

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a
Decision of the
Universal Service Administrator by
Bayless Intermediate School
St. Louis, Missouri
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-483397
CC Docket No. 02-6

ORDER

Adopted: January 14, 2011

Released: January 14, 2011

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

I. INTRODUCTION

1. We grant an appeal filed by Bayless Intermediate School (Bayless) of a decision of the Universal Service Administrative Company (USAC) denying its funding request for discounts under the E-rate program (more formally known as the schools and libraries universal service support program). USAC denied Bayless's funding request on the grounds that Bayless had extended the expiration date of its contract for services without posting a new request for services in violation of the E-rate program competitive bidding rules. We find, however, that Bayless complied with the E-rate program's competitive bidding rules. We therefore grant Bayless's request for review and remand its underlying application to USAC for further action consistent with this order. To ensure that the underlying matter is resolved expeditiously, we direct USAC to issue an award or denial based on a complete review and analysis of the underlying application no later than 60 calendar days from the release date of this order.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services. The Commission's rules provide that an eligible school, library, or consortium must seek competitive bids for all services eligible for support.

1 Letter from Bettie Downs, Bayless Intermediate School, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Mar. 28, 2006) (Request for Review). 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. §§ 54.504; Letter from USAC, Schools and Libraries Division, to Bettie Downs, Bayless Intermediate School, at 5-6 (dated Feb. 1, 2006) (Bayless Funding Commitment Decision Letter).

3 47 C.F.R. §§ 54.501-54.503.

4 47 C.F.R. § 54.504. There is one limited exception for existing, binding contracts signed on or before July 10, 1997. See 47 C.F.R. § 54.511(c). Bayless does not argue that this exemption applies to its case.

In accordance with our rules, an applicant must file with USAC an FCC Form 470 requesting services.⁵ The applicant must wait at least 28 days after the FCC Form 470 is posted to the USAC website, or after public availability of an applicant's RFP, whichever is later, before making commitments with the selected service provider for the requested services.⁶ Once the school or library has complied with the Commission's competitive bidding requirements and signed a contract for eligible services, the applicant must submit an FCC Form 471 application before USAC will issue a funding commitment to the applicant.⁷

3. *Request for Review.* In December 2003, Bayless submitted an FCC Form 470 seeking bids for internal connections for funding year 2004.⁸ On January 21, 2004, Bayless signed a contract for a one-time purchase of internal connections from SBC Datacom for \$95,461.88.⁹ Although this contract had no expiration date, Bayless states that electronic submission of its FCC Form 471 for funding year 2004 required it to provide an expiration date, so it used the last day of funding year 2004.¹⁰ At the time for applying for discounts for funding year 2005, USAC had not yet announced whether it would have sufficient funds to be able to approve funding year 2004 funding commitments for internal connections by applicants eligible for 80 percent discounts.¹¹ Therefore, in January 2005, Bayless submitted an FCC Form 471 funding request for funding year 2005 for E-rate discounts based on the same January 21, 2004 contract with SBC Datacom.¹² Bayless indicated on its funding year 2005 FCC Form 471 that its 2005 funding request duplicated its funding year 2004 funding request.¹³ Additionally, as it did in funding year 2004, Bayless used the last day of funding year 2005 to indicate the expiration date of the contract with SBC Datacom.¹⁴ USAC, however, denied Bayless's funding year 2005 request for internal connections on the grounds that Bayless had violated the E-rate program competitive bidding rules by extending its

⁵ 47 C.F.R. § 54.504(b); *see also* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (FCC Form 470).

⁶ 47 C.F.R. § 54.504(b)(4); *see also* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

⁷ 47 C.F.R. § 54.504(c); *see also* FCC Form 471. An applicant can enter into multi-year contracts or contracts with voluntary extensions without reposting an FCC Form 470 application and complying with the 28-day rule each year as long as the applicant indicated such intent in the original posting in item 13 on its FCC Form 470 or in its RFP. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732, 6736, para. 10-12 (1999); *see* USAC website, Schools and Libraries, Contract Guidance, at <http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx> (last viewed Nov. 17, 2010). A contract including voluntary extensions means that the contract expires at the end of its original term and may be voluntarily extended for one or more years pursuant to the provisions in the contract. *Id.*

⁸ FCC Form 470, Bayless Intermediate School (filed Dec. 8, 2003); Bayless Request for Review at 1-2.

⁹ FCC Form 471, Bayless Intermediate School (filed Jan. 30, 2004) (regarding funding request number (FRN) 1136756). Bayless was eligible for an 80 percent discount rate. *Id.*

¹⁰ Bayless Request for Review at 2.

¹¹ Ultimately, applicants eligible for an 80 percent discount rate did not receive funding for internal connections in funding year 2004. *See* USAC website, Schools and Libraries, April 2005 Announcements, at <http://www.universalservice.org/sl/tools/news-archive/2005/042005.asp> (last viewed Nov. 17, 2010); Letter from USAC, Schools and Libraries Division, to Bettie Downs, Bayless Intermediate School (dated May 10, 2005).

¹² FCC Form 471, Bayless Intermediate School (filed Feb. 18, 2005) (regarding FRN 1339552) (Bayless 2005 FCC Form 471).

¹³ *See* Bayless 2005 FCC Form 471, item 10. In item 10, Bayless indicated that FRN 1339552 for funding year 2005 duplicated FRN 1136756 for funding year 2004. *Id.*

¹⁴ Bayless Request for Review at 2.

SBC Datacom contract for internal connections hardware from June 30, 2005 to June 30, 2006 without seeking a new set of competitive bids.¹⁵ Bayless subsequently filed its request for review with the Commission.¹⁶ In its request for review, Bayless states that any violation of E-rate program rules was due to a lack of direction from USAC in this instance as to how to treat a purchase agreement without an expiration date, particularly when the purchase agreement was also part of a funding request from a previous funding year that had not yet been acted upon by USAC.¹⁷

III. DISCUSSION

4. We grant Bayless's request for review. USAC denied Bayless's funding year 2005 request for internal connections on the grounds that Bayless had violated the E-rate program competitive bidding rules by extending its SBC Datacom contract for hardware without seeking bids for such extension.¹⁸ Based on the facts and circumstances of this case, we find, however, that Bayless's effort to seek a discount on a one-time purchase of internal connections hardware complied with the E-rate program competitive bidding rules.¹⁹ As indicated above, in 2004, Bayless sought competitive bids for internal connections and subsequently signed a contract with SBC Datacom on January 21, 2004.²⁰ Because there was no option on the FCC Form 471 to indicate the contract with SBC Datacom lacked an expiration date, Bayless listed the last day of the funding year as the expiration date on its FCC Forms 471 for funding years 2004 and 2005.²¹ We find this was a reasonable way to treat a one-time purchase given the limitations of the FCC Form 471. Additionally, because Bayless had not yet received a decision regarding its funding year 2004 request, Bayless specifically indicated in item 10 of its funding year 2005 FCC Form 471 that this request was a duplication of its funding year 2004 funding request.²² We also find it reasonable for Bayless to have then considered the "expiration date" of that purchase contract to be the last day of funding year 2005. Because Bayless's contract with SBC Datacom was in compliance with our competitive bidding rules when its request for service was initially posted, we find no public interest in requiring Bayless to seek a second round of bids for a one-time purchase that was already subject to the E-rate program competitive bidding process. Moreover, at this time, there is no evidence of waste, fraud or abuse. We therefore remand the underlying application to USAC for further action consistent with this order.

5. In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.²³ We remind USAC of its obligation to determine

¹⁵ See Bayless Funding Commitment Decision Letter at 5-6.

¹⁶ See Bayless Request for Review.

¹⁷ See *id* at 2.

¹⁸ See Bayless Funding Commitment Decision Letter at 5-6.

¹⁹ 47 C.F.R. § 54.504(b).

²⁰ See *supra* para. 3.

²¹ *Id.*

²² *Id.*

²³ Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

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. To ensure that the underlying matter is resolved expeditiously, we direct USAC to issue an award or a denial based on a complete review and analysis no later than 60 calendar days from the release date of this order.²⁴

IV. ORDERING CLAUSES

6. Accordingly, IT IS 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 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 request for review filed by Bayless Intermediate School on March 28, 2006 IS GRANTED and the application IS REMANDED to USAC for further consideration in accordance with the terms of this order.

7. 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 sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC SHALL COMPLETE its review of Bayless Intermediate School's underlying application and ISSUE an award or a denial based on a complete review and analysis no later than 60 calendar days from the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

²⁴ In performing a complete review and analysis of the underlying matter, USAC shall either grant the requested support, or, if denying it, provide the applicant with any and all grounds for denial.