKET PURCHASE AGREEMENT (line item particulars follow)	1 lot		5000000.00			
	Total:			5000000.00			
Blanket Comments:	Contract for the Idaho Education Network (IEN) for the benefit of the State of Idaho eligible schools, political subdivisions, or public agencies as defined by Idaho Code, Section 67-2327. The Division of Purchasing or the requisitioning agency wilk issue individual releases (delivery or purchase orders) against this Contract on an as needed basis in accordance with the IEN strategic implementation plan, for a period of five (5) year commencing January 28, 2009 ending January 27, 2014, with the option to renew for three (3) additional five (5) year periods.						
Item No	Description Qu	antity	Unit	EXTENSION			

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001	COMMUNICATIONS AND RELATED SERVICESIdaho Education Network related services  (915-51) (nt)	8 YEAR	1000000.00	5000000.00
General Comments:	NOTICE OF STATEWIDE CONTRACT (SBPO) AWARD Contract for the Idaho Education Network (IEN) per State of Idaho RFP 2160 schools, agencies, institutions, and departments and eligible political subdidefined by Idaho Code, Section 67-2327. The Division of Purchasing or the I individual releases (delivery or purchase orders) ageinst this Contract on at with the IEN strategic implementation plan.  The Contract TERM is for a period of five (5) years commencing January 28, the option to renew for three (3) additional five (6) year periods.  Contract Title: Idaho Education Network Contract Usage Type: Mandatory Use (executive agencies) Public Agency Clause: Yes Contract Administration: Gregory Lindstrom—Phone Number: 208-332-1609  E-Mail: gregory.lindstrom@adm.idaho.gov  Contractor's Primery Contact —Attn: David M. Pierce —Address: 1101 McGavock Street —City, State, Zip: Mashville, TN 37203 Phone Number: 868-615-1101 Facsimile: 615-312-6009  E-Mail: dpierce@ena.com  CONTRACTOR: Ship to the FOB DESTINATION point and BILL DIRECTLY to MAIL INVOICES TO THE DIVISION OF PURCHASING. Notating the Contract invoices/statement will facilitate the efficient processing of payment.  The dollar amount listed in the contract extension pricing is an estimate and collar amount of the contract may be more or less depending on the actual to the Contractor by the State or may be dependent upon the specific terms  THIS STATEWIDE BLANKET PURCHASE ORDER, (including any files attact IDAHO'S ACCEPTANCE OF YOUR SIGNED OFFER (including any electronic bid submission), WHICH SUBMISSION IS INCORPIAS THOUGH SET FORTH IN FULL  In the event of any inconsistency, unless otherwise provided herein, such ingiving precedence in the following order:  1. This Statewide Blanket Purchase Order document.  2. The state of Idaho's original solicitation document RFP02160.  3. The Education Networks of America's signed offer.	visions or particular the ORDE Award Num I cannot be orders, requorate Consed), CONS	RING AGENC  RING AGENC  RING AGENC  Busis in acc  RING AGENC  RI	es as il issue ordance 7, 2014, with The actual tasks given ESTATE OF
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Bill To: State of Ideho Various Agencies Verious State Agencies located throughout Ideho

Address 2

Various, ID 83701

State of Idaho THE S MEMBER APPER APPEAR
ON ALL DECEMBERS

Statewide Stanket Perchase Order CHANGE ORDER - 01 Statewick Blanket Purchase Order SSP01308 - 01

DELIVER TO: State of Idaho Various Agencies Various State Agencies

Various State Agencies located throughout idaho

Address 2 Various, ID 93701 Mark Little @adm.idsho.gev Dute: Thu Feb 26 2009

F.O.B: Destination Terms: N30

Start of Service Date Wed Jan 28, 2009

VIDIOOR:

CWEST COMMUNICATIONS CORPORATION 1801 California Street Denver, CO 80282 Altric Director-Business Deve Ingment Emailed To: richard, fernandex@qwest.com Phone: 800 839-7788

End of Service Date: Mon Jen 27, 2014

RFQ#: RFP02160 DOC#: PREQ15608

Fax: 363 972-5591 Account Number: P00000057075

File Attached:

- EN\_Boders\_Conference.doc
- EN\_RFP\_29 Dec\_66\_Changes\_and\_or\_Updates\_docx
- P IEN\_Bidders\_conf\_QA\_39 Dec\_68.docx
- D. APPENDIX\_FandG\_to\_RFP02160.docx
- C RFP\_IEN\_Briefing\_29\_Dec\_08.pptx
- AMENDMENT4\_RFP02186.doc
- REPOZIGO\_WITH\_APPEN\_Adoc
- C RFP02160 APPEN C THRU E.doc
- O AMENDMENT1 to SBPOR1308 Qwest.doc

Buyer: MARK LITTLE 208-332-1611

Item No	Description	Quentity UOM	Unit Price	EXTENSION				
999	BLANKET PURCHASE AGREEMENT ( line flem particulars follow )	1 lot .		00.000003				
	Total			\$000000.0				
Digrater Common	Contract for the Island Education Network (IEN) for the benefit of the State of Island eligible schools, is defined by Island Gode, Section 67-3377. The Division of Purchasing or the requisitiening agency purchase orders) against this Contract on an as needed basis per the IEN Strategic Implementation I continuous January 29, 2004, with the option to renew for three (8) addition	will leave ! Men for a p	eriat le Baire Levil le Baire	sees (delivery ( 5) year				
ttem No	Description	Quantity UOM	Unit Price	EXTENSION				
1	COMMUNICATIONS AND RELATED SERVICESHane Education Network related services (816-61) (st)	6 YEAR	1000000.04	5400000.00				
Gesteral Commentar	***SBPO1388 IS MODEFIED PER THE ATTACHED DOCUMENT TITLED "AMENDMENT) to SBPO81398 Qurest.doc". NO OTHER CHANGES MOTED.							

Date 9/10/10
Name Little
M&M Court Reporting

2/26/2009 10:56 AM

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	1. This Statewick Blacket Purchase Order document.
	in the event of any incommission, unless otherwise provided herein, such incommissions shall be resolved by giving precedence in the dollowise order:
ļ	(Including any electronic hid automission), WHICH SUBMISSION IS INCORPORATED MERSIN BY REFERENCE AS THOUGH SET FORTH IN FIELD.
	YOUR SIGNED OFFER
1	THIS STATEWINE BLANKET PURCHASE ORDER, (Including any Miss staches), CONSTITUTES THE STATE OF IDAHO'S ACCEPTANCE OF
	mey be more or less depending on the actual orders, requirements, or tasks given to the Contractor by the State or may be dependent apprehies specific terms of the Contract.
1	The dellar amount listed in the contract extension pricing to an estimate and connot be guaranteed. The actual dellar amount of the contract
-	payment.
	CONTRACTOR: Ship to the FOB DESTINATION point and SILL DIRECTLY to the ORDERING AGENCY, DO NOT MAIL INVOICES TO THE DIVISION OF PURCHASING. Notating the Contract Avant Number on any invoices/statement will facilitate the efficient processing of
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]	Fessivalist
1	Phone Mumber:
1	
1	Attraction Clint Borry Address:
ĺ	Contractor's Primary Contact
1	E-Mail:grapd ry.lindstrom@adm.ldaho.gov
	-Phone Number:309-332-1609
į	Prumo Agency Casses:
	Public Agency Classe:Yes

Award IF2000001305 has been scheduled for release on: Fri Feb 27 00:00:00 GMT-0600 (PST) 2008.

Award Hotifications are saledyled for release on: Fri Feb 27 00:94:00 GMT-6800 (PST) 2009.

d) 1998-2609 SiconerMet, Inc. All Rights Reserved. - po001 - The, 26 Feb 2010 metidate

#### IDAHO DIVISION OF PURCHASING AMENDMENT ONE (1) TO STATE OF IDAHO EDUCATION NETWORK (IEN) SBP001308 February 26, 2009

THIS AMENDMENT NO. 01 (this "Amendment") by and between the State of Idaho ("State") and Qwest Communications Company, LLC ("Qwest") hereby amends the contract for the Idaho Education Network ("IEN"), Qwest Statewide Blanket Purchase Order: SBPO1308 (the "Agreement").

It is the intent of the State of Idaho to amend SBPO01308 in order to clarify the roles and responsibilities of the parties to the Agreement.

- Qwest will be the general contractor for all IEN technical network services. The Service
  Provider listed on the State's Federal E-rate Form 471, Education Networks of America
  (ENA), is required to work with the dedicated Qwest Account Team for ordering, and
  provisioning of, on-going maintenance, operations and billing for all IEN sites.
- Qwest, in coordination with ENA, will deliver IEN technical network services using its existing core MPLS network and backbone services.
- 3. Qwest, in coordination with ENA, will procure and provision all local access connections and routing equipment making reasonable efforts to ensure the most cost efficient and reliable network access throughout the State to include leveraging of public safety network assets wherever economically and technically feasible. Qwest and ENA will use existing and future agreements and partnerships to deliver the necessary bandwidth to each IEN site and to connect to the core IEN MPLS platform.
- 4. Qwest, in coordination with ENA, will provide all internet services to IEN users.
- 5. Qwest will assign a project manager to work with the State of Idaho and ENA to define the project Scope of Work. The Qwest project manager, working with the ENA project manager, will develop a detailed Joint Project Plan that will outline project tasks, assign responsibilities, Identify risks, and define the schedule for project implementation. This Joint Project Plan will be presented to the State of Idaho IEN program manager for final review and approval. Implementation of this Joint Project Plan is subject to the review and approval from the State.
- 6. Qwest and ENA will use a combination of Qwest and ENA Network Operations Center (NOC) assets for the Idaho Education Network including but not limited to:
  - a. Establishment of a physical layer (transport) NOC by Qwest;
  - b. Establishment of an IP NOC by Qwest; and
  - c. Establishment of a customer facing Network Operations Center (NOC) by ENA.

All three NOCs will be staffed twenty-four hours a day, seven days a week, three hundred sixty five days of the year. ENA's NOC will serve as the one-stop IEN customer facing service and support center; Qwest transport NOC will monitor both the physical and logical layer for outages and Qwest's IP NOC will manage the MPLS services via existing management platforms.

#### IDAHO DIVISION OF PURCHASING AMENDMENT ONE (1) TO STATE OF IDAHO EDUCATION NETWORK (IEN) SBP001308 February 26, 2009

- Qwest will work with ENA and with the State of Idaho to supply the information necessary for the State and ENA to file Federal E-rate forms accurately and in a timely manner.
- The State considers Qwest and ENA equal partners in the IEN project as demonstrated in the Intent to Award Letter dated January 20, 2009 and the subsequent SBPO01308 dated January 28, 2009.
- 9. The State may request copies of all itemized billing from Qwest, as the service provider associated with the delivery of IEN services on a monthly, annual, or on-going basis at any time during the term of the agreement. Qwest must provide this information within 30 days of the State's request for itemized billing information.

Bill To: State of Idaho Various Agencies water or roano Various Ag Various State Agencies located throughout Idahe

Address 2 Various, ID 83791

State of Idaho

Statewide Blanket Purchose Order CHANGE ORDER - 01

THIS HUMBER WHEN APPEAR
ON M.L. EXCEMPENTS

Statewide Blanket Purchase Order SBPQ1309 - 91

DELIVER TO: State of Idaho Various Agencies

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Date: The Feb 28 2809

F.O.B: Destination Terms: N 30

VEHOOR:

EDUCATION NETWORKS OF AMERICA 1101 McGarock St

TYOT Micravice St Manhville, TN 37203 Attn: Vice President Emailed To: grielson@ena.com Phone: 703-727-8866 Fax: 616-312-5099 Account Number: P00600074671 Start of Service Date Wed Jan 28, 2609

End of Service Date: Mon Jan 27, 2014

RFQ#: RFP#2196 DOC#: PREQ16758

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Contractor's Primary Contact		
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-Address:		
City, State, Zipr Hashville, TN 37283		
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#### DEPARTMENT OF ADMINISTRATION, OFFICE OF THE OCIO, AMENDMENT ONE (1) TO STATE OF IDAHO EDUCATION NETWORK (IEN) SBP001309 February 26, 2009

THIS AMENDMENT NO. 01 (this "Amendment") by and between the State of Idaho ("State") and Education Networks of America, Inc./ENA Services, LLC hereby amends the contract for the Idaho Education Network ("IEN"), ENA Statewide Blanket Purchase Order: SBPO1309 (the "Agreement").

It is the intent of the State of Idaho to amend SBP001309 in order to clarify the roles and responsibilities of the parties to the Agreement.

- ENA will be the Service Provider listed on the State's Federal E-rate Form 471. Qwest Communications Company LLC ("Qwest") is required to work with the ENA Account Team for ordering, and provisioning of, on-going maintenance, operations and billing for all IEN sites.
- ENA will coordinate overall delivery of all IEN network services and support.
- 3. ENA, in coordination with Qwest, will procure, provision, and provide all local access connections and routing equipment making reasonable efforts to ensure the most cost efficient and reliable network access throughout the State to include leveraging of public safety network assets wherever economically and technically feasible. ENA and Qwest will use existing and future agreements and partnerships to deliver the necessary bandwidth to each IEN site and to connect to the core IEN MPLS platform.
- 4. ENA, in coordination with Qwest, will provide all Video Teleconferencing (VTC) installation, Operations, Monitoring, and Scheduling support for the IEN network.
- 5. ENA will assign a project manager to work with the State of Idaho and Qwest to define the project Scope of Work. The ENA project manager, working with the Qwest project manager, will develop a detailed Joint Project Plan that will outline project tasks, assign responsibilities, identify risks, and define the schedule for project implementation. This Joint Project Plan will be presented to the State of Idaho IEN program manager for final review and approval. Implementation of this Joint Project Plan is subject to the review and approval from the State.
- 6. ENA and Qwest will use a combination of ENA and Qwest Network Operations Center (NOC) assets for the Idaho Education Network including, but not limited to:
  - a. Establishment of a customer facing Network Operations Center (NOC) by ENA:
  - b. Establishment of a physical layer (transport) NOC by Qwest; and
  - c. Establishment of an IP NOC by Qwest.

All three NOCs will be staffed twenty-four hours a day, seven days a week, three hundred sixty five days of the year. ENA's NOC will serve as the one-stop IEN customer facing service and support center; Qwest transport NOC will monitor both the physical and logical layer for outages and Qwest's IP NOC will manage the MPLS services via existing management platforms.

#### DEPARTMENT OF ADMINISTRATION, OFFICE OF THE OCIO, AMENDMENT ONE (1) TO STATE OF IDAHO EDUCATION NETWORK (IEN) SBP001309 February 26, 2009

- 7. ENA will work directly with the State of Idaho and Qwest to supply the Information necessary for the State to file Federal E-rate forms accurately and in a timely manner. ENA will also assist the State in providing E-Rate training for State Educational Support entities, Public School Districts and Libraries.
- The State considers ENA and Qwest as equal partners in the IEN project as demonstrated in the Intent to Award Letter dated January 20, 2009 and the subsequent SBP001309 dated January 28, 2009.
- 9. The State may request copies of all itemized billing from ENA, as the service provider associated with the delivery of IEN services on a monthly, annual or on-going basis at any time during the term of the agreement. ENA must provide this information within 30 days of the State's request for itemized billing information.



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J. DAVID TELL STORY

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Attorneys for Defendant ENA Services, LLC, a Division of Education Networks of America, Inc.

### IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho Limited Liability Company,

Plaintiff,

VS.

**IDAHO DEPARTMENT OF** ADMINISTRATION; J. MICHAEL "MIKE" GWARTNEY, in his personal and official capacity as Director and Chief Information Officer of the Idaho Department of Administration; JACK G. "GREG" ZICKAU, in his personal official capacity of Chief Technology Officer and Administrator of the Office of the CIO; ENA SERVICES, LLC, a Division of EDUCAT ION NETWORKS OF AMERICA, INC. a Delaware corporation; OWEST COMMUNICATIONS COMPANY, LLC, a Delaware limited liability company,

Defendants.

Case No. CV OC 0923757

**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY** JUDGMENT

COMES NOW defendant ENA Services, LLC, a division of Education Networks of America, Inc. ("ENA") by and through its counsel of record, Hall, Farley, Oberrecht & Blanton, P.A., and Bradley Arant Boult Cummings, LLP, and hereby submits its Memorandum in Support of Motion for Summary Judgment.

I.

#### INTRODUCTION

Syringa Networks, LLC ("Syringa") brought suit against ENA for breach of contract, or more specifically, breach of the Teaming Agreement. ENA now seeks summary dismissal of all of the claims against it on four, alternate grounds: (A) the Teaming Agreement was an unenforceable agreement to agree; (B) the Teaming Agreement terminated by its own terms; (C) even if the Teaming Agreement were an enforceable contract, performance never became due because of the failure of a condition precedent; and (D) performance was excused because the commercial purpose of the Teaming Agreement was frustrated by the State's award of the Idaho Education Network.

The claims against ENA are based upon a very different and inconsistent premise than the claims against the other defendants. In addition to the claim brought against ENA, Syringa also filed suit against the Department of Administration ("DOA" or "State") and Qwest Communications Company, LLC ("Qwest") on theories that they conspired to deprive the Idaho Educational Network ("IEN") Alliance (comprised of ENA and Syringa) of the award of the statewide contract for the Idaho Education Network. Despite Syringa's assertions that the State

<sup>&</sup>lt;sup>1</sup> The IEN project was awarded after the State sought Requests for Proposal 02160, or as referred to throughout this memorandum, the "RFP."

and Qwest conspired against the IEN Alliance to direct the connectivity<sup>2</sup> portion of the IEN project to Qwest, Syringa sued ENA on the theory that "ENA had and continues to have an absolute duty to perform its obligations" to direct connectivity work on the IEN project to Syringa. *Complaint* ¶¶11-12.

The undisputed facts establish that ENA lacks the power to direct connectivity work to Syringa. Accordingly, ENA brings the present motion because no genuine issue of material fact exists to support Syringa's claim that the Teaming Agreement is an enforceable contract or, if the Teaming Agreement is an enforceable contract, that ENA has the duty, authority, or power to perform the putative obligations of the Teaming Agreement.

II.

### STATEMENT OF UNDISPUTED FACTS<sup>3</sup>

### A. Background of the Idaho Education Network

"The IEN was meant to be 'the coordinated, statewide telecommunications distribution system for distance learning for each public school[.]" Substitute Memorandum Decision and Order, filed July 23, 2010 ("Substitute Order"), p. 2. In December of 2008, the Department of Administration issued a Request for Proposals 02160 for the IEN project (the "RFP"). Id. The RFP sought a unified solution with two components, an E-Rate component and a connectivity component. Lowe Depo., Nov. 5, 2010, p. 63:4-11.

<sup>&</sup>lt;sup>2</sup> For the purposes of this motion, the movant will use "connectivity" to refer to both "backbone," which is the cable that provides internet connectivity throughout the state, and "last mile connectivity" by which schools connect to the backbone.

<sup>&</sup>lt;sup>3</sup> The factual background of this case has been extensively briefed by the parties. For that reason, ENA will only briefly address the facts relevant to the present motion.

<sup>&</sup>lt;sup>4</sup> All depositions referenced in this motion are attached as Exhibits A-G to the Affidavit of Leslie M. Hayes in Support of ENA Services, LLC's Motion for Summary Judgment filed contemporaneously with the present motion.

### 1. The RFP requested an "end-to-end" solution.

As stated in the RFP, the State was seeking "the best and most cost effective "total end-to-end service support solution" and supporting network architecture[.]" Affidavit of Leslie M. Hayes in support of ENA Services, LLC's Motion for Summary Judgment ("Hayes Aff."), Exh, J, RFP ¶ 3.2. In soliciting a response to the RFP that provided an "end-to-end" solution, the State defined "project" to include both E-Rate work and the technical or network architecture required for the connectivity services that physically connected the schools of the IEN. Hayes Aff., Exh. J, RFP ¶ 2.0. Accordingly, the IEN Alliance proposal presented a single contractor, statewide, "end-to-end" solution that married ENA's strengths with the E-Rate services to Sryinga's abilities to provide the connectivity services required by the IEN. Lowe Depo., Nov. 5, 2010, p. 63:4-6 ("the proposal asked for an end-to-end solution. It did not bifurcate those two [the E-Rate and the connectivity] into two different solutions[.]").

### 2. The RFP reserved the right for the State to make an award to "multiple parties in whole or in part."

In its definition of "award," the RFP provided that "(t)he State reserves the right to reject any or all proposals, wholly or in part, or to award [the IEN project] to multiple bidders in whole or in part." Hayes Aff., Exh. J, RFP ¶ 2.0. By the express terms of Section 5.3 of the RFP, the State reserved the right to split the award. Hayes Aff., Exh. J, RFP ¶ 5.3. "Any resulting contract from this solicitation will be awarded to up to four providers." Id. As the RFP anticipated that the State could accept any portion of a bidder's or multiple bidders' proposal(s) "in whole or in part," those responding to the RFP could not know what, if any, portion of the E-Rate and connectivity services proposed in their response ultimately might be awarded them by the State.

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 4

<sup>&</sup>lt;sup>5</sup> For the purposes of this matter, "E-Rate Services" shall include managed Internet Access services and responsibility for overall service to E-Rate eligible sites integrating connectivity services, customer premise equipment, network management and customer support services pursuant to the State's award.

3. The RFP expressly contemplated that the responding party could not know at the time of the award the scope or pricing of the services to be provided.

Under the methodology established by the RFP, the parties responding to the RFP could not know the timing, scope, and pricing of the services required of an individual school until after the State made an award of the IEN contract pursuant to a purchase order. As expressly stated in the RFP, the purpose of the RFP was to identify the vendor(s) who could build the "business model that they will initiate to service the State of Idaho IEN network." *Hayes Aff.*, Exh. J, RFP ¶ 3.2. For the purpose of comparing the pricing offered by the bidders, the State of Idaho provided certain assumptions that were common to all bidders. *Zickau Depo.*, Nov. 11, 2010, p.190:5-191:5. These standard assumptions allowed comparison of the bidders' proposals, while the RFP expressly reserved the right to tailor the actual services that ultimately were ordered to the schools' needs. *Hayes Aff.*, Exh. J, RFP ¶ 10.0; *Zickau Depo.*, Nov. 11, 2010, p.190:5-191:5.

The State shall not be required to purchase any specific service or minimum quantities of network services. The quantities provided in this RFP as example are for the sole purpose of assisting the Bidders in preparation of their proposals and the State to evaluate the feasibility of the proposed network solutions.

Hayes Aff., Exh. J, RFP ¶ 10.0; see also, Zickau Depo., November 11, 2010, p.190:5-191:5. No party responding to the RFP could predict the requirements of the ultimate contract because the State expressly reserved the right to split the award, and the State expressly provided it was not required to purchase any specific service or quantity of services even after making an award.

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<sup>&</sup>lt;sup>6</sup> The intent of the RFP process is to seek proposals from industry experts for achieving the purpose and goals of the IEN as established by the legislature. Rather than defining a specific technology, architecture or network design, the Department of Administration is providing broad guidelines only and relying on industry expertise to design and propose a network capable of meeting these requirements. *Hayes Aff.*, Exh. J, RFP ¶ 3.2.

### B. Background of the IEN Alliance

"Syringa and ENA entered into a 'Teaming Agreement' for the purpose of responding to the IEN RFP." *Substitute Order*, p. 3. Neither Syringa nor ENA had the ability, standing alone, to present a single contractor, "end-to-end" solution in response to the RFP. *Lowe Depo.*, Nov. 5, 2010, p. 60:1-17. That is because ENA's core competency is obtaining E-Rate funding and providing logistical coordination of content for schools, while Syringa's core competency is providing connectivity services. *Lowe Depo.*, Nov. 5, 2010, p. 61:9-21. In response to the RFP, Syringa and ENA joined together to prepare and submit a proposal as the IEN Alliance with the goal of obtaining the whole of the IEN contract. *Lowe Depo.*, Nov. 5, 2010, p. 60:9-17.

### 1. The Teaming Agreement had a limited purpose.

The purpose of the Teaming Agreement was for IEN Alliance to respond to the IEN RFP in an effort to win the right to provide to the State of Idaho a statewide, "end-to-end" solution. Hayes Aff., Exh. I, Teaming Agreement; Lowe Depo, Nov. 5, 2010, 60:1-17. To do so, the IEN Alliance married ENA's and Syringa's core competencies. Lowe Depo, Nov. 5, 2010, 60:1-17. As Syringa has repeatedly emphasized in pleadings and in testimony, the limited purpose of the Teaming Agreement was for the IEN Alliance to obtain the entire, statewide contract to provide both components of the IEN, E-Rate services and connectivity services, statewide. Lowe Aff., Feb. 25, 2010, ¶¶8-12, 15; Complaint, ¶¶24-29, 110; Lowe Depo, Nov. 5, 2010, 60:1-17; See also Collie Depo., Sept. 29, 2010, p. 67:16-68:3.

### 2. Under the Teaming Agreement, Syringa's role in the IEN would have been to provide connectivity services.

<sup>&</sup>lt;sup>7</sup> "Proposal" is defined in the Teaming Agreement at paragraph 1(d) and "means the written response to the Project." "Project" is also defined in the RFP at paragraph 1(c) to mean "that certain request for proposal, request for quotation, invitation for bid or similar invitation for (i) provision of products or services with the State of Idaho Request for Proposal #RFP02160 to construct the Idaho Education Network ("IEN") and (ii) services provided under the Prime Contract.

Within the Teaming Agreement, there was a clear division of responsibility between ENA and Syringa. *Hayes Aff.*, Exh. I, Teaming Agreement; *Lowe Depo.*, Nov. 5, 2010, pp. 60:1-61:21; *See generally Collie Depo.*, Sept. 29, 2010, p. 69:12-19. Syringa was to provide the connectivity services or the technical or network architecture that physically connected the schools statewide. *Hayes Aff.*, Exh. I, Teaming Agreement. As described in ¶3(b) of the Teaming Agreement:

Syringa Responsibilities. . . . Syringa shall be responsible for (i) providing the statewide backbone for the services, (ii) providing and operating a network operations center for the backbone, (iii) providing for co-location of core network equipment, (iv) procuring and owning all customer premises equipment not provided by ENA, (v) coordinating field service for non-school or library sites, (vi) managing the customer relationship for non-school or library sites, and (vii) procuring, managing and provisioning last mile circuits<sup>8</sup> for non-school or library sites.

The Teaming Agreement clearly defines Syringa's purpose in participating in the IEN Alliance as becoming the sole contractor to provide the connectivity services required by the IEN statewide.

Syringa's purpose in joining the IEN Alliance was to become the single "carrier of record" to provide connectivity services statewide to the IEN. *Lowe Depo.*, Nov. 5, 2010, p. 62:17-65:5. The "carrier of record" is the single-point of contact for the contract. *Lowe Depo.*, Nov. 5, 2010, p. 33:19-35:5. Under the proposal of the IEN Alliance, ENA would have been the "carrier of record" as the State's single point of contact for the entire IEN. *Lowe Depo.*, Nov. 5, 2010, p. 64:3-8. The goal of the IEN Alliance was that Syringa would be the single point of

**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT -7** 

ENA was free to seek proposals from other providers. *Id*.

<sup>&</sup>lt;sup>8</sup> For the purposes of this motion, the distinction between "backbone" and "last mile connectivity" is irrelevant as ENA lacks the power to direct work for either aspect the connectivity services required by the IEN. The Teaming Agreement distinguished "connectivity" of the backbone from the "last mile circuits" that connect an individual school or other state facility to the backbone. *Hayes Aff.*, Exh. I. It provided for a competitive bidding process for the "last mile circuits." *Id.*. The Teaming Agreement did not ensure that Syringa would provide all last mile circuits, but instead it provided that ENA would notify Syringa of all "last mile circuits" needed for the project and then, grant Syringa the first opportunity to provide a cost estimate. *Id.* After Syringa's cost estimate was received,

contact for the provision of connectivity services to the IEN through ENA. *Lowe Depo.*, Aug. 5, 2010, p. 94:25-95:4; *see also Lowe Depo.*, Nov. 5, 2010, p. 65:2-5.

#### C. The State awarded the IEN to Owest and ENA

1. In its letter of intent the State awarded the IEN contract to ENA and Qwest rather than making an award to a single contractor to provide a statewide, end-to-end solution.

On January 20, 2009, the State issued a letter of intent to award the IEN to ENA and Qwest. Substitute Order, p. 5. The State did not issue a letter of intent to Syringa or the IEN Alliance. Substitute Order, p. 5. The letter of intent for the award of the IEN was addressed to "Education Networks of America, Inc./ENA Services, LLC." Hayes Aff., Exh. K. It provided in relevant part that "this as a Letter of Intent to award [the IEN] to Qwest Communications Company LLC and Education Networks of America, Inc./ENA Services, LLC for being awarded the most points." Hayes Aff., Exh. K. In effect, the letter of intent did not recognize the IEN Alliance.

2. In issuing two awards the State split the award between "multiple bidders in whole or in part[]" as anticipated by the definition of "award" in the RFP.

On January 28, 2009, the State issued two, identical Statewide Blanket Purchase Orders ("SBPO") with identical terms: one to ENA (SBPO 1309) and the other to Qwest (SBPO 1308). Hayes Aff., Exhs. L and M. In effect, the State rejected the single contractor, statewide solution proposed by the IEN Alliance in which Syringa would be the "carrier of record" for connectivity services, and split the whole award between ENA and Qwest. Substitute Opinion, p. 6. The State intended for ENA and Qwest to work together, communicate, and utilize their individual strengths and expertise to achieve the goals of the IEN. Gwartney Depo., Sept. 2, 2010, p. 156:14-158:7.

On February 26, 2009, the State issued amendments to the statewide blanket purchase order (the "Amendments"), stating "[i]t is the intent of the State of Idaho to amend SBPO1308 [SBPO1309] to clarify the roles and responsibilities of the parties to the Agreement." *Substitute Opinion*, p. 6. The Amendments stated that "[t]he State considers Qwest and ENA equal partners in the IEN project as demonstrated in the Intent to Award Letter dated January 20, 2009 and the subsequent SBPO1308 [SBPO 1309] dated January 28, 2009." *Substitute Order*, p. 6. In the Amendments, the State made an award to multiple parties, ENA and Qwest, and it made an award "in part" by segregating E-Rate and connectivity services, and awarding Qwest control of the connectivity services.

As explained by Greg Zickau, the Chief Technology Officer with the State of Idaho, the SBPO's gave the State the authority to purchase all, some or none of the services offered in the parties RFP's. *Zickau Depo.*, Nov. 11, 2010, p. 190:5-191:5. Once the SBPO's were issued it was up to the State to determine what best met its needs, including the determination of whether Qwest or ENA would be the E-Rate provider. *Zickau Depo.*, Sept. 20, 2010, pp. 99:5-100:22; 53:2-14. The Amendments served the purpose of clarifying the parties' roles and specifying which services the State would be purchasing from each. *Zickau Depo.*, Sept. 20, 2010, 66:10-18.

3. The Amendments awarded to Qwest all of the connectivity services under the IEN and thereby rejected the IEN Alliance proposal that Syringa would provide those same services.

The February 26 Amendments to the SBPO clearly state that the State desired Qwest to control the connectivity services required by the IEN.

Qwest will be the general contractor for all IEN technical network services. The Service Provider listed on the State's Federal E-Rate Form 471, Education Networks of America (ENA) is required to work with the dedicated Qwest Account Team for ordering, provisioning of, ongoing maintenance, operations and billings for all IEN sites.

Hayes Aff., Exhs. N and O. In contrast to the other provisions of the Amendment that were conditioned with "Qwest, in coordination with ENA," paragraph 1 of the Amendment required ENA to work with Qwest and thereby vested in Qwest control of the *entire* technical network and connectivity services. Hayes Aff., Exhs. N and O (emphasis added).

The effect of the Amendment was to assign to Qwest the "entire scope of work assigned to Syringa in the Teaming Agreement and the IEN Alliance Proposal." *Substitute Order*, p. 6. As plainly admitted in Mr. Lowe's affidavit on behalf of Syringa, "the services for which Syringa was responsible under the Teaming Agreement and the services for which Qwest is responsible under the Amended SBPO's are the same services." *Lowe Aff.*, February 25, 2010, ¶ 27. "The effect of the Amendments was to eliminate Syringa from participation in the IEN RFP project." *Substitute Order*, p. 6. Syringa was prevented from participating in IEN work pursuant to the Amendments. *Substitute Order*, p. 15. With the Amendments of February 26, 2009, the State awarded Owest the entire connectivity services for the IEN to the exclusion of Syringa.

#### III.

#### STANDARD OF REVIEW

Summary judgment is proper if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Marchand v. JEM Sportswear, Inc.*, 143 Idaho 458, 147 P.3d 90 (2006). "When a motion for summary judgment has been properly supported with evidence indicating the absence of material factual issues, the opposing party's case must not rest on mere speculation, and a mere scintilla of evidence is not enough to create a genuine issue of fact." *John W. Brown Props. v. Blaine County*, 138 Idaho 171, 59 P.3d 976, 979 (2002). If the evidence reveals no disputed issues of material fact, it is well settled that summary judgment should be granted. *Smith v. Meridian Joint School Dist. No. 2*, 128 Idaho

714, 718-19, 918 P.2d 583, 587-88 (1996). It is equally well settled that the moving party is entitled to judgment as a matter of law when the non-moving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial." *Badell v. Beeks*, 115 Idaho 101, 765 P.2d 126, 127 (1988).

#### IV.

#### ARGUMENT

### A. The Teaming Agreement is an unenforceable agreement to agree.

Contracts that merely state the parties' intent to contract in the future are unenforceable as agreements to agree. *Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 614, 114 P.3d 974, 984 (2005) (finding a contractual provision that is "tied to agreeable milestones' is merely an agreement to agree in the future on a condition precedent to any obligation to pay"); *Snyder v. Miniver*, 134 Idaho 585, 589, 6 P.3d 835, 839 (2000) (holding that an Earnest Money Agreement for the purchase of real property is merely an agreement to agree).

Agreements to agree are also unenforceable because the "terms are so indefinite that [they] fail[] to show a mutual intent to create an enforceable obligation." *Maroun*, 141 Idaho at 614, 114 P.3d at 984. "It is essential to an enforceable contract that it be sufficiently definite and certain in its terms and requirements so that it can be determined what acts are to be performed and when performance is complete." *Spokane Structures, Inc. v. Equitable Inv., LLC*, 2010 WL 309004, \*5 (Idaho 2009) (quoting *Dale's Service Co., Inc. v. Jones*, 96 Idaho 662, 664, 534 P.2d 1102, 1104 (1975)).

# 1. The Teaming Agreement does not include all the material terms of a binding contract.

The Teaming Agreement lacks the material terms necessary for a final contract, because it lacks terms such as the place, price, and time for performance. Specifically, the Teaming

Agreement did not state how orders would be placed, how and when billing would occur, how each party would get paid, how the money would be divided or how the labor would be divided. *Lowe Depo.*, Aug. 5, 2010, p. 176:22-177:15. It was determined that all of those details would be ironed out during "subsequent negotiations upon winning." *Lowe Depo.*, Aug. 5, 2010, p. 177:19-20.

The RFP expressly reserved the right of the state to split the award; accordingly, no one responding to the RFP could know whether they would be awarded the entire contract for the IEN project. See generally Hayes Aff., Exh. J, RFP ¶ 10.0; see also, Zickau Depo., Nov. 11, 2010, p.190:5-191:5. Although the IEN Alliance proposal included pricing terms, the pricing terms were based solely on assumptions that were provided by the State in the RFP for the purpose of comparing various bidders' responses to the RFP. Id. The RFP directly stated that those assumptions were never intended to specify the actual needs of the schools for the IEN. Hayes Aff., Exh. J, RFP ¶ 3.2. Since those needs could not, and were not, specified until completion of an inventory months after the award, the Teaming Agreement did not include the material terms of a final contract regarding the scope, timing, and cost of the services required by those schools.

Even if the State had accepted the proposal by the IEN Alliance to be the single, statewide contractor for the IEN, there were three steps required before the IEN Alliance could know the actual pricing and logistics of the connectivity services for the purpose of entering into a final agreement. First, the State had to conduct an inventory of each school's needs, which was a function of the size of the school and existing connectivity. *See generally Kraft Depo.*, Nov. 15, 2010, p. 86:9-87:3. Second, the State had to decide when to connect each school, as the RFP anticipated phasing in the IEN over time and some schools already had contracts in place. *Kraft Depo.*, Nov. 15, 2010, p. 67:11-20 (discussing ENA's preparation of diagrams that reflect pre-

IEN architecture, proposed architecture, and the architecture which exists once the school is approved and connected); *Hayes Aff.*, Exh. J; *Zickau Depo.*, Nov. 11, 2010, pp. 226:25-227:23. Third, as expressly anticipated by the Teaming Agreement, the parties were to bid out the "last mile connectivity" to each school to assure the state the lowest price for physically connecting schools in remote locations to the Internet. *Kraft Depo.*, Nov. 15, 2010, p. 122:13-123:13 (stating that around August 2009 "high cost locations" were identifiable and further cost breakdowns of the IEN were requested); *Hayes Aff.*, Exh. I, Teaming Agreement; *Lowe Depo.*, Aug. 5, 2010, 174:21-175:7. Even if the IEN Alliance had become the carrier of record for the IEN project, ENA and Syringa could not have priced the cost of connectivity before completing these three steps.

The Teaming Agreement was an unenforceable agreement to agree because it lacked the material terms of a final contract for the IEN. ENA and Syringa accomplished the purpose of the Teaming Agreement once they submitted the proposal. Even if the State had accepted the IEN Alliance proposal, the Teaming Agreement did not contain the material terms of the final agreement between them to provide the E-Rate and connectivity services required by the IEN.

### 2. The Teaming Agreement does not show a mutual intent to create an enforceable obligation.

Similarly, the Teaming Agreement did not manifest a mutual intent to create an enforceable obligation between ENA and Syringa. The Teaming Agreement is premised on "if" and "when" and merely contemplated a future contractual relationship. *Hayes Aff.*, Exh. I, Teaming Agreement ¶¶ 2(a) ("If ENA or Syringa are awarded the Prime Contract"). Had Syringa and ENA intended to create an enforceable obligation, they would have stated that intent within the four corners of the contract. Any final agreement between ENA and Syringa was contingent on many factors, including the award of the entire IEN project. There is no language in the Teaming Agreement that unequivocally states a present intent to create a mutually

enforceable obligation regarding the services that might ultimately be determined to be required by the IEN.

# 3. The Teaming Agreement expressly contemplated the execution of a subsequent agreement.

Indeed, the Teaming Agreement expressly contemplates the execution of a future agreement between ENA and Syringa.

"If ENA or Syringa are awarded the Prime Contract, ENA and Syringa shall enter into an agreement pursuant to which Syringa shall provide connectivity services statewide to ENA.

. . .

If ENA wins the Prime Contract as provided in Section 2(a) above, the parties shall execute a partnership agreement as specified in this agreement that will also include any required, flow-down provisions or other appropriate terms similar to those set forth in the Prime Contract."

Hayes Aff., Exh. I, Teaming Agreement ¶¶ 2(a), 3(a) (emphasis added). There were three primary reasons why the Teaming Agreement expressly acknowledged that a subsequent contract was required if the IEN Alliance won the IEN project. First, ENA and Syringa could not know if they would succeed in obtaining the entire IEN because the RFP reserved for the State the right to split the award (as evidenced by the present litigation). See Hayes Aff., Exh. J, RFP ¶ 2.0. Second, the parties could not know what services would be required until completion of the inventory described above. Third, the RFP did not obligate the State to purchase any services, even if the IEN Alliance had won the award of the IEN. The Teaming Agreement does not establish the time, scope, or pricing for the services to be provided to individual schools or school districts because it could not under these conditions.

By its terms, the Teaming Agreement was an agreement to agree that expressly anticipated the execution of a subsequent contract. "If ENA or Syringa are awarded the Prime Contract, ENA and Syringa shall enter into an agreement[.]" Hayes Aff., Exh. I, Teaming

Agreement ¶ 2(a) (emphasis added). "If ENA wins the Prime Contract as provided in Section 2(a) above, the parties shall execute a partnership agreement[.]" Hayes Aff., Exh. I, Teaming Agreement ¶ 3(a) (emphasis added). "The subsequent agreement was for the logistics of what this teaming agreement defined as work." Lowe Depo., Aug. 5, 2010, p. 176:22-177:3. It is undisputed that ENA and Syringa did not execute a contract subsequent to the Teaming Agreement. Lowe Depo., Aug. 5, 2010, p. 177:22-178:7. The RFP created an uncertainty in the scope of the award; therefore, the express terms of the Teaming Agreement could not contain the final agreement between ENA and Syringa. Therefore, the Teaming Agreement is an unenforceable agreement to agree.

### B. If the Teaming Agreement was an enforceable contract, then it terminated by its own terms when the State rejected the IEN Alliance's proposal.

By its own terms, the Teaming Agreement terminated when the State rejected the IEN Alliance's proposal. "This agreement will terminate without liability upon any of the following events: (i) the customer formally and finally rejects the Proposal or cancels the Project." *Hayes Aff.*, Exh. I, Teaming Agreement ¶ 2(h)(i). It is black letter law that the modification of an offer is a rejection of the offer. *Heritage Excavation, Inc. v. Briscoe*, 141 Idaho 40, 43, 105 P.3d 700, 703 (Ct. App. 2005) (quoting *Phelps v. Good*, 15 Idaho 76, 84, 96 P. 216, 218 (1908) (stating that "[a]n acceptance which varies from the terms of the offer is a rejection of the offer"). When the State did not award the IEN to the IEN Alliance, the state rejected the proposal and the above provision then terminated the Teaming Agreement.

The State did not make a single, statewide, "end-to-end solution" as offered by the IEN Alliance proposal, and instead expressly rejected the award of the connectivity portion of the IEN to Syringa, which was Syringa's principal role under both the Teaming Agreement and the proposal. The Teaming Agreement terminated in accordance with its terms when the State

rejected the IEN Alliance's proposal to be the single, statewide provider for the IEN. See Hayes Aff., Exh. I, Teaming Agreement  $\P$  2(h)(i).

### 1. The State did not accept the IEN Alliance's proposal.

The IEN Alliance submitted a proposal for a single contractor, statewide, end-to-end solution that included both E-Rate services and backbone. As Greg Lowe explained in his affidavit filed with this Court on February 25, 2010:

12. Syringa and Education Networks of America, Inc. combined, in response to (the) recommendation in Section 3.2 of the IEN RFP quoted above, for the purpose of preparing a response to the IEN RFP and to provide the "total, end-to-end support solution" solution the RFP requested.

Greg Lowe explained further that the "end-to-end service support solution" was a statewide, single contractor solution:

11. A "total end-to-end service support solution" for a project like the Idaho Education Network means that a single contractor is to assume responsibility for all aspects of content, connectivity and coordination necessary for the delivery of an interactive learning environment. . . .

Lowe Aff., February 25, 2010, ¶¶ 11-12. The IEN Alliance assembled a proposal to provide a single contractor end-to-end solution for "all aspects of content, connectivity and coordination" of the IEN. The State did not accept that proposal, because it did not make an award to "a single contractor . . . to assume responsibility for all aspects of content, connectivity and coordination." Lowe Aff., February 25, 2010. Instead, it modified its acceptance by issuing two SBPO's, one to ENA and one to Qwest. Therefore, the State rejected the proposal when the State did not accept the IEN Alliance's proposal as offered, and the Teaming Agreement terminated in accordance with its terms. See Heritage Excavation, Inc., 141 Idaho at 43, 105 P.3d at 703 (stating that acceptance which does not mirror the offer is a rejection of the offer).

### 2. The Amendments expressly rejected Syringa as the single, statewide contractor of connectivity services for the IEN.

The State rejected the proposal a second time with the Amendments that issued on February 26, 2009, when it unilaterally awarded the connectivity services portion of the IEN to Qwest to the exclusion of Syringa. Under the definition of "award" as contained in the RFP, the State had the right to make an "award to multiple bidders in whole or in part." Hayes Aff., Exh. J, RFP ¶ 2.0. In the month that intervened between the award and the Amendment, the State analyzed how best to divide the work between the two awardees. In the Amendments of February 26, the State awarded Qwest the backbone/connectivity portion of the IEN. As this Court has concluded, "[t]he work assigned to Qwest apparently included all of the work that ENA and Syringa had proposed for Syringa. These amendments precluded Syringa from participating in the work." Memorandum Decision and Order RE: Syringa Networks, LLC's Motion to Reconsider, p. 5; see also Substitute Order, p. 6 (the effect of the Amendment was to assign to Qwest the "entire scope of work assigned to Syringa in the Teaming Agreement and the IEN Alliance Proposal"); and ("the effect of the amendments to the purchase order was to eliminate Syringa from participation in the IEN RFP project"). The State expressly rejected that portion of the IEN Alliance proposal that anticipated Syringa being the single, statewide provider of connectivity services by awarding that portion of the IEN to Qwest.

### 3. The State's decision to reject the IEN Alliance's proposal was unilateral.

The State's decision to reject the IEN Alliance's proposal was unilateral. Mike Gwartney, the Director of the Department of Administration for the State of Idaho, explained in his letter of July 24, 2009 in direct response to Syringa's challenge to the award:

After the initial award, Administration then unilaterally determined how best to divide the work between the two awardees/contractors. Administration's determination was based upon the individual strengths of each awardees/contractors' proposals. For example,

ENA had expertise in providing E-rate servies and providing video teleconferencing operations. Qwest had expertise in providing the technical operation (i.e. backbone). Before Amendment 1 to SBPO 01308 and SBPO 01309 were issued, Administration contemplated various ways to divide the responsibilities between Qwest and ENA, including but not limited to dividing the services to be provided by Qwest and ENA regionally. However the division of responsibilities reflected in the Amendments is a reflection of what Administration believed would serve the best interests of the State of Idaho and the schools.

Hayes Aff., Exh H. "Qwest was awarded the technical services portion of the IEN (i.e. the backbone). ENA was not." Id.

## 4. By its own terms, the Teaming Agreement became invalid once the IEN Alliance's proposal was rejected.

The Teaming Agreement terminated by its terms once the State rejected the IEN Alliance proposal; indeed, the State rejected the proposal twice. As a consequence of the issuance of two SBPO's, the State modified the offer from the proposal, and thereby rejected the proposal that offered a single contractor, statewide, end-to-end solution. The effect of the Amendments issued was that the State awarded to Qwest exactly those same connectivity services that Syringa had hoped to supply as defined in the Teaming Agreement. *Substitute Opinion*, p. 15. As a result of the rejection of the IEN Alliance proposal, the Teaming Agreement terminated by its own terms in accordance with the provisions of paragraph 2(h)(i) of the Teaming Agreement.

### C. Even if the Teaming Agreement is an enforceable contract, performance never became due because of failure of a condition precedent.

"A condition precedent is an event not certain to occur, but which must occur, before performance under a contract becomes due." *Maroun*, 141 Idaho at 614, 114 P.3d at 984. "Whether a provision in a contract amounts to a condition precedent is generally dependent on what the parties intended, as adduced by the contract itself." *Johnson v. Lambros*, 143 Idaho 468, 474, 147 P.3d 100, 106 (Ct. App. 2006). The failure of the condition precedent must be through no fault of the parties. *Dengler v. Hazel Blessinger Family Trust*, 141 Idaho 123, 128,

106 P.3d 449, 454 (2005). The condition precedent in the Teaming Agreement was that the State award the IEN Alliance the connectivity portion of the IEN project. Accordingly, performance under the Teaming Agreement never became due.

The goal of the IEN Alliance was to become the single, statewide contractor for the IEN. "The IEN is composed of two major components: educational content and telecommunications services." *Complaint*, p. 2. The IEN Alliance was formed because, standing alone, neither Syringa nor ENA had the ability to provide a complete response to the RFP. *Lowe Depo.*, Nov. 5, 2010, p. 60:1-17.

28. Under the IEN Alliance, Syringa was responsible for the IEN telecommunication services and equipment, including local access connections, routing equipment, network and backbone services.

Complaint, ¶28; see also Lowe Depo., Nov. 5, 2010, p. 61:9-21. In marrying the E-Rate competence of ENA with the connectivity services of Syringa under the Teaming Agreement, the condition precedent to a future working relationship was the award of both the E-Rate and the connectivity services under the IEN. Syringa's goal was to be the single "carrier of record" for those connectivity services statewide. Lowe Depo., Nov. 5, 2010, p. 62:17-65:5

The condition precedent to an enforceable contract between ENA and Syringa was not satisfied because the IEN Alliance was not awarded the IEN contract. The Teaming Agreement expressly contemplated the IEN Alliance being awarded the entire IEN project (including the connectivity portion), which it was not. The Teaming Agreement cannot form the basis of an enforceable contract because the condition precedent to the formation of that contract was never met; that condition being, the IEN Alliance's award as the single, statewide contractor for both the E-Rate and connectivity services of the IEN project.

Neither the IEN Alliance nor ENA was awarded the connectivity portion of the IEN. Substitute Opinion, p. 6. "The amended blanket purchase order very clearly put the handcuffs on ENA's ability to execute its teaming agreement." *Lowe Depo.*, Aug. 5, 2010, p. 163:19-21. The State intended from the issuance of the letter of intent on January 20, 2010 that the IEN was to be split by having ENA provide E-Rate and Qwest provide connectivity. *Gwartney Depo.*, Sept. 2, 2010, p. 159:15-161:2. ENA never had the ability to direct any of the connectivity work for the IEN, as contemplated by the Teaming Agreement, to Syringa. The award of the entire IEN project, including connectivity, was a condition precedent to a formal contract between ENA and Syringa. Therefore, even if the Teaming Agreement was a final agreement between ENA and Syringa, performance would never have become due because of the failure to satisfy a condition precedent.

# D. The Teaming Agreement is unenforceable because its commercial purpose was frustrated when Qwest was awarded the entire connectivity portion of the IEN that was contemplated for Syringa under the Teaming Agreement.

An event that substantially frustrates the objects contemplated by parties when they made the contract excuses performance of the contract. *See* Restatement (Second) of Contracts § 269 (1981) (citing with approval in *Sutheimer v. Stoltenberg*, 127 Idaho 81, 85, 896 P.2d 989, 993 (Ct. App. 1995)). Frustration of commercial purpose is measured on an objective, rather than subjective, basis. *Rasmussen v. Martin*, 104 Idaho 401, 406, 659 P.2d 155, 160 (Ct. App. 1983).

### 1. Syringa's purpose under the Teaming Agreement was to provide the connectivity for the IEN.

The uncontroverted facts, indeed the very bases of Syringa's claim, is that the commercial purpose of the IEN Alliance (ENA and Syringa) has been frustrated by the award of the connectivity portion of the IEN to Qwest. Syringa's responsibilities under the Teaming Agreement, as expressly set forth in paragraph ¶3(b), was to provide connectivity services. Further, "[u]nder the IEN Alliance, Syringa was responsible for the IEN telecommunication services and equipment, including local access connections, routing equipment, network and backbone services." *Complaint*, ¶28. The commercial purpose of the Teaming Agreement was

to provide ENA the E-Rate work and Syringa the connectivity services. Even if the Teaming Agreement was an enforceable contract, it is clear that the both the SBPO's and the Amendments to the SBPO's have frustrated one of the primary commercial purposes of the Teaming Agreement; that purpose being the award of the connectivity portion of the IEN to Syringa.

## 2. Syringa's anticipated duties under the Teaming Agreement are identical to those awarded by the State to Qwest.

The State frustrated that commercial purpose of the Teaming Agreement by awarding Qwest the connectivity services required by the IEN to the exclusion of Syringa. The State awarded "Qwest all of the IEN telecommunications services." *Complaint*, p. 2.

With minor differences in language, a side-by-side comparison demonstrates that the services for which Syringa was responsible under the Teaming Agreement and the services for which Qwest was responsible under the Amended SBPO's are the same services.

Lowe Aff., February 25<sup>th</sup>, 2010, ¶ 27. Mr. Lowe set forth in his affidavit a side by side comparison which demonstrates that very concept:

Syringa Responsibilities Under Paragraph 3(c) of the Teaming Agreement			west Responsibilities Under ragraphs 1 – 4 of Amendment One to SBPO1308	
3(c)	Syringa shall be responsible for (i) providing the statewide backbone for the services, (ii) providing and operating a network operations center for the backbone, (iii) providing for co-location of core network equipment, (iv) procuring and owning all customer premises equipment not provided by ENA,		1.	Qwest will be the general contractor for all IEN technical network services. The Service Provider listed on the State's Federal E-rate Form 471, Education Networks of America (ENA) is required to work with the dedicated Qwest Account Team for ordering, and provisioning of, ongoing maintenance, operations and billings for all IEN sites.
	<ul><li>(v) coordinating field service for non-school or library sites,</li><li>(vi) managing the customer relationship for non-school or library sites, and</li></ul>		2.	Qwest, in coordination with ENA, will deliver IEN technical network services using its existing core MPLS network and backbone services.

(vii) procuring, managing and provisioning last mile circuits for non-school or library sites.		3.	Qwest, in coordination with ENA, will procure and provision all local access connections and routing equipment, making reasonable efforts to ensure the most cost efficient and reliable network access throughout the State to include leveraging of public safety network
--	--	----	---

technically feasible.Qwest, in coordination with ENA, will provide all Internet services to IEN users.

assets wherever economically and

As demonstrated by Greg Lowe, the State frustrated Syringa's "commercial purpose" in forming the Teaming Agreement by awarding to Qwest all of the communication services that were identified as Syringa's responsibilities under the Teaming Agreement.

3. If the Teaming Agreement was an enforceable contract, ENA's performance did not become due because the commercial purpose was frustrated when the State awarded Qwest "Syringa's connectivity portion" of the project.

The very foundation upon which the Teaming Agreement was made is gone. That foundation being that Syringa would provide the connectivity portion of the IEN. Even if the Teaming Agreement constituted an enforceable contract, ENA does not have the ability to direct to Syringa the connectivity services required by the IEN. *See Kraft Depo.*, Nov. 15, 2010, p. 148:17-149:1 (stating that ENA may not order directly from Syringa without approval of the State and Qwest); *see also Zickau Depo.*, Nov. 11, 2010, p. 282:4-286:3 (according to the contracts with the State, ENA may only contract for connectivity services with Qwest's agreement). Syringa's fundamental purpose of the Teaming Agreement has been frustrated by the State's decision to split the award between multiple parties; therefore, ENA's performance under the Teaming Agreement never became due.

V.

#### CONCLUSION

For the foregoing reasons, this Court should summarily dismiss all the claims asserted against ENA because (A) the Teaming Agreement is an unenforceable agreement to agree; (B) the Teaming Agreement has terminated by its own terms; (C) even if the Teaming Agreement were an enforceable contract, performance is not required because of the failure of a condition precedent; and (D) performance is excused because the commercial purpose of the Teaming Agreement has been frustrated.

DATED this 23<sup>rd</sup> day of November, 2010.

HALL, FARLEY, OBERRECHT & BLANTON, P.A.

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 23<sup>rd</sup> day of November, 2010, I caused to be served a true copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT**, by the method indicated below, and addressed to each of the following:

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### IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SYRINGA NETWORKS, LLC, an Idaho limited liability company,

Plaintiff.

VS.

IDAHO DEPARTMENT OF ADMINISTRATION; J. MICHAEL "MIKE" GWARTNEY, in his personal and official capacity as Director and Chief Information Officer of the Idaho Department of Administration; JACK G. "GREG" ZICKAU, in his personal and official capacity as Chief Technology Officer and Administrator of the Office of the CIO; ENA SERVICES, LLC, a Division of EDUCATION NETWORKS OF AMERICA, Inc., a Delaware corporation; QWEST COMMUNICATIONS COMPANY, LLC, a Delaware limited liability company,

Defendants.

Case No. CV OC 0923757

REPLY TO PLAINTIFF'S OPPOSITION TO STATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNT FOUR OF PLAINTIFF'S COMPLAINT

REPLY TO PLAINTIFF'S OPPOSITION TO STATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNT FOUR OF PLAINTIFF'S COMPLAINT

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Defendants the Idaho Department of Administration ("IDA"), Michael ("Mike")

Gwartney ("Gwartney") and Jack G. ("Greg") Zickau ("Zickau"), collectively referred to herein as the "State Defendants," by and through their undersigned counsel, hereby submit this response to the Opposition to State Defendants' Motion for Summary Judgment RE Count Four of Plaintiff's Complaint ("Opposition") filed by Plaintiff Syringa Networks LLC ("Syringa").

### I. INTRODUCTION

The State Defendants have moved for summary judgment on Count Four of Syringa's Complaint, which alleges tortious interference with contract, on grounds that (1) IDA is absolutely immune from liability; (2) Syringa did not allege facts and could not produce evidence sufficient to overcome the statutory presumption that Gwartney and Zickau were likewise immune because they did not act with malice or criminal intent or outside the course and scope of their employment. Syringa has since conceded that the IDA is absolutely immune. See Opposition at 4. As to Gwartney and Zickau, Syringa's Opposition fails to demonstrate that Syringa alleged conduct sufficient to overcome the statutory presumption nor presented evidence sufficient to raise a genuine issue of material fact as to whether the presumption has been overcome. Syringa instead relies upon a hodgepodge of irrelevant evidence, inadmissible evidence, and rank speculation. Indeed, Syringa's argument is anchored solely in speculation, and it would require inference upon inference to create a genuine issue of material fact.

### II. LEGAL STANDARD

"The party opposing a motion for summary judgment must respond to the summary judgment motion with specific facts showing there is a genuine issue for trial. A mere scintilla of evidence or only slight doubt as to the facts is insufficient to withstand summary judgment;