

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

In the Matter of)	
)	
Request for Review of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Gila Bend Unified School District 24)	File Nos. SLD- 463128, 505646
Gila Bend, Arizona)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: May 17, 2011

Released: May 17, 2011

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

I. INTRODUCTION

1. We deny two appeals filed by the Gila Bend Unified School District 24 (Gila) of decisions by the Universal Service Administrative Company (USAC) concerning Gila's applications for discounted services under the E-rate program (more formally known as the schools and libraries universal service program) for funding years 2005 and 2006.¹ USAC rescinded funding for two of Gila's funding requests on the grounds that Gila violated the Commission's competitive bidding requirements.² Upon review of the record, we find that Gila failed to retain the required documentation that would demonstrate its compliance with the Commission's competitive bidding rules and we, therefore, affirm USAC's decisions. To the extent funds have already been disbursed under these funding requests to Gila, we direct USAC to continue recovery actions.

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

¹ See Requests for Review by Gila Bend Unified School District 24, to Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed July 8, 2010) (Requests for Review) (regarding FCC Form 471 application number 463128, funding request number (FRN) 1272933 and FCC Form 471 application number 505646, FRN 1389610). 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 Letter from USAC, Schools and Libraries Division, to James Mosley, Gila Bend Unified School District (dated Apr. 21, 2010) (regarding funding year 2005 FCC Form 471 application number 463128); Letter from USAC, Schools and Libraries Division, to James Mosley, Gila Bend Unified School District (Apr. 21, 2010) (regarding funding year 2006 FCC Form 471 application number 505646) (collectively, Notification of Commitment Adjustment Letters (COMADs)).

services.³ The Commission's rules provide that these entities must seek competitive bids for all services eligible for support.⁴

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.⁵ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.⁶ 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.⁷ The RFP must be available to all potential bidders for the duration of the bidding process.⁸ 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 470.⁹

4. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹⁰ 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.¹¹ 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.¹² 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.¹³

³ 47 C.F.R. §§ 54.501-54.502.

⁴ 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).

⁵ 47 C.F.R. § 54.503.

⁶ *Id.*

⁷ *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).

⁸ *See* FCC Form 470.

⁹ *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*).

¹⁰ 47 C.F.R. §§ 54.504(b)-(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).

¹¹ 47 C.F.R. § 54.511(a).

¹² *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).

¹³ *See* USAC website, Schools and Libraries, Funding Commitment Decision Letter, <http://www.universalservice.org/sl/applicants/step09/funding-commitment-decision-letter.aspx> (last visited May 17, 2011).

5. Applicants may purchase eligible services from “master contracts” negotiated by a third party such as a governmental entity.¹⁴ The third party initiating the master contract must comply with the Commission’s competitive bidding requirements and state procurement laws.¹⁵ 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.¹⁶ If a third party has negotiated a master contract without complying with the competitive bidding requirements, the applicant must comply with the Commission’s competitive bidding requirements and state and local procurement laws before it may receive discounts or reduced rates for services purchased from that master contract.¹⁷ 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, 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.¹⁸ 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.¹⁹ The applicant must certify its compliance with the competitive bidding rules when submitting its FCC Form 471 application.²⁰

6. *Requests for Review.* Gila submitted its FCC Forms 470 to USAC to initiate the competitive bidding process for E-rate eligible services.²¹ Subsequently, Gila entered into contracts with the selected service providers under a state master contract and filed its FCC Form 471 applications for funding years 2005 and 2006.²² USAC approved the funding requests at issue in Gila’s funding year

¹⁴ 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).

¹⁵ 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*).

¹⁶ *Id.* at 5452-53, para. 233; see also *supra*, paras. 2-3.

¹⁷ *Fourth Reconsideration Order*, 13 FCC Rcd at 5452-53, para. 233; *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 May 17, 2011). See also 47 C.F.R. §§ 54.503, 54.511.

¹⁸ *Fourth Reconsideration Order*, 13 FCC Rcd at 5452-53, para. 233; *Patterson Order*, 21 FCC Rcd 13101; USAC website, Schools and Libraries, Contract Guidance, <http://www.usac.org/sl/applicants/step04/contract-guidance.aspx> (last visited May 17, 2011). See also 47 C.F.R. §§ 54.503, 54.511.

¹⁹ See *Ysleta Order*, 18 FCC Rcd at 26424-26, paras. 41-44.

²⁰ See FCC Form 471, Block 6.

²¹ FCC Form 470, Gila Bend Unified School District (posted Nov. 1, 2005); FCC Form 470, Gila Bend Unified School District (posted Dec. 10, 2005) (collectively, Gila FCC Forms 470).

²² FCC Form 471, Gila Bend Unified School District (filed Jan. 27, 2006) (FCC Form 471 application number 505646); FCC Form 471, Gila Bend Unified School District (filed Feb. 9, 2005) (FCC Form 471 application number 463128) (collectively, Gila FCC Forms 471).

2005 and 2006 applications.²³ During post-funding review, however, USAC rescinded Gila's funding commitment for FRN 1272933 as part of its funding year 2005 application and FRN 1389610 as part of its funding year 2006 application on the grounds that Gila failed to maintain documentation demonstrating that the vendor selection process for its applications complied with E-rate program rules.²⁴ USAC later affirmed its decisions on appeal.²⁵ Gila then filed the instant requests for review with the Commission.²⁶

III. DISCUSSION

7. We deny Gila's appeals because we are unable to determine from the record that a competitive bidding process consistent with E-rate requirements occurred. The record shows that Gila initiated a competitive bidding process for the services at issue by filing an FCC Form 470 on November 1, 2005 and December 10, 2005.²⁷ According to Gila, it selected vendors from an Arizona state master contract.²⁸ During the course of an audit, USAC determined that Gila failed to retain sufficient documentation regarding the number of bids, associated prices, and bid evaluation, and could not determine the cost-effectiveness of the bid as a result.²⁹ On appeal, Gila argues that its state procurement rules only require the retention of purchase orders from vendors selected from a state master contract.³⁰ Thus, no other formal documentation concerning the competitive bidding process was created or retained.

8. As discussed above, when the applicant files its own FCC Form 470 and considers a state master contract as one of the bids, the applicant must nonetheless comply with the Commission's competitive bidding rules.³¹ In particular, the applicant must carefully consider all bids submitted, not just the state master contract, and select the most cost-effective service offering.³² In addition, the applicant must retain for five years any and all worksheets and other records relied upon to fill out its application, including documentation relating to the competitive bidding process, such as documents

²³ See Letter from USAC, Schools and Libraries Division, to James Mosley, Gila Bend Unified School District (dated Dec. 14, 2005) (regarding FCC Form 471 application number 463128); Letter from USAC, Schools and Libraries Division, to James Mosley, Gila Bend Unified School District (dated Feb. 27, 2007) (regarding FCC Form 471 application number 505646) (collectively, funding commitment decision letters (FCDLs)).

²⁴ See COMADs.

²⁵ See Letter from USAC, Schools and Libraries Division, to Ernest N. Nicely, Nicely Done Consulting, LLC, on behalf of Gila Bend Unified School District (dated June 9, 2010) (regarding FCC Form 471 application number 505646); Letter from USAC, Schools and Libraries Division, to Ernest N. Nicely, Nicely Done Consulting, LLC, on behalf of Gila Bend Unified School District (dated June 15, 2010) (regarding FCC Form 471 application number 463128) (collectively, Gila Administrator decision letters (ADLs)).

²⁶ See Requests for Review.

²⁷ Gila FCC Forms 470.

²⁸ See Requests for Review. We note, however, that Gila did not intend to use a vendor from the state master contract because it did not identify the state master contract as the source for its service provider on its FCC Forms 471. See Gila FCC Forms 471.

²⁹ See Gila ADLs.

³⁰ See Requests for Review.

³¹ *Id.*

³² 47 C.F.R. § 54.511.

describing the bid evaluation criteria and weighting, bid evaluation worksheets, and correspondence between the beneficiary and prospective bidder.³³ In this instance, the record does not contain any documentation regarding Gila's vendor selection process for the services at issue. Gila failed to demonstrate that it conducted a competitive bidding process for the applications at issue consistent with Commission rules. Consequently, we affirm USAC's decisions and deny Gila's appeals.

IV. ORDERING CLAUSES

9. 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 requests for review filed by the Gila Bend Unified School District No. 24, regarding FCC Form 471 application number 463128 and FCC Form 471 application number 505646, on July 8, 2010, ARE DENIED.

10. 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 CONTINUE recovery actions with Gila Bend Unified School District concerning the funding commitment for FRN 1272933 as part of Gila's funding year 2005 application and FRN 1389610 as part of Gila's funding year 2006 application.

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
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

³³ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15823-26, paras. 47-50 (2004) (*Schools and Libraries Fifth Report and Order*) (concluding that program participants must retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt, and delivery of services receiving schools and libraries discounts); see also 47 C.F.R. §§ 54.504(a)(1)(x), 54.516(a).