

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Request for Review of a)
Decision of the)
Universal Service Administrator by)
Truth or Consequences Municipal Schools) File No. SLD-546693
Truth or Consequences, New Mexico)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: August 20, 2012

Released: August 20, 2012

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

1. Consistent with precedent,1 we deny a request from Truth or Consequences Municipal Schools (TCMS) seeking review of a decision made by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program) for funding year 2007.2 In its decision, USAC determined that TCMS violated E-rate program rules by failing to evaluate all the bids it received.3

2. Based on our review of the record, we agree with USAC's determination. Section 54.511 of the Commission's rules requires applicants to consider all submitted bids prior to entering into a contract for eligible services, and price must be the primary factor in selecting the winning bid.4 The record shows that, on November 3, 2006, TCMS posted its FCC Form 470 to USAC's website seeking bids for basic maintenance of internal connections.5 That same day, TCMS also released a request for

1 See generally, Request for Review of the Decision of the Universal Service Administrator by Central Islip Free Union School District, et al., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 26 FCC Rcd 8630, 8640 (Wireline Comp. Bur. 2011) (Central Islip Order) (explaining that it is a violation of the Commission's rules for a petitioner to fail to consider all bids submitted before entering into a contract).

2 See Letter from Tom Burris, Superintendent, Truth or Consequences Municipal Schools, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 16, 2011) (regarding funding year (FY) 2007 FCC Form 471 application number 546693, funding request number (FRN) 1509542) (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).

3 See Letter from USAC, Schools and Libraries Division, to Tom Burris, Truth or Consequences Municipal Schools (dated Oct. 18, 2011); 47 C.F.R. § 54.511 (2006).

4 47 C.F.R. §54.511 (2006).

5 See FCC Form 470, Truth or Consequences Municipal Schools (posted Nov. 3, 2006); Request for Review.

proposal with a due date of December 7, 2006 for interested bids.⁶ TCMS received two bids in response to these postings and signed a contract with Decision Tree Technologies (Decision Tree) on December 14, 2006.⁷ TCMS's vendor evaluation worksheets, however, were dated January 23, 2007, more than a month after the TCMS signed the contract with Decision Tree.⁸ The fact that the vendor selection documentation was dated after the contract award date strongly supports USAC's determination that TCMS did not undertake an evaluation of the two competing bids before entering into a contract with Decision Tree. Moreover, TCMS has provided no evidence to the contrary.⁹ We therefore affirm USAC's decision and deny TCMS's request for review.

3. 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 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 and 54.722(a), the request for review filed by Truth or Consequences Municipal Schools IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

⁶ See Request for Review. Under 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 or any services for which the applicant is seeking a new contract. 47 C.F.R. § 54.504 (2006) *amended by* 47 C.F.R. § 54.503 (2011). The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services. *Id.* The applicant must provide this description on its FCC Form 470 or indicate on the form that it has a request for proposal available providing detail about the requested services. See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (FCC Form 470).

⁷ See Request for Review.

⁸ *Id.*

⁹ *Id.*