

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of a)	
Decision of the)	
Universal Service Administrator by)	
)	
Ramirez Common School District)	File No. SLD-605575
Realitos, Texas)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: June 9, 2011

Released: June 9, 2011

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request by the Ramirez Common School District, Ramirez, Texas (Ramirez) seeking review of a decision by the Universal Service Administrative Company (USAC) denying funding for discounted services under the E-rate program (more formally known as the schools and libraries universal service support program).¹ USAC denied five of Ramirez's funding requests on the ground that Ramirez violated the Commission's competitive bidding requirements.² Upon review of the record, we find that a waiver of section 54.503 of the Commission's rules, which requires applicants to seek competitive bids for E-rate eligible products and services, is in the public interest.³ We therefore grant Ramirez's appeal and remand the underlying funding requests associated with this appeal to USAC for further action consistent with this order.⁴ To ensure that the underlying funding requests are resolved

¹ See Letter from Eric Freed, Vice President Operations, FundEd, L.L.C., on behalf of Ramirez Common School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed May 14, 2009) (regarding funding year (FY) 2008 FCC Form 471 application number 605575, funding request numbers (FRNs) 1668486, 1668490, 1668503, 1668528, and 1668550) (Request for Review). In this order, we use the term "appeal" to generically refer to Ramirez's request for review of USAC's decision. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See Request for Review at 1.

³ See 47 C.F.R. § 54.503.

⁴ We estimate that the appeal granted in this order involves five funding requests for approximately \$28,000 in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2011 (May 2, 2011). We thus determine that the action we take today should have minimal impact on the universal service fund as a whole.

expeditiously, we direct USAC to complete its review of the funding requests and issue a decision based on a complete review and analysis no later than 90 calendar days from the release date of this order.⁵

II. BACKGROUND

2. *E-rate Program Rules and Requirements.* Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.⁶ The Commission's rules provide that these entities must seek competitive bids for all services eligible for support.⁷

3. In accordance with the Commission's competitive bidding rules, applicants must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services, such as tariffed telecommunications services, month-to-month Internet access, or any services for which the applicant is seeking a new contract.⁸ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.⁹ The applicant must provide this description on its FCC Form 470 or indicate on the form that it has a request for proposal (RFP) available providing detail about the requested services.¹⁰ The RFP must be available to all potential bidders for the duration of the bidding process.¹¹ The Commission has determined that a service provider participating in the competitive bidding process cannot be involved in the preparation of the entity's FCC Form 470.¹²

4. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹³ The Commission's rules require that an applicant carefully consider all submitted bids prior to entering into a contract, and price must be the primary factor in selecting the winning bid.¹⁴ Once the applicant has selected a provider and entered into a service

⁵ In performing a complete review and analysis of the underlying funding requests, USAC shall either grant the underlying funding requests before it, or, if denying the funding requests, provide the applicant with any and all grounds for denial.

⁶ 47 C.F.R. §§ 54.501-54.502.

⁷ 47 C.F.R. § 54.503. The Commission's rules provide one exception to the competitive bidding requirement for existing, binding contracts signed on or before July 10, 1997. *See* 47 C.F.R. § 54.511(c).

⁸ 47 C.F.R. § 54.503.

⁹ *Id.*

¹⁰ *See, e.g.,* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (current FCC Form 470).

¹¹ *See* FCC Form 470.

¹² *See Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033 (2000) (*Mastermind Order*).

¹³ 47 C.F.R. § 54.503(c). *See, e.g., Request for Review of the Decision of the Universal Service Administrator by Approach Learning and Assessment Center, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15510 (2008) (*Approach Learning Order*).

¹⁴ 47 C.F.R. § 54.511(a).

contract, the applicant must file an FCC Form 471 requesting support for eligible services.¹⁵ USAC assigns a funding request number (FRN) to each request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.¹⁶

5. *Request for Review.* In December 2007, Ramirez submitted an FCC Form 470 application to USAC to initiate the competitive bidding process for E-rate eligible services.¹⁷ In January 2008, Ramirez subsequently entered into service contracts and filed its FCC Form 471 application with USAC for funding year (FY) 2008.¹⁸ In April 2009, USAC denied Ramirez's FCC Form 471 application on the ground that Ramirez violated the Commission's competitive bidding rules because it issued an RFP, despite having indicated on its FCC Form 470 that no RFP existed.¹⁹ USAC later affirmed its decision on appeal.²⁰ Ramirez then filed the instant appeal with the Commission.²¹

6. In its request for review, Ramirez states that its FCC Form 470 was the RFP and that the FCC Form 470 contained sufficient information for service providers to submit bids.²² Ramirez claims that its failure to indicate on the FCC Form 470 that an RFP existed was an unintentional, technical error.²³ Ramirez also states that its district is located in a rural, remote area where only one vendor provides telecommunications and Internet services.²⁴ Ramirez further maintains that it has not been contacted by any other prospective vendors during the bidding process for the last 10 years.²⁵

III. DISCUSSION

7. For the reasons explained below, we grant Ramirez's appeal and remand the underlying funding requests associated with this appeal to USAC for further action consistent with this order.²⁶ The

¹⁵ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (current FCC Form 471).

¹⁶ See USAC website, Schools and Libraries, Funding Commitment Decision Letter, <http://www.universalservice.org/sl/applicants/step09/funding-commitment-decision-letter.aspx> (last visited June 9, 2011).

¹⁷ See FCC Form 470, Ramirez Common School District (posted Dec. 12, 2007) (Ramirez FCC Form 470).

¹⁸ See FCC Form 471, Ramirez Common School District (posted Jan. 18, 2008).

¹⁹ Letter from USAC, Schools and Libraries Division, to Jose Leal, Ramirez Common School District (dated Apr. 7, 2009) (Funding Commitment Decision Letter (FCDL)).

²⁰ Letter from USAC, Schools and Libraries Division, to Jose Leal, Ramirez Common School District (dated July 7, 2009).

²¹ See Request for Review.

²² See *id.* at 1.

²³ See E-mail from Chris Wittrien, USAC, Schools and Libraries Division, to Silverio Pena, Ramirez Common School District (dated Nov. 14, 2008) (Selective Review Information Request).

²⁴ *Id.*

²⁵ *Id.*

²⁶ The Bureau must conduct a *de novo* review of requests for review of decisions issued by USAC. 47 C.F.R. § 54.723.

record shows that Ramirez violated E-rate program rules by failing to indicate on its FCC Form 470 that it planned to issue an RFP for the underlying funding requests (FRNs 1668486, 1668490, 1668503, 1668528, and 1668550). However, because Ramirez's FCC Form 470 contained enough detail for service providers to identify the desired services and to formulate bids, we find that all bidders were on a level playing field despite this failure.²⁷ In addition, the record shows that Ramirez only received one bid and there was no contact by any other prospective vendors during the bidding process.²⁸ Consistent with precedent, we thus conclude that rejecting Ramirez's funding requests on the ground that Ramirez failed to advise bidders that an RFP existed is not warranted in this instance.²⁹ Rather, we find that a limited waiver of section 54.503 of the Commission's rules is in the public interest and that this determination results in more effective implementation of Commission policy on competitive bidding.³⁰ Accordingly, we waive section 54.503 of the Commission's rules and remand the underlying funding requests as part of Ramirez's FY 2008 FCC Form 471 application to USAC for further action consistent with this order. In remanding these funding requests to USAC, we make no finding as to the ultimate eligibility of the services requested therein.³¹

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), section 54.503 of the Commission's rules, 47 C.F.R. § 54.503 IS WAIVED to the extent provided herein.

9. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.722(a), that the request for review filed by Ramirez Common School District on May 14, 2009, IS GRANTED and the funding requests, FRNs 1668486, 1668490, 1668503, 1668528, and 1668550, ARE REMANDED to USAC for further action consistent with the terms of this order.

10. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.722(a), that USAC SHALL COMPLETE its review of the remanded funding requests and SHALL ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.

²⁷ See Ramirez FCC Form 470 (requesting, for example, local and long distance telecommunications service, high speed internet access connection, email, and webhosting).

²⁸ See Selective Review Information Request.

²⁹ See *Approach Learning Order*, 23 FCC Rcd 15510 (concluding that petitioners did not violate the Commission's competitive bidding rules by failing to correctly indicate on their FCC Forms 470 whether they had issued an RFP).

³⁰ 47 C.F.R. § 54.503. See also 47 C.F.R. § 54.511(a).

³¹ We remind USAC of its obligation to determine independently whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, or applicable statutes and to decline to disburse funds where this standard is not met.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
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