

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 3:35

NOV 10 2014

CHRISTOPHER D. FROH, Clerk  
BY: SHIRLEY ABBOTT  
CLERK

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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; ENA SERVICES,  
LLC, a Division of EDUCATION  
NETWORKS OF AMERICA, Inc., a  
Delaware corporation; QWEST  
COMMUNICATIONS, LLC, a Delaware  
limited liability company;  
  
Defendants.

Case No. CV-OC-2009-23757

MEMORANDUM DECISION  
AND ORDER RE:  
PENDING DISPOSITIVE MOTIONS

This decision will resolve 1) Plaintiff Syringa Networks, LLC's ("Syringa") and Defendant Idaho Department of Administration's ("DOA") cross-motions for summary judgment as to Count Three of the Second Amended Post Appeal Complaint; and 2) Defendant ENA Services, LLC, a Division of Education Networks of America, Inc.'s ("ENA") motion to dismiss Count Three of the Second Amended Post Appeal Complaint. As explained more fully below, the Court grants summary judgment in favor of Syringa as to Count Three of the Second Amended Post Appeal Complaint. The Court denies ENA's motion to dismiss Count Three of the Second Amended Post Appeal Complaint.

### Background and Proceedings

1  
2 In 2008, the Idaho Legislature established the "Idaho Education Network" ("IEN"),  
3 intended as a statewide high speed broadband telecommunications network for every public  
4 school in Idaho. Ch. 260, § 3, 2008 Idaho Sess. Laws 753, 754. In December 2008, DOA issued  
5 a Request for Proposals ("RFP") for the initial work to establish the IEN. The closing date for  
6 submitting RFPs was January 12, 2009.

7  
8 On January 7, 2009, Syringa entered into a "teaming agreement" with ENA. The  
9 teaming agreement described how ENA and Syringa would jointly perform an award of the RFP.  
10 ENA submitted a proposal in response to the RFP indicating an intent to perform on the basis of  
11 the teaming agreement with Syringa. Defendant Qwest Communications, LLC ("Qwest") and  
12 Verizon Business Network Services also submitted proposals.

13  
14 On January 28, 2009, DOA awarded the IEN work to ENA and Qwest in the form of  
15 essentially identical Statewide Blanket Purchase Orders ("SBPO"); SBPO 1308 to Qwest, and  
16 SBPO 1309 to ENA. Each SBPO contained the same scope of work, to perform the entire scope  
17 of the RFP requirements. On February 26, 2009, DOA issued Amendment One (1) to each of the  
18 SBPOs. These amendments divided the work between Qwest and ENA. Amendment One to the  
19 Qwest SBPO made Qwest the general contractor for all technical network services, i.e. the  
20 "backbone." As a result of this amendment, Qwest was awarded the entire scope of work that the  
21 teaming agreement would have assigned to Syringa. Amendment One to the ENA SBPO made  
22 ENA the service provider for federal E-rate services.<sup>1</sup>

23  
24  
25 <sup>1</sup> The "Universal Service Fund" provides federal funding subsidies for telecommunications services to eligible  
26 schools, school districts and libraries. *In re CMC Telecom, Inc.*, 383 B.R. 52, 55-56 (Bankr. E.D. Mich. 2008). For  
some reason this funding is known as E-rate funding. DOA intended to use E-rate funding for the IEN.

1  
2 Syringa filed this action on December 15, 2009. Counts One, Four, Five and Six sought  
3 damages against DOA, its Director, its Chief Technology Officer, Qwest and ENA on various  
4 theories including breach of contract and tortious interference. In Count Two, Syringa sought a  
5 declaratory judgment that DOA's award to Qwest was the result of improper influence by Qwest,  
6 the Director of DOA and DOA's Chief Technology Officer in violation of Idaho Code § 67-  
7 5726.<sup>2</sup> In Count Three, Syringa sought a declaratory judgment that DOA's award to Qwest  
8 constituted an improper multiple award in violation of Idaho Code § 67-5718A. Syringa did not  
9 seek declaratory relief regarding DOA's award to ENA. Over the course of the proceedings in  
10 district court, the Court granted summary judgment against Syringa on all claims and dismissed  
11 the lawsuit. Syringa appealed.

12  
13 In a decision filed March 29, 2013, the Supreme Court affirmed the dismissal of Counts  
14 One, Two, Four, Five and Six. *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 155 Idaho 55,  
15 305 P.3d 499 (2013). However, the Court reversed the grant of summary judgment as to Count  
16 Three. The Supreme Court found that by dividing the scope of work between Qwest and ENA,  
17 DOA violated state procurement law in two respects. *Syringa Networks*, 305 P.3d at 503-06.  
18 First, the division of the scope of work violated Idaho Code § 67-5718(2)<sup>3</sup> and IDAPA  
19

20  
21  
22 <sup>2</sup> "(2) Except as provided by section 67-5718, Idaho Code, no officer or employee shall influence or attempt to  
23 influence the award of a contract to a particular vendor, or to deprive or attempt to deprive any vendor of an  
24 acquisition contract.

25 (3) No officer or employee shall conspire with a vendor or its agent, and no vendor or its agent shall conspire with  
26 an officer or employee, to influence or attempt to influence the award of a contract, or to deprive or attempt to  
deprive a vendor of an acquisition award." Idaho Code § 67-5726.

1 38.05.01.052<sup>4</sup> by awarding contracts which did not conform to the description of the work as set  
 2 forth in the RFP, "in effect, changing the RFP after the bids were opened." *Id.* at 506. Second,  
 3 the division of the scope of work violated Idaho Code § 67-5718A<sup>5</sup> which only permits a  
 4 multiple award if each contractor provides the same or similar property. *Id.* at 505-06.

5 The remittitur remanding the case to the district court was filed on September 9, 2013  
 6 with a directive for "further proceedings consistent with this opinion" as to Count Three of the  
 7 Complaint. *Id.* at 512. Following remand, Syringa sought leave to amend Count Three to add a  
 8 challenge to the award to ENA based upon the Supreme Court's analysis and conclusion that  
 9 DOA violated state procurement law. In opposition, DOA argued that the Court had no  
 10 jurisdiction to permit any challenge to the validity of the award to ENA. *See* DOA's Mem. in  
 11 Opp'n to Mot. to Rename Count Three and Amend Paragraph 94 of Pl.'s Compl. at pp. 5-11,  
 12 January 7, 2014. In the February 25, 2014 Memorandum Decision and Order Re: Motions to  
 13 Amend, the Court granted leave to permit Syringa's challenge to the award to ENA, and stated:  
 14  
 15  
 16

---

17 <sup>3</sup> "(2) Notice shall be posted of all acquisitions of property, unless otherwise excepted by rules of the division. The  
 18 notice may be posted electronically. The administrator shall also cause all invitations to bid and requests for  
 19 proposals to be posted manually in a conspicuous place in the office. The notice shall describe the property to be  
 acquired in sufficient detail to apprise a bidder of the exact nature or functionality of the property required; and shall  
 set forth the bid opening date, time and location." Idaho Code § 67-5718.

20 <sup>4</sup> "An invitation to bid or request for proposals may be changed by the buyer through issuance of an addendum,  
 21 provided the change is issued in writing prior to the bid opening date and is made available to all vendors receiving  
 the original solicitation. Any material information given or provided to a prospective vendor with regard to an  
 22 invitation to bid or request for proposals shall be made available in writing by the buyer to all vendors receiving the  
 original solicitation. Oral interpretations of specifications or contract terms and conditions shall not be binding on  
 the division unless confirmed in writing by the buyer and acknowledged by the division prior to the date of the  
 23 opening. Changes to the invitation to bid or request for proposals shall be identified as such and shall require that the  
 vendor acknowledge receipt of all addenda issued. The right is reserved to waive any informality."  
 IDAPA 38.05.01.052.

24 <sup>5</sup> "(1) Notwithstanding any provision of this chapter to the contrary, the administrator of the division of purchasing  
 25 may make an award of a contract to two (2) or more bidders to furnish the same or similar property where more than  
 one (1) contractor is necessary . . ." Idaho Code § 67-5718A.  
 26

1 “The Supreme Court has ruled that DOA violated Idaho Code § 67-5718 in making the amended  
2 awards to Qwest and ENA.” *Id.* at p. 10.

3 DOA moved for reconsideration of this decision and made a number of arguments  
4 including: 1) asserting that the Supreme Court exceeded its authority by discussing the merits of  
5 Syringa’s challenge to the bid award; and 2) characterizing any such discussion by the Supreme  
6 Court as improper *dicta* which is not controlling on this or any other court. *See* Mem. in Supp.t  
7 of Def.’s Mot. for Partial Recons., April 22, 2014. In ruling on the motion to reconsider, the  
8 Court rejected DOA’s efforts to avoid the plain implications of the decision by the Supreme  
9 Court and stated:

10  
11 The [Supreme]Court’s determination that the amendment violated state law is not  
12 dicta. The [Supreme] Court’s determination that the amendment violated state  
13 law is the law of this case and will be adhered to by this Court.

14 Contrary to DOA’s argument, the Supreme Court has made a determination that  
15 the February 26, 2009 amendments which divided the scope of work between  
16 Qwest and ENA were contrary to law.

17 Mem. Decision and Order Re: Mot. to Reconsider at p. 9, June 24, 2014. In this decision, the  
18 Court permitted Syringa to include a challenge to the award to ENA based upon the amendment  
19 which divided the work between ENA and Qwest.

20 After the Court granted leave to amend Count Three to include a challenge to the award  
21 to ENA, Syringa amended its complaint. On March 20, 2014, Syringa moved for partial  
22 summary judgment that DOA’s awards to Qwest and ENA were void based upon the Supreme  
23 Court’s decision in this case. DOA filed a supporting memorandum and an affidavit of its  
24 counsel with multiple attachments. DOA filed an opposition to Syringa’s motion for summary  
25 judgment on September 26, 2014. Qwest filed a joinder in DOA’s opposition on September 29,  
26 2014. Syringa filed a reply in support of its motion on October 3, 2014.

1 On July 17, 2014, ENA filed a motion to dismiss Count Three of Syringa's Second  
2 Amended Post Appeal Complaint as it relates to the award to ENA. Syringa filed a response on  
3 October 3, 2014. ENA filed a reply on October 8, 2014.

4 On August 11, 2014, DOA filed a motion for summary judgment as to Count Three of the  
5 Second Amended Post Appeal Complaint. The motion was supported by a memorandum and the  
6 Affidavit of Bill Burns with numerous attachments. Qwest filed a joinder on August 11, 2014.  
7 Syringa filed an opposition on September 26, 2014 along with an affidavit of its counsel. DOA  
8 filed a reply on October 3, 2014.

9 The Court heard argument on these matters on October 10, 2014. David L. Lombardi and  
10 Melodie A. McQuade, Givens Pursley, LLP, appeared and argued for Syringa. Merlyn W. Clark  
11 and Steven F. Schossberger, Hawley Troxell Ennis & Hawley, LLP, appeared for DOA,  
12 argument by Mr. Schossberger. Stephen R. Thomas, Moffatt, Thomas, Barrett, Rock & Fields,  
13 Chtd., and Steven J. Perferment (*pro hac vice*), Bryan Cave HRO, Denver, Colorado, appeared  
14 for Qwest, argument by Mr. Perferment. Phillip S. Oberrecht, Greener Burke Shoemaker  
15 Oberrecht, PA, and Robert S. Patterson (*pro hac vice*) (by telephone conference), Bradley Arant  
16 Boulton Cummings, LLP, Nashville, Tennessee, appeared for ENA, argument by Mr. Oberrecht.

17 The Court took the matters under advisement.  
18

## 19 Standards

### 20 A. Summary Judgment

21 Summary judgment is appropriate when "the pleadings, depositions, and admissions on  
22 file, together with the affidavits, if any, show that there is no genuine issue as to any material fact  
23 and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). Generally,  
24 the burden of proof is on the moving party to demonstrate the absence of a genuine issue of  
25

1 material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing  
2 *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). In construing the facts, the  
3 court normally must draw all reasonable factual inferences in a light most favorable to the non-  
4 moving party. *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 410, 179 P.3d 1064, 1066  
5 (2008). If reasonable people can reach different factual conclusions, then the motion must be  
6 denied. *Ashby v. Hubbard*, 100 Idaho 67, 593 P.2d 402 (1979). "Once the moving party  
7 establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving  
8 party to show that a genuine issue of material fact does exist." *Kiebert v. Goss*, 144 Idaho 225,  
9 227, 159 P.3d 862, 864 (2007). If the non-moving party does not demonstrate that there is a  
10 genuine issue of fact, then summary judgment, if appropriate, will be entered against such party.  
11 I.R.C.P. 56(e).

12  
13 Where the party moving for summary judgment will not carry the burden of production or  
14 proof at trial, the "genuine issue of material fact" burden may be met by establishing the absence  
15 of evidence on an element that the non-moving party will be required to prove at trial. *Heath v.*  
16 *Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000). Such an  
17 absence of evidence may be established either by an affirmative showing with the moving party's  
18 own evidence or by a review of all the nonmoving party's evidence and the contention that such  
19 proof of an element is lacking. *Id.* (citing *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475,  
20 478 (Ct. App. 1994); *Withers v. Bogus Basin Recreational Ass'n, Inc.*, 144 Idaho 78, 80, 156  
21 P.3d 579, 581 (2007) (quoting *Baxter v. Craney*, 135 Idaho 166, 170, 16 P.3d 263, 267 (2000)).

## 22 **B. Motion to Dismiss**

23  
24 ENA's motion to dismiss is based upon the legal doctrines of *res judicata* and judicial  
25 estoppel. In the usual case, these doctrines would be pled as affirmative defenses. I.R.C.P. 8(c);  
26

1 *Ticor Title Co. v. Stanton*, 144 Idaho 119, 122, 157 P.3d 613, 616 (2007) (*res judicata* is an  
2 affirmative defense); *Kootenai Elec. Co-op., Inc. v. Lamar Corp.*, 148 Idaho 116, 119, 219 P.3d  
3 440, 443 (2009) (party asserts judicial estoppel as an affirmative defense). However, in this case,  
4 ENA has not filed an answer containing any defenses. Instead, ENA filed this motion to dismiss.  
5 The Court will treat the motion to dismiss as a motion under I.R.C.P. 12(b)(6) alleging failure to  
6 state a claim upon which relief can be granted. Because the motion involves consideration of  
7 matters outside the pleadings, the Court will treat the 12(b)(6) as a motion for summary judgment  
8 as to those affirmative defenses under I.R.C.P. 56. *E.g. McCann v. McCann*, 152 Idaho 809, 814,  
9 275 P.3d 824, 829 (2012). Thus, the Court need not address the merits of ENA's motion to  
10 dismiss prior to Syringa's motion for summary judgment.

#### 11 **Discussion**

12 Syringa's motion for summary judgment is based upon the Supreme Court's ruling that  
13 the SBPOs, when amended by Amendments One to divide the scope of work, violated State  
14 procurement law, and as a consequence, are void. DOA argues that this Court lacks jurisdiction  
15 to make a declaration because ENA and Qwest were not joined as necessary parties to Count  
16 Three pre-appeal. Under Idaho's Declaratory Judgment Act, "[w]hen declaratory relief is sought,  
17 all persons shall be made parties who have or claim any interest which would be affected by the  
18 declaration, and no declaration shall prejudice the rights of persons not parties to the  
19 proceeding." I.C. § 10-1211. Qwest and ENA were named as parties to the original Complaint.  
20 The Court acknowledges Count 3 sought a declaration that only the award to Qwest was in  
21 violation of state law. In the Supreme Court decision, the Supreme Court determined that the  
22 amendments dividing the work violated state law. Post-appeal, the Court has permitted Syringa  
23 to seek a declaration that the awards to Qwest and ENA, as amended to divide the scope of work,  
24  
25  
26

1 violates state law as determined by the Supreme Court. In the Court's view, all necessary parties  
2 have been joined and the Court has jurisdiction.

3 DOA's motion for summary judgment asserts that in July 2014, DOA, ENA and Qwest  
4 entered into new amendments to the SBPOs which "rescinded" Amendments One to the SBPOs.  
5 DOA argues that any issue of validity now has been cured and is moot because the SBPOs now  
6 have the same scope of work. DOA argues that "there is nothing for this Court to do on Count  
7 Three of the Second Amended Post-Appeal Complaint" because Amendments One to the SBPOs  
8 have been "rescinded." DOA also argues that whether Amendments One to the SBPOs are  
9 considered void or rescinded, the remaining claim by Syringa is moot because the Amendments  
10 are "nonexistent."  
11

12 Syringa argues that void contracts cannot be rescinded to cure a defect. In the alternative,  
13 Syringa argues that recognized exceptions to the mootness doctrine preclude a finding of  
14 mootness.

15 The consequence of entering into a contract which violates state procurement law is  
16 governed by Idaho Code § 67-5725 which provides as follows:

17  
18 All contracts or agreements made in violation of the provisions of this chapter  
19 shall be void and any sum of money advanced by the state of Idaho in  
20 consideration of any such contract or agreement shall be repaid forthwith. In the  
21 event of refusal or delay when repayment is demanded by the proper officer of the  
22 state of Idaho, under whose authority such contract or agreement shall have been  
23 made or entered into, every person so refusing or delaying, together with his  
24 surety or sureties, shall be forthwith prosecuted at law for the recovery of such  
25 sum of money so advanced."

26 Idaho Code § 67-5725. This statute requires that agreements made in violation of state  
procurement law "shall be void."

1 The SBPOs, as amended to divide the work between Qwest and ENA, are void. A void  
2 contract is "one which never had any legal existence or effect, and such contract cannot in any  
3 manner have life breathed into it." Black's Law Dictionary 1745 (Rev'd 4th ed. 1968)<sup>6</sup>; *King v.*  
4 *Donnkenny, Inc.*, 64 F. App'x 376, 378 (4th Cir. 2003) (a void contract "cannot in any manner  
5 have life breathed into it"); *Robinson v. Am. Home Mortgage Servicing, Inc.*, 1:11-CV-1087,  
6 2012 WL 4470116 (W.D. Mich. Sept. 27, 2012) (citing to same definition of "void contract"  
7 from Black's Law Dictionary 5<sup>th</sup> ed. 1979); *Matter of Estate of Griffin*, 248 Mont. 472, 476, 812  
8 P.2d 1256, 1258 (1991) ("A void contract is one which never had any legal existence or effect,  
9 and it cannot in any manner have life breathed into it."); *Consol. Realty Grp. v. Sizzling Platter,*  
10 *Inc.*, 930 P.2d 268, 272 (Utah Ct. App. 1996) (citing definition of void contract from *Black's Law*  
11 *Dictionary* 1412 (5th ed.1979)). Contrary to DOA's argument, DOA's efforts to salvage these  
12 void contracts were futile and of no effect. An agreement made in violation of the state's  
13 procurement law cannot be fixed or cured. The amendments dividing the scope of work render  
14 these awards void.

15  
16 ENA argues that Syringa's challenge to ENA's award is barred by the doctrines of *res*  
17 *judicata* and judicial estoppel. ENA is correct that Syringa did not challenge the award to ENA  
18 in its Complaint, and did not seek to add this claim until after the appeal. ENA's arguments  
19 correctly state the law but, in the end, these arguments must be rejected. The award to ENA  
20 presents the same difficulty as the award to Qwest. As amended to divide the scope of work, the  
21 award violates state procurement law, and as a result, is void.  
22  
23  
24

25 <sup>6</sup> This edition of Black's Law Dictionary was purchased at the beginning of my first year in law school and has been  
26 in my office since.

1 In Idaho, a court has an affirmative duty to raise the issue of illegality at any stage in the  
2 litigation, regardless of whether the issue was pleaded by a party. *Quiring v. Quiring*, 130 Idaho  
3 560, 566-67, 944 P.2d 695, 701-02 (1997). As explained by the Court:

4 A party to a contract, void as against public policy, cannot waive its illegality by  
5 failure to specially plead the defense or otherwise, but whenever the same is made  
6 to appear at any stage of the case, it becomes the duty of a court to refuse to  
7 enforce it; again, a court of equity will not knowingly aid in the furtherance of an  
8 illegal transaction; in harmony with this principle, it does not concern itself as to  
9 the manner in which the illegality of a matter before it is brought to its attention.

10 *Id.* (quoting *Stearns v. Williams*, 72 Idaho 276, 283, 240 P.2d 833, 840 (1952) (citations  
11 omitted). The Court is not free to ignore this issue or to countenance the continuation of  
12 contracts that resulted from violation of state procurement law. The award of the SBPO to ENA,  
13 when amended to divide the scope of work, violated state procurement law, and is void. ENA's  
14 motion to dismiss this claim is denied. ENA is seeking a ruling that would allow ENA to benefit  
15 from an improper award. In the Court's view, such a result would fly in the face of the Supreme  
16 Court's decision in this case.

17 The Supreme Court decided this case in March, 2013. Since then, DOA has argued that  
18 the Supreme Court had no authority to decide that DOA's actions violated procurement law.  
19 DOA also argued that the Supreme Court's ruling that DOA violated state procurement law was  
20 improper *dicta* which this Court is free to ignore. The Supreme Court's ruling that DOA violated  
21 state procurement law by splitting the work between Qwest and ENA is the law of the case, and  
22 is binding upon the parties and this Court. The awards which divided the work violate state  
23 procurement law and are void. DOA seeks to extend this case to engage in additional discovery,  
24 and ultimately, a trial on the merits. In the Court's view, there is no good reason to further delay  
25 this case.  
26

1 To date, DOA refuses to acknowledge that its bid process in this case was and remains  
2 fatally flawed. Even after the Supreme Court decision, and despite further rulings from this  
3 Court rejecting DOA's post appeal arguments, DOA continues to fund these contracts. DOA  
4 even tries to fix what cannot be fixed.

5 The Idaho Legislature established administrative oversight for the IEN in the Idaho  
6 Education Network and Resource Advisory Council ("IPRAC"). Idaho Code § 67-5745E. One  
7 of IPRAC's duties is to ensure continued E-rate funding for IEN. Idaho Code § 67-5745E(5).<sup>7</sup>  
8 The Universal Service Administrative Company ("USAC") is the agency responsible for funding  
9 E-rate projects. In 2013, USAC suspended funding of the IEN, presumably after USAC reviewed  
10 the Supreme Court decision in this case. Currently, there is no E-rate funding for this project.  
11 As a result, DOA sought and has received replacement funding from the Legislature to allow  
12 DOA to continue full funding of these awards to Qwest and ENA. Ch. 229, 2014 Idaho Sess.  
13 Laws. This legislation authorized an appropriation of \$ 4,800,000.00 for continued IEN  
14 implementation for the fiscal year beginning July 1, 2014.  
15

16 Qwest's SBPO 1308 and ENA's SBPO 1309, as amended by Amendments One, were  
17 made in violation of Idaho Code § 67-5718(2), IDAPA 38.05.01.052 and Idaho Code § 67-  
18 5718A. As such, these agreements are void. The attempt to revitalize these agreements by  
19 purportedly "rescinding" Amendments One is futile. There is no genuine issue of material fact  
20 as to whether these contract awards complied with state procurement law. As detailed above, the  
21

22  
23  
24 <sup>7</sup> "The IPRAC shall, in its administration of the provisions of this section, comply with all provisions of federal law  
25 and regulations necessary to obtain and maintain qualification of the IEN and its participating schools in order to  
26 enable receipt of federal universal service support funding and the federal e-rate discount program for schools and  
libraries including, but not limited to, maintenance of the IEN as a separate and distinct network to the extent  
necessary to obtain and maintain such qualification." Idaho Code § 67-5745E.

1 contract awards, as amended to divide the scope of work, do not comply with Idaho law. The  
2 Court will grant summary judgment in favor of Syringa as to the claim in Count Three that the  
3 contract awards, as amended to divide the scope of work between Qwest and ENA, are void.

4 In light of the Court's ruling, the other outstanding motions are moot.<sup>9</sup>

5 **Conclusion**

6 As set forth above, the Court grants summary judgment to Syringa as to Count Three of  
7 the Second Amended Post Appeal Complaint. The Court denies ENA's motion to dismiss.  
8 The Statewide Blanket Purchase Order to Qwest (SBPO 1308), as amended by Amendment One,  
9 and the Statewide Blanket Purchase Order to ENA (SBPO 1309), as amended by Amendment  
10 One, are void. Because these contract awards are void, the provisions of Idaho Code § 67-5725  
11 now apply.  
12

13 Counsel for Syringa is directed to submit an appropriate form of judgment from which an  
14 appeal may be taken.

15 IT IS SO ORDERED.

16 Dated this 10 day of November, 2014.

17   
18 Patrick H. Owen  
19 District Judge  
20  
21  
22  
23

24 <sup>9</sup> These include Syringa's October 3, 2014 Rule 56(e) Objection to Affidavits and Deposition Testimony Presented  
25 by DOA; ENA's July 22, 2014 Motion to Strike Count Six of Second Amended Post Appeal Complaint; DOA's  
26 July 7, 2014 Motion for Enlargement of Time; and DOA's July 18, 2014 Motion to Strike Portions of Second  
Amended Post Appeal Complaint.

CERTIFICATE OF MAILING

*Exel*

I, Christopher D. Rich, 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:

DAVID R. LOMBARDI  
GIVENS PURSLEY LLP  
601 W BANNOCK ST  
PO BOX 2720  
BOISE, ID 83701-2720

MERLYN W. CLARK  
STEVEN F. SCHOSSBERGER  
HAWLEY TROXELL ENNIS & HAWLEY, LLP  
877 MAIN ST, STE 1000  
PO BOX 1617  
BOISE, ID 83701-1617

STEPHEN R. THOMAS  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHARTERED  
101 S CAPITOL BLVD, 10TH FLOOR  
PO BOX 829  
BOISE, ID 83701-0829

B. LAWRENCE THEIS  
STEVEN J. PERFREMENT  
BRYAN CAVE HRO  
1700 LINCOLN STREET, STE 4100  
DENVER, COLORADO 80203

PHILLIP S. OBERRECHT  
GREENER BURKE SHOEMAKER OBERRECHT, PA  
950 BANNOCK, STE. 950  
BOISE, ID 83702

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

ROBERT S. PATTERSON  
BRADLEY ARANT BOULT CUMMINGS LLP  
1600 DIVISION STREET, STE 700  
NASHVILLE, TN 37203

CHRISTOPHER D. RICH  
Clerk of the District Court  
Ada County, Idaho

Date: *November 10, 2014*

By: \_\_\_\_\_  
Deputy Clerk