

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a
Decision of the
Universal Service Administrator by
Bell Gardens Christian School
Bell, CA
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-520482
CC Docket No. 02-6

ORDER

Adopted: September 11, 2013

Released: September 11, 2013

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

1. In this Order, we deny a request made by CTI E-Rate Services on behalf of Bell Gardens Christian School (Bell Gardens) seeking review of a decision made by the Universal Service Administrative Company (USAC) to rescind funding committed under the E-rate program (more formally known as the schools and libraries universal service support program) for funding year 2006.

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for universal service support for eligible services. E-rate program rules provide that these entities must seek competitive bids for services eligible for support. In accordance with the Commission's competitive bidding rules, applicants must submit for posting on USAC's website

1 See Letter from Paul McLaurin, CTI E-Rate Services, on behalf of Bell Gardens Christian School, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Sept. 30, 2010) (regarding funding year 2006 FCC Form 471 application number 520482, funding request number (FRN) 1432721) (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 See Letter from USAC, Schools and Libraries Division, to Ramsey Mora, Bell Gardens Christian School (dated Nov. 16, 2012) (Administrator's Decision on Appeal Letter) (ADL); Letter from USAC, Schools and Libraries Division, to Verdell Winslow, Bell Gardens Christian School (dated Sept. 4, 2012) (Notification of Commitment Adjustment Letter) (COMAD Letter).

3 47 C.F.R. §§ 54.501-54.502 (2006); see also 47 C.F.R. §§ 54.501-54.502 (2011). In this Order, we describe the requirements of the E-rate program as they currently exist, but because the Order involves an application from funding year 2006, and the Commission has reorganized the E-rate rules since then, where the Commission's codification of the rules in the Code of Federal Regulations has changed, we also cite to the relevant rules as they existed during the relevant funding year.

4 47 C.F.R. § 54.504 (2006); see also 47 C.F.R. § 54.503 (2011).

an FCC Form 470 requesting discounts for E-rate eligible services.⁵ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.⁶ After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.⁷

3. The Commission's rules require applicants to carefully consider all submitted bids prior to entering into a contract, and that the price of eligible products and services must be the primary factor in selecting the winning bid.⁸ Additionally, the applicant must retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least five years after the last day of service delivered in a particular funding year.⁹ These documents include, but are not limited to, documents relating to the competitive bidding process, such as records describing the bid evaluation criteria and weighting, bid evaluation worksheets, and winning and losing bids.¹⁰ Applicants are also required to produce such records upon request from USAC, the Commission or any local, state, or federal agency with jurisdiction.¹¹

4. Upon review of the record, we affirm USAC's decision and find that Bell Gardens failed to provide documentation concerning the process it used for selecting the Packet Group (Packet Group) for FRN 1432721 and thus failed to demonstrate how its vendor selection process complied with E-rate program rules.¹² During the course of an audit, USAC asked Bell Gardens to provide bid evaluation sheets created during the bid evaluation period and evidence of how it selected Packet Group as the winning vendor.¹³ In response to these requests, Bell Gardens provided copies of bid evaluation sheets it had completed for Packet Group and for a second vendor, Sapium.¹⁴ Bell Gardens also provided a copy

⁵ 47 C.F.R. § 54.504 (2006); *see also* 47 C.F.R. § 54.503 (2011).

⁶ 47 C.F.R. § 54.504 (2006); *see also* 47 C.F.R. § 54.503 (2011).

⁷ *Id.*

⁸ 47 C.F.R. §§ 54.504, 54.511 (2006); *see also* 47 C.F.R. §§ 54.503, 54.511 (2011).

⁹ *See* 47 C.F.R. § 54.516 (a).

¹⁰ *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15824, para. 48 (2004) (*Schools and Libraries Fifth Report and Order*) (concluding that program participants must retain all documents relating to the competitive bidding process, including all winning and losing bids, for at least five years after the last day of service delivered in a particular funding year); 47 C.F.R. §§ 54.504, 54.516 (2006); *see also* 47 C.F.R. §§ 54.503, 54.516 (2011).

¹¹ 47 C.F.R. § 54.516(b).

¹² *See* 47 C.F.R. §§ 54.504, 54.511, 54.516 (2006); *see also* 47 C.F.R. §§ 54.503, 54.511, 54.516 (2011).

¹³ *See* Letter from USAC, Schools and Libraries Division, to Verdell Winslow, Bell Gardens Christian School (dated Aug. 4, 2011) (requesting that Bell Gardens provide completed bid evaluation sheets and evidence of how it selected the winning vendor); Email from USAC, Schools and Libraries Division, to Verdell Winslow, Bell Gardens Christian School (dated Feb. 28, 2012) (requesting that Bell Gardens provide copies of the bids submitted by Sapium and Packet Group).

¹⁴ As indicated above, the record shows that Bell Gardens evaluated two bids, one from Packet Group and another from Sapium. *See* Facsimile from Verdell Winslow, Bell Gardens Christian School, to Chris Wittrien, USAC, Schools and Libraries Division (dated Aug. 18, 2010). According to the bid evaluation worksheets, Bell Gardens considered seven criteria in its vendor evaluation process: (1) "actual cost" (representing 30 percent of the total evaluation weighting); (2) "quality of proposed project" (representing 20 percent of the total evaluation weighting); (3) "reputation of vendor" (representing 15 percent of the total evaluation weighting); (4) "location of the vendor - distance from school" (representing 15 percent of the total evaluation weighting); (5) "history and experience with E-rate" (representing 10 percent of the total evaluation weighting); (6) "availability - schedule and completion time" (representing 5 percent of the total evaluation weighting); and (7) "overall impression of the vendor" (representing 5 (continued....))

of the Packet Group bid, but it failed to provide a copy of the Sapium bid.¹⁵ In light of Bell Garden's failure to produce a copy of the Sapium bid, USAC rescinded Bell Gardens' funding commitment for FRN 1432721 and initiated recovery actions for the improperly disbursed funds.¹⁶

5. On appeal, Bell Gardens claims that several vendors expressed interest in its FCC Form 470, but that the only vendor to submit a proposal was Packet Group.¹⁷ The record, however, does not support Bell Gardens' assertion. Bell Gardens' own bid evaluation sheets demonstrate that it received and evaluated bids from Packet Group and Sapium.¹⁸ As such, it should have retained the Sapium bid and been able to provide it upon request to USAC. As indicated above, the Commission's record retention rules require applicants to retain copies of all documents relating to the competitive bidding process, including winning and losing bids, for at least five years after the last day of service in a particular funding year, and to produce them to USAC upon request.¹⁹ Therefore, Bell Garden's failure to maintain and produce the Sapium bid violates the Commission's rules.

6. Moreover, the fact that Bell Gardens failed to provide a copy of the Sapium bid upon request, or any of the allegedly non-responsive bids it claims to have received, makes it impossible for us to verify that Bell Gardens carefully considered all bids submitted in response to its FCC Form 470 posting, as required by the Commission's competitive bidding rules.²⁰ Consequently, we find no basis upon which to grant the requested relief and deny Bell Gardens' Request for Review.

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percent of the total evaluation weighting). *Id.* The winning bid, submitted by Packet Group, received an overall score of 9.4, and the losing bid, submitted by Sapium, received an overall score of 8.75. *Id.*

¹⁵ See Request for Review.

¹⁶ See COMAD Letter; Letter from USAC, Schools and Libraries Division, to Ramsey Mora, Bell Gardens Christian School (dated Nov. 19, 2012); Letter from USAC, Schools and Libraries Division, to Ramsey Mora, Bell Gardens Christian School (dated Dec. 20, 2012).

¹⁷ See Request for Review.

¹⁸ See *supra* n.14.

¹⁹ See 47 C.F.R. § 54.516; *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd 15808, 15824, para. 48.

²⁰ See 47 C.F.R. §§ 54.504, 54.511 (2006); see also 47 C.F.R. §§ 54.503, 54.511 (2011).

7. 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, 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 Bell Gardens Christian School IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly A. Scardino
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau