

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

| | | |
|--|---|-------------------------------|
| In the Matter of |) | |
| |) | |
| Requests for Review of |) | |
| Decisions of the |) | |
| Universal Service Administrator by |) | |
| |) | |
| Central Islip Free Union School District |) | File No. SLD- 294809 |
| Central Islip, New York |) | |
| |) | |
| Colorado City Unified School District |) | File Nos. SLD- 433137, 432989 |
| Colorado City, Arizona |) | |
| |) | |
| Free Library of Philadelphia |) | File No. SLD-669457 |
| Philadelphia, Pennsylvania |) | |
| |) | |
| Glendale School District |) | File No. SLD- 662410 |
| Flinton, Pennsylvania |) | |
| |) | |
| Northwest Arctic Borough School |) | File No. SLD- 632553 |
| Kotzebue, Alaska |) | |
| |) | |
| Yonkers Public Schools |) | File No. SLD- 458165 |
| Yonkers, New York |) | |
| |) | |
| |) | |
| Schools and Libraries Universal Service |) | CC Docket No. 02-6 |
| Support Mechanism |) | |

ORDER

Adopted: June 22, 2011

Released: June 22, 2011

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

I. INTRODUCTION

1. In this order, we address six appeals of decisions by the Universal Service Administrative Company (USAC) denying requests for funding under the E-rate program (more formally known as the schools and libraries universal service support program).¹ USAC denied funding to the petitioners on the

¹ See Letter from Kevin Seaman, Attorney for Central Islip Union Free School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 3, 2008) (regarding funding year (FY) 2002 FCC Form 471 application number 294809) (Central Islip Request for Review); Letter from Paul Timpson, Colorado City Unified School District No. 14, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 13, 2006) (regarding FY 2004 FCC Form 471 application numbers 433137 and 432989) (Colorado Request for Review); Letter from Kathleen Hannigan, Free Library of Philadelphia, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 18, 2010)

ground that the underlying applications violated the Commission's competitive bidding requirements.² Upon review of the record, we find that the Free Library of Philadelphia (Philadelphia) did not violate the Commission's competitive bidding requirements and we grant its appeal. We deny the appeals filed by Central Islip Union Free School District (Central Islip), Colorado City Unified School District (Colorado), Glendale School District (Glendale), Northwest Arctic Borough School (Northwest), and Yonkers Public Schools (Yonkers), finding that these petitioners violated the Commission's competitive bidding rules.³ We therefore direct USAC to rescind those funding requests at issue and institute recovery actions against the petitioners consistent with this order.

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.⁴ The Commission's rules provide that these entities must seek competitive bids for all services eligible for support.⁵

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.⁶ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.⁷ 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.⁸ The RFP must be available to all potential

(regarding FY 2009 FCC Form 471 application number 669457) (Philadelphia Request for Review); Letter from Nathaniel Hawthorne, Attorney for Glendale School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 5, 2010) (regarding FY 2009 FCC Form 471 application number 662410) (Glendale Request for Review); Letter from Saul Friedman, Attorney for Northwest Arctic Borough School, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed May 7, 2009) (regarding FY 2008 FCC Form 471 application number 632553) (Northwest Request for Review); Letter from Christopher M. Carvalho, Yonkers Public Schools, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 25, 2007) (regarding FY 2005 FCC Form 471 application number 458165) (Yonkers Request for Review). In this order, we use the term "appeals" to generically refer to requests for review of decisions issued by USAC. 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 47 C.F.R. §§ 54.503(c)(2)(vii), 54.511(a).

³ See *supra*, n.1.

⁴ 47 C.F.R. §§ 54.501-54.502.

⁵ 47 C.F.R. § 54.503. An existing contract signed on or before July 10, 1997 is exempt from the competitive bidding requirements. See 47 C.F.R. § 54.511(c).

⁶ 47 C.F.R. § 54.503(c).

⁷ *Id.*

⁸ 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).

bidders for the duration of the bidding process.⁹ 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 470.¹⁰

4. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹¹ The applicant must consider all submitted bids prior to entering into a contract, and price must be the primary factor in selecting the winning bid.¹² Once the applicant has selected a provider and entered into a service contract, the applicant must file an FCC Form 471 requesting support for eligible services.¹³ 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.¹⁴

5. Applicants may purchase eligible services from "master contracts" negotiated by a third party such as a governmental entity.¹⁵ The third party initiating the master contract must comply with the Commission's competitive bidding requirements and state procurement laws.¹⁶ The applicant is not required to satisfy the competitive bidding requirements if it takes service from a master contract that either has been competitively bid or qualifies for the existing contract exemption.¹⁷ If a third party has negotiated a master contract without complying with the competitive bidding requirements, then the applicant must comply with the competitive bidding requirements before it may receive discounts or reduced rates for services purchased from that master contract.¹⁸ If the applicant initiates a competitive bidding process by filing its own FCC Form 470 and considers a state master contract as one of the bids,

⁹ See FCC Form 470.

¹⁰ 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*).

¹¹ 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).

¹² 47 C.F.R. § 54.511(a).

¹³ 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).

¹⁴ See USAC website, *Schools and Libraries, Funding Commitment Decision Letter*, <http://www.universalservice.org/sl/applicants/step09/funding-commitment-decision-letter.aspx> (last visited Mar. 25, 2011).

¹⁵ See 47 C.F.R. § 54.500(g) (defining "master contract" as a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider).

¹⁶ See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5452-53, para. 233 (1997) (*Fourth Reconsideration Order*).

¹⁷ *Id.* at 5452-53, para. 233; see also *supra*, paras. 2-3.

¹⁸ *Fourth Reconsideration Order*, 13 FCC Rcd at 5452-53, para. 233.

then the applicant must comply with the Commission's competitive bidding requirements (i.e., carefully consider all bids submitted and select the most cost-effective offering with price being the primary factor considered in the selection process) and state and local procurement laws before it may receive discounts or reduced rates for services purchased from that master contract.¹⁹ Compliance with state and local procurement requirements does not relieve a school from its obligation also to follow Commission rules specifically for the E-rate program.²⁰ The applicant must certify its compliance with the competitive bidding rules when submitting its FCC Form 471 application.²¹

6. *Requests for Review.* The petitioners submitted their FCC Forms 470 to USAC to initiate the competitive bidding process for E-rate eligible services.²² Subsequently, the petitioners entered into contracts with their respective service providers and filed their FCC Form 471 applications for various funding years.²³ USAC denied the petitioners' applications on the ground that the petitioners violated the Commission's competitive bidding rules.²⁴ Specifically, the petitioners' requests for funding were denied because either they did not provide documentation showing that the vendor selection process complied with program rules, there was improper service provider participation in the competitive bidding process, the vendor selection documentation was created after the contract award date, they did not conduct a fair and open competitive bidding process, they failed to adhere to their own evaluation criteria in the vendor selection process, or they did not carefully consider all bids submitted in response to their FCC Form 470 postings.²⁵ USAC later affirmed these decisions on appeal.²⁶ The petitioners then filed the instant requests for review with the Commission.²⁷

¹⁹ *Fourth Reconsideration Order*, 13 FCC Rcd at 5452-53, para. 233; see also *Request for Review of the Decision of the Universal Service Administrator by Patterson School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 13101 (2006) (*Patterson Order*); USAC website, Schools and Libraries, Contract Guidance, <http://www.usac.org/sl/applicants/step04/contract-guidance.aspx> (last visited Mar. 25, 2011); see also 47 C.F.R. §§ 54.503, 54.511.

²⁰ See *Ysleta Order*, 18 FCC Rcd at 26424-26, paras. 41-44.

²¹ See FCC Form 471, Block 6.

²² FCC Form 470, Central Islip Union Free School District (posted Oct. 26, 2001) (Central Islip FCC Form 470); FCC Form 470, Colorado City Unified School District No. 14 (posted Jan. 2, 2004); FCC Form 470, Free Library of Philadelphia (posted Dec. 12, 2008) (Philadelphia FCC Form 470); FCC Form 470, Glendale School District (posted Aug. 25, 2004) (Glendale FCC Form 470); FCC Form 470, Northwest Arctic Borough School District (posted Jan. 4, 2008); FCC Form 470, Yonkers Public Schools (posted Jan. 7, 2005) (Yonkers FCC Form 470).

²³ FCC Form 471, Central Islip Union Free School District (filed Jan. 11, 2002); FCC Form 471, Colorado City Unified School District (filed Feb. 4, 2004); FCC Form 471, Free Public Library (filed Feb. 2, 2009); FCC Form 471, Glendale School District (filed Feb. 12, 2009); FCC Form 471, Northwest Arctic Borough School District (filed Feb. 7, 2008); FCC Form 471, Yonkers Public Schools (filed Feb. 18, 2005).

²⁴ See Letter from USAC, Schools and Libraries Division, to Fadhilika Atiba-Weza, Central Islip Union School District (dated Dec. 9, 2004) (Central Islip Funding Commitment Decision Letter (FCDL)); Letter from USAC, Schools and Libraries Division, to Dennis Darger, Colorado City Unified School District No. 14 (dated June 14, 2005) (Colorado FCDL); Letter from USAC, Schools and Libraries Division, to Kathleen Hannigan, Free Library of Philadelphia (dated Jan. 19, 2010) (Philadelphia FCDL); Letter from USAC, Schools and Libraries Division, to Currie Sutton, Glendale School District (dated Feb. 9, 2010) (Glendale FCDL); Letter from USAC, Schools and Libraries Division, to Judy Richards, Northwest Arctic Borough School District (dated Mar. 10, 2009) (Northwest FCDL); Letter from USAC, Schools and Libraries Division, to Chris Carvalho, Yonkers Public Schools (dated Dec. 2, 2005) (collectively, FCDLs).

²⁵ See Central Islip FCDL, Colorado FCDL, Philadelphia FCDL, Glendale FCDL, Northwest FCDL, and Yonkers FCDL.

III. DISCUSSION

7. Consistent with our obligation to conduct a *de novo* review of appeals of decisions made by USAC,²⁸ we find that Philadelphia did not violate the Commission's competitive bidding rules and we therefore grant its appeal. In addition, we deny the appeals filed by Central Islip, Colorado, Glendale, Northwest, and Yonkers, finding that each of those petitioners failed to demonstrate compliance with the Commission's competitive bidding rules.²⁹ We discuss these appeals separately, below.

8. *Free Public Library of Philadelphia*. USAC denied one funding request in Philadelphia's funding year 2009 application on the ground that its vendor selection documentation was created after the contract award date.³⁰ In its request for review, Philadelphia states that its vendor evaluation process was based on bids received before the contract award date and that it signed a contract with the lowest bidder on January 30, 2009.³¹

9. After reviewing the record before us, we find that USAC erred in denying Philadelphia's request for support. The record shows that, on December 12, 2008, Philadelphia posted its FCC Form 470 to USAC's website seeking bids for Internet access services.³² The record also shows that Philadelphia received three bids in response to this posting on December 19, 2008, January 14, 2009, and January 20, 2009.³³ In its request for review, Philadelphia provides two screen prints of its bid evaluation worksheets.³⁴ One worksheet, dated December 26, 2008, does not represent a complete bid assessment because two of the bids had not yet been received.³⁵ The other worksheet, dated February 2, 2009, appears to illustrate a complete bid evaluation.³⁶ Although the February worksheet is dated after

²⁶ See Letter from USAC, Schools and Libraries Division, to Kevin Seaman, Attorney for Central Islip Union Free School District (dated Dec. 27, 2007); Letter from USAC, Schools and Libraries Division, to Dennis Darger, Colorado City Unified School District No. 14 (dated Nov. 16, 2005) (Colorado Administrative Decision Letter (ADL)); Letter from USAC, Schools and Libraries Division, to Kathleen Hannigan, Free Library of Philadelphia (dated Feb. 18, 2010) (Philadelphia ADL); Letter from USAC, Schools and Libraries Division, to Chris Carvalho, Yonkers Public Schools (dated Sept. 21, 2006). Note that Glendale and Northwest submitted an appeal of USAC's funding commitment decision letter with the Commission. See Glendale Request for Review; Northwest Request for Review.

²⁷ See Central Islip Request for Review; Colorado Request for Review; Philadelphia Request for Review; Glendale Request for Review; Northwest Request for Review; Yonkers Request for Review.

²⁸ 47 C.F.R. § 54.723.

²⁹ See 47 C.F.R. § 54.511.

³⁰ See Philadelphia FCDL; Philadelphia ADL.

³¹ See Philadelphia Request for Review at 2; Letter from James A. Pecora, Free Library of Philadelphia, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 31, 2010). The allowable contract date was January 9, 2009.

³² See Philadelphia FCC Form 470.

³³ See Philadelphia Request for Review.

³⁴ *Id.*

³⁵ *Id.* at 3.

³⁶ See Free Public Library of Philadelphia, E-rate Bid Assessment Worksheet, Funding Year July 2009- June 2010, FRN 1837112, dated Feb. 2, 2009.

Philadelphia signed a service contract for the underlying services, the record contains other evidence showing that the vendor evaluation process took place before the contract award date. Specifically, Philadelphia provides an email communication documenting that it evaluated all three bids before selecting the winning vendor on January 30, 2009.³⁷

10. Furthermore, Philadelphia explains that it submitted its FCC Form 471 application on February 2, 2009, and inserted that date on its bid evaluation worksheet.³⁸ There is no Commission requirement that vendor selection documentation be dated before the contract award date. The fact that Philadelphia dated its paperwork after the contract award date because that was the date it submitted its application does not undermine the evidence that Philadelphia's selecting official properly considered the bids and made a selection on January 30. Based on these factors, we find that Philadelphia's competitive bidding process did not violate program rules. In addition, in the record at this time, there is no evidence of waste, fraud or abuse, or misuse of funds, or a failure to adhere to core program requirements. We therefore grant Philadelphia's request for review.

11. *Central Islip*. USAC denied nine FRNs in Central Islip's funding year 2002 application after determining that Central Islip failed to supply evidence of how it selected Network Outsource, Inc., (Network Outsource) as its provider of internal connections.³⁹ In its request for review, Central Islip states that it received three bids in response to its FCC Form 470 posting and that it reviewed each bid carefully before selecting Network Outsource.⁴⁰ In support of these assertions, Central Islip provides a copy of one bid and a letter from its superintendent indicating that a second bid had been received but rejected.⁴¹ Central Islip states that USAC possesses the third successful bid of Network Outsource.⁴² Central Islip maintains that the submission of this documentation clearly illustrates that there was a competitive bidding process and that Network Outsource was the most viable candidate.⁴³

12. We conclude that USAC correctly denied Central Islip's request for support. The record shows that Central Islip received three bids in response to its FCC Form 470 posting.⁴⁴ Although Central Islip provides a copy of one bid and a letter indicating that another bid had been rejected, there is no documentation, i.e., a bid evaluation sheet or bid comparison, showing how the bids were evaluated,

³⁷ See Letter from James A. Pecora, Free Library of Philadelphia, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 31, 2010). Specifically, the email (which was sent from a Philadelphia representative to a telecommunications company representative that had submitted a bid) states "I made my decision on January 30 and filed my E-rate form on February 2." Philadelphia maintains that this email communication shows that Philadelphia made its vendor selection prior to the contract award date.

³⁸ *Id.*

³⁹ See Central Islip ADL (regarding FRNs 767429, 767431, 767432, 767440, 767444, 767453, 767464, 767466, and 767467).

⁴⁰ See Central Islip Request for Review at 1.

⁴¹ *Id.* at Attachments C, D.

⁴² *Id.* at 1.

⁴³ *Id.* at 2.

⁴⁴ *Id.* at 1-2.

scored, or ranked.⁴⁵ Thus, we are unable to determine whether Central Islip selected the most cost-effective service offering. The absence of this information leads us to conclude that Central Islip failed to demonstrate that its competitive bidding process complied with program rules because it could not show that it conducted a competitive bidding process.⁴⁶ The documentation submitted on appeal and Central Islip's assertion that it reviewed the responsive bids is not a sufficient basis upon which to grant the requested relief.⁴⁷ Consequently, we deny Central Islip's request for review.⁴⁸

13. *Colorado*. USAC denied Colorado's funding request on the ground that there was improper service provider participation in Colorado's competitive bidding process.⁴⁹ Specifically, USAC determined that an employee of Darcomm Technologies (Darcomm), Mr. Richard Moore, served on the committee that developed the technology plan for Colorado and that Colorado subsequently awarded Darcomm a service contract.⁵⁰ In its request for review, Colorado concedes that Mr. Moore assisted with the school district's technology plan and explains that that Mr. Moore was listed as a "Technology Provider" on the technology plan because his company was selected for an E-rate project in the previous funding year and to give the plan credibility.⁵¹ Colorado also concedes that it selected Darcomm but states that the vendor selection committee did not include Mr. Moore.⁵²

14. Upon review of the record, we conclude that USAC correctly denied Colorado's request for support. The record shows that Mr. Moore is included on a list of committee members who are in charge of developing a technology plan for the Colorado City Unified School District and determining what products and services are necessary to achieve technology plan goals.⁵³ The record also shows that Mr. Moore submitted several bids on behalf of Darcomm and Darcomm was ultimately awarded a service contract.⁵⁴ A person assisting in the preparation of a technology plan can influence the products and services that are requested.⁵⁵ When an applicant allows an entity to formulate a technology plan and also

⁴⁵ We note that the Commission's rules in effect at the time of this procurement required entities to maintain for their purchases of telecommunications and other supported services the kind of procurement records that they maintain for other purchases. See 47 C.F.R. § 54.516.

⁴⁶ See 47 C.F.R. § 54.511.

⁴⁷ See Central Islip Request for Review at 1.

⁴⁸ See Central Islip Request for Review (regarding FRNs 767429, 767431, 767432, 767440, 767444, 767453, 767464, 767466, and 767467).

⁴⁹ See Colorado Request for Review. See also Colorado FCDL; Colorado ADL.

⁵⁰ See Colorado FCDL; Colorado ADL. Mr. Moore is listed as the "Technology Provider" on behalf of Darcomm Technologies. See Strategic Long-Range Technology Plan, Colorado City Unified School District #14 at 4 (dated Mar. 4, 2005) (Colorado Tech Plan) (listing members of the technology committee).

⁵¹ See Colorado Request for Review at 2.

⁵² *Id.*

⁵³ See Colorado Tech Plan at 5, 24. Specifically, the mission of the committee is to evaluate and assess the technology needs of the Colorado City Unified School District and to establish a technology plan that will address the technology needs of the students, teachers, and staff. *Id.*

⁵⁴ See, e.g., E-mail from Richard Moore, Darcomm Technologies to Dennis Darger, Colorado City Unified School District (dated Jan. 20, 2004).

⁵⁵ See, e.g., *Mastermind Order*, 16 FCC Rcd at 4032-33.

participate in the competitive bidding process as a prospective service provider, the applicant impairs its ability to hold a fair and open competitive bidding process.⁵⁶ We are deeply concerned about practices such as these that undermine the framework of the competitive bidding process. Service provider participation of the type addressed here may suppress fair and open competitive bidding and ultimately damage the integrity of the program. Colorado has not provided sufficient evidence demonstrating that USAC erred in its decision and has not demonstrated compliance with the Commission's competitive bidding requirements. We therefore deny its request for review.⁵⁷

15. *Glendale*. USAC denied one funding request in Glendale's funding year 2009 application on the ground that Glendale failed to assure USAC that it conducted a fair and open competitive bidding process and chose the most cost-effective offering.⁵⁸ Specifically, USAC determined that Glendale did not adequately explain the time lapse between the posting date of the referenced FCC Form 470 and the contract award date.⁵⁹ In its request for review, Glendale states that it posted an FCC Form 470 to initiate the competitive bidding process for eligible telecommunications services on August 25, 2004.⁶⁰ On May 2, 2006, Glendale signed a service contract with Windstream Communications, Inc. (Windstream), the only vendor to respond to the Form 470.⁶¹ Glendale argues that USAC's decision to deny funding because of the twenty month time lapse between the FCC Form 470 posting date and the contract execution date is arbitrary, unreasonable, and unlawful.⁶² Glendale further argues that rigid adherence to certain E-rate rules that are procedural in nature denies Glendale funding and does not promote the goals of section 254 of the Act.⁶³ Glendale maintains that there is no specific rule stating that the passage of time equates to an unfair and anti-competitive bidding process and therefore its funding request should be approved.⁶⁴

16. We conclude that USAC correctly denied Glendale's request for support. The record shows that there was a time lapse of almost two years between the allowable contract date and the execution date of Glendale's contract with Windstream. We understand that sometimes contract negotiations can be protracted. In this specific instance, however, we do not believe that a two-year time lapse is appropriate. A time lapse of this length distorts the competitive bidding process because it makes it more difficult to determine whether the applicant obtained the most cost-effective offering for the

⁵⁶ *Id.*

⁵⁷ See Colorado Request for Review (regarding FRNs 1205932, 1205362, 1205283, 1205258, and 1205180).

⁵⁸ See Glendale FCDL (regarding FRN 1929081). See also Glendale FCC Form 470.

⁵⁹ *Id.*

⁶⁰ Glendale Request for Review at 2. The allowable contract date was September 22, 2004. See Glendale FCC Form 470.

⁶¹ See Glendale Request for Review at 2.

⁶² *Id.* at 6.

⁶³ *Id.* at 3, 5, citing *Request for Review of the Decision of the Universal Service Administrator by Grand Rapids Public Schools, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-524297, CC Docket No. 02-6, Order, 23 FCC Rcd 15413 (2008) (*Grand Rapids Order*); *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*).

⁶⁴ *Id.* at 6.

eligible products or services. It also may deter participation in the bidding process because service providers may presume that a FCC Form 470 posted two years ago is not a viable bidding opportunity. We find that when there is a substantial time lapse between the FCC Form 470 posting and the ultimate vendor selection, such as in Glendale's case, the applicant must provide a compelling reason for the delay or else re-bid the project.⁶⁵ Here, Glendale has not offered any explanation for the time lapse between the FCC Form 470 posting and contract execution dates. Consequently, we deny its request for review.

17. *Northwest*. USAC denied seven funding requests in Northwest's funding year 2008 application on the ground that Northwest failed to adhere to its own evaluation criteria in the vendor selection process.⁶⁶ Specifically, USAC found that the vendor selection worksheets submitted to USAC during the application review process had not been completed and did not show how each of the three vendors submitting bids was scored against the established evaluation criteria.⁶⁷

18. In its request for review, Northwest asserts that its selection committee considered several factors in determining which vendor offered the most cost-effective means of meeting its educational goals: reliability and response time, infrastructure, record of support and service, confidence in vendors, and educational application of technology.⁶⁸ Northwest also states that price was a primary consideration in the committee's unanimous decision to retain Northwest's existing service provider, GCI Communications Corporation (GCI).⁶⁹ As evidence of these assertions, Northwest provides a copy of a worksheet containing a chart that includes the price proposals of three bidders and the notations of a committee member listing five criteria used to select the winning bidder.⁷⁰ Northwest also provides a copy of a document entitled "[Northwest] E-rate Contract Proposal Evaluation" (Proposal Evaluation document), which was to be used in the vendor selection process.⁷¹ The Proposal Evaluation document lists nine evaluation criteria and the number of points assigned to each criterion.⁷² In addition, Northwest provides the affidavit of a committee member attesting that Northwest's vendor selection process

⁶⁵ In its 2004 Train the Trainer Presentation, USAC provided guidance to program participants concerning the competitive bidding process, the roles for service providers during the competitive bidding process, service contracts, the FCC Form 470, and other matters. With regard to service contracts, USAC explained that "if there is a significant period of time between the posting of the 470 and the contract award date, the applicant must be able to explain the delay." See USAC website, Schools and Libraries, Training Presentations, <http://www.usac.org/sl/about/training-sessions/training-2004/2004-presentations.aspx>, at slide 9 (last visited Apr. 19, 2011).

⁶⁶ See Northwest FCDL (regarding FRNs 1748697, 1748741, 1748747, 1748767, 1748773, 1748649, and 1748670).

⁶⁷ *Id.*

⁶⁸ See Northwest Request for Review at 4.

⁶⁹ See *id.* at 5.

⁷⁰ See Northwest Request for Review at Exhibit C (consists of a chart containing the price proposals of three bidders and the notations of a committee member identifying five criteria used to select the winning bidder: reliability and response time, infrastructure, price differential, record of support and service, confidence in vendors, and educational application of technology).

⁷¹ *Id.* at Exhibit F.

⁷² *Id.* (listing nine evaluation criteria and the weights and scoring scale for each of the criteria. The evaluation criteria include: project understanding (10 points), methodology (5 points), design and technical execution (20 points), services and support (15 points), experience (10 points), proposed staff qualifications and experience (5 points), proposed installation and operational delivery (5 points), charges/cost to include (25 points), and billing statements (5 points)).

complied with program rules.⁷³ Northwest maintains that it has been unable to locate the scoring matrix used during its vendor review and selection process, but that the committee acted fairly, responsibly, and objectively in selecting GCI.⁷⁴ Northwest argues that the omission of a scoring matrix is a procedural error, not a substantive one, and that the committee's consideration of the criteria complied with program requirements.⁷⁵

19. We conclude that USAC correctly denied Northwest's request for support. Based on our review of the record, Northwest is unable to show that it evaluated the bids submitted in response to the FCC Form 470 posting in accordance with the process set forth in the Proposal Evaluation document.⁷⁶ The Proposal Evaluation document provided by Northwest to USAC during the application review process, and to the Commission on appeal, was not completed and does not show how any of the selection committee members reviewed, scored, or ranked the bids submitted on behalf of three service providers.⁷⁷ In fact, by Northwest's admission, it has been unable to locate any scoring matrix used by the selection committee during the vendor selection process.⁷⁸ Moreover, the worksheet containing the pricing chart and handwritten notes of one of the selection committee members does not show how each bid was scored and ranked or indicate how each of the evaluation criteria was weighed in order to select the winning vendor.⁷⁹ Northwest is unable to demonstrate that it complied with the vendor selection process set forth in its Proposal Evaluation document or provide any other documentation showing that it complied with the Commission's competitive bidding rules. We therefore deny its request for review.⁸⁰

20. *Yonkers*. USAC determined that Yonkers failed to provide documentation of how it scored its bids during the selective review process.⁸¹ In its request for review, Yonkers states that it reviewed all of the bids submitted in response to its FCC Form 470 posting.⁸² Yonkers also states that vendor score sheets were not required because it selected a vendor from a state master contract.⁸³

⁷³ *Id.* at Exhibit D (affidavit of Eugene Smith).

⁷⁴ *See* Northwest Request for Review at 8, Exhibit D.

⁷⁵ *See* Northwest Request for Review at 12.

⁷⁶ *Id.* The evaluation contract states that vendors responding to Northwest's FCC Form 470 will be evaluated and ranked on the basis of the criteria set forth in the contract. *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at Exhibit D.

⁷⁹ *Id.*

⁸⁰ *See* Northwest Request for Review (regarding FRNs 1748697, 1748741, 1748747, 1748767, 1748773, 1748649, and 1748670).

⁸¹ USAC selects some applications for selective review to ensure that certain FCC program rules are followed. Applications are reviewed to examine compliance with the following: 1) competitive bidding process; 2) necessary resources certification; 3) endowment qualifications; and 4) consortia qualifications. *See* Schools and Libraries website regarding the Selective Review process, <http://www.universalservice.org/sl/applicants/step08/> (last visited Mar. 25, 2011).

⁸² *See* Yonkers Request for Review at 1.

⁸³ *Id.*

21. We conclude that USAC correctly denied Yonkers' request for support. The record shows that Yonkers initiated a competitive bidding process for Internet access services by filing an FCC Form 470, which was posted on January 7, 2005.⁸⁴ Yonkers received three bids in response to the posting, but ultimately selected a vendor from the New York state master contract.⁸⁵ When asked to submit documentation regarding the comparison of bids received for the desired services, Yonkers responded that no formal documentation was created.⁸⁶

22. Applicants may select a vendor from a state master contract.⁸⁷ If the state files an FCC Form 470, then the applicant may reference that form on its FCC Form 471 application.⁸⁸ No separate bidding documents are required by the applicant citing the state's Form 470, other than what is required by the state master contract and state and local procurement laws. However, when the applicant files its own FCC Form 470 and considers a state master contract as one of the bids, the applicant must comply with the Commission's competitive bidding rules.⁸⁹ In particular, applicants must select the most cost-effective service offering after carefully evaluating all submitted bids, including the state master contract, and be able to show that price was the primary factor considered.⁹⁰ In this instance, Yonkers has not provided any documentation, (i.e., a score sheet or bid comparison), regarding the vendor selection process for the services at issue. The absence of this information leads us to conclude that Yonkers failed to carefully consider all bids submitted in response to its FCC Form 470 posting. Yonkers' assertion that it reviewed the responsive bids is not a sufficient basis upon which to grant the requested relief.⁹¹ We therefore conclude that Yonkers has failed to demonstrate compliance with the Commission's competitive bidding requirements. Consequently, we deny Yonkers' request for review.

IV. ORDERING CLAUSES

23. ACCORDINGLY, IT IS 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, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that the request for review filed by the Free Public Library of Philadelphia IS GRANTED.

24. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the requests for review filed by Central Islip Union Free School District, Colorado City Unified School District No. 14, Glendale School District, Northwest Arctic Borough School, and Yonkers Public Schools ARE DENIED.

⁸⁴ Yonkers FCC Form 470.

⁸⁵ See Yonkers Request for Review at 1.

⁸⁶ See Letter from Christopher M. Carvalho, Yonkers Public Schools, to USAC, Schools and Libraries Division (dated Nov. 4, 2005).

⁸⁷ See 47 C.F.R. § 54.500(g).

⁸⁸ See *supra*, para.5. See also *Patterson Order*, 21 FCC Rcd at 13102-03, para. 3.

⁸⁹ *Id.*

⁹⁰ 47 C.F.R. § 54.511.

⁹¹ See Yonkers Request for Review at 1.

25. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Universal Service Administrative Company SHALL RESCIND the funding commitments for the funding request numbers at issue and INSTITUTE recovery actions against Central Islip Union Free School District, Colorado City Unified School District No. 14, Glendale School District, Northwest Arctic Borough School, and Yonkers Public Schools, to the extent provided herein.

26. 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
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau