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**CONFIDENTIAL ATTORNEY/CLIENT
PRIVILEGED COMMUNICATION**

Date: October 18, 2006
To: All Schools Legal Service Clients
From: William A. Hornback, Esq.

REMINDER: Competitively Bid E-Rate Contracts

The time is drawing near to secure contracts for E-Rate funded technology projects. Each year the choice is made whether to apply for funding, and each year the process reaches a point where the district will be required to identify who has been selected to perform the work and/or provide the equipment.

The selection process is more complex than the ordinary rules of procurement that typically apply. The E-Rate program has rules of its own. The important point here is:

**THE ADDITIONAL REQUIREMENTS IMPOSED UNDER THE
FEDERAL E-RATE PROGRAM ARE IN ADDITION TO, AND NOT A
SUBSTITUTE FOR, THE TYPICAL AND STANDARD REQUIREMENTS
APPLICABLE TO PUBLIC WORKS AND/OR EQUIPMENT
CONTRACTING.**

This means that districts still must look at the dollar value of the proposed acquisition and compare it to the applicable competitive bidding thresholds. **LOOK AT THE ENTIRE CONTRACT VALUE, NOT JUST THE DISTRICT'S SHARE.** If the anticipated value exceeds the applicable threshold, the district must either complete a competitive bidding process to select its contractor or utilize one of the recognized exceptions to competitive bidding, such as piggybacking an equipment purchase or CMAS contracts.

The "Schools and Libraries Program of the Universal Service Fund" notes on its website (<http://www.universalservice.org/sl/applicants/step03/>) that "in all cases, applicants must comply with state and local procurement laws." Failure to comply with state and local bidding requirements will render the contract void, and may result in loss of funding and/or eligibility.

Part of the bidding obligations applicable to educational agencies is the advertising requirement of Public Contract Code Section 20112 (Education Code Section 81641 for community college districts). To secure competitive bids, it is required that a notice calling for bids be published at least once a week for two weeks in a newspaper of general circulation published in the district, or if there is no such paper, then in a newspaper of general circulation. Different rules apply for districts which have adopted Uniform Construction Cost Accounting procedures. (See Public Contract Code Sections 22054, 22037.) K-12 districts may (but are not required to) post the notice on the district website or electronic portal specifying the same information, as well as the website where bids will be "opened." This electronic posting is not a substitute for publishing in a newspaper of general circulation, but is something a district may do in addition to the publication.

As with any acquisition, if there are questions about the obligations, you should consult with legal counsel for guidance in the acquisition process and procedures.