

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Request for Review of a )
Decision of the )
Universal Service Administrator by )
Washington Unified School District ) File No. SLD-740756
West Sacramento, CA )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: September 20, 2013

Released: September 20, 2013

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

1. Consistent with precedent,<sup>1</sup> we deny a request from eRate 360, LLC, on behalf of Washington Unified School District (Washington), seeking review of a decision made by the Universal Service Administrative Company (USAC) denying Washington funding under the E-rate program (more formally known as the schools and libraries universal service program) for funding year 2010.<sup>2</sup> In its decision, USAC determined that Washington violated the Commission’s E-rate rules governing competitive bidding by failing to indicate on its FCC Form 470 that it planned to issue a request for proposal (RFP) for the underlying funding requests.<sup>3</sup> Based on our review of the record, we find that

<sup>1</sup> See Requests for Review of a Decision of the Universal Service Administrator by Riverdale Unified School District and Cherokee County School District; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 26 FCC Rcd 11207 (Wireline Comp. Bur. 2011); Request for Review of a Decision of the Universal Service Administrator by Ramirez Common School District; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 26 FCC Rcd 8430 (Wireline Comp. Bur. 2011) (each stating that an applicant must describe with specificity the services it is seeking to purchase on its FCC Form 470 to enable service providers to formulate bids or indicate on the form that it has a request for proposal (RFP) available providing detail about the requested services).

<sup>2</sup> See Letter from Richard Larson, eRate 360, LLC, on behalf of Washington Unified School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 11, 2013) (regarding funding year 2010 FCC Form 471 application number 740756, funding request numbers (FRNs) 2000369, 2064628, 2064969, 2065914, 2065958, 2066128, 2066153, 2066269, 2066375, 2066478, 2066507, 2066746, 2066762, 2066882, 2066905, 2066982, 2067008, 2067103, 2067136, 2067387, 2067526, 2067617, 2067728, 2067798) (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).

<sup>3</sup> See Letter from USAC, Schools and Libraries Division, to Richard Larson, eRate 360, LLC, on behalf of Washington Unified School District (dated Apr. 15, 2013) (regarding FCC Form 471 application number 740756, FRNs 2000369, 2064628, 2064969, 2065914, 2065958, 2066128, 2066153, 2066269, 2066375, 2066478, 2066507, 2066746, 2066762, 2066882, 2066905, 2066982, 2067008, 2067103, 2067136, 2067387, 2067526, 2067617, 2067728, 2067798) (Administrator’s Decision on Appeal (ADL)); Letter from USAC, Schools and Libraries Division, to Mathew Hetman, eRate 360, LLC, on behalf of Washington Unified School District (dated Dec. 5, (continued...))

Washington violated the Commission's competitive bidding requirements by failing to include sufficient information on its FCC Form 470 to enable prospective service providers to identify and formulate bids for the E-rate supported services being sought by Washington.<sup>4</sup>

2. 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.<sup>5</sup> The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.<sup>6</sup> The applicant may describe the services it is seeking on its FCC Form 470 or indicate on the form that it has an RFP available providing detail about the requested services.<sup>7</sup> The RFP must be available to all potential bidders for the duration of the bidding process.<sup>8</sup>

3. The record demonstrates that Washington submitted an FCC Form 470 describing in broad terms the services for which it was seeking bids, and provided additional supplementary documents, entitled "Summary of Projects" and "Instructions to Bidders" ("supplementary documents"), to vendors that responded to its FCC Form 470.<sup>9</sup> USAC found that the supplementary documents constituted an RFP that was not identified in Washington's FCC Form 470, and therefore Washington violated the FCC's competitive bidding requirements.<sup>10</sup>

4. In its Request for Review, Washington concedes that it provided the supplementary documents containing detailed specifications about the types of products Washington was seeking to

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2012) (regarding FCC Form 471 application number 740756, FRNs 2000369, 2064628, 2064969, 2065914, 2065958, 2066128, 2066153, 2066269, 2066375, 2066478, 2066507, 2066746, 2066762, 2066882, 2066905, 2066982, 2067008, 2067103, 2067136, 2067387, 2067526, 2067617, 2067728, 2067798) (Funding Commitment Decision Letter (FCDL)).

<sup>4</sup> See 47 C.F.R. § 54.503 (2011); 47 C.F.R. § 54.504 (2009). 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 2010, 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. See also *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26410, para. 7 (2003) (*Ysleta Order*), citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service First Report and Order*) (subsequent history omitted) (explaining that the FCC Form 470 must describe the services that the schools and libraries seek to purchase in sufficient detail to enable potential providers to formulate bids).

<sup>5</sup> 47 C.F.R. §§ 54.501-54.502 (2011); 47 C.F.R. §§ 54.501-54.502 (2009).

<sup>6</sup> See *Ysleta Order*, 18 FCC Rcd at 26410, para. 7.

<sup>7</sup> *Id.*; Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (FCC Form 470) (stating that if an RFP is issued, the description of the desired services on the FCC Form 470 may be in general terms because a more detailed description would be provided in the RFP). We stress that if an RFP is not issued, the FCC Form 470 must provide enough detail for vendors to identify the desired services and formulate bids. See *Universal Service First Report and Order*, 12 FCC Rcd at 9078, para. 575.

<sup>8</sup> See FCC Form 470.

<sup>9</sup> See FCC Form 470, Washington Unified School District (posted Jan. 5, 2010); see also E-rate 2010-2011 Summary of Projects, Washington Unified School District (dated Jan. 11, 2010); E-rate 2010-2011, Instruction to Bidders, Washington Unified School District (dated Jan. 11, 2010).

<sup>10</sup> See ADL, FCDL.

purchase and bid submission instructions to only those vendors responding to its FCC Form 470. Washington argues, however, that its FCC Form 470 contained adequate information to attract responses from six qualified vendors and that USAC erroneously characterized the supplementary documents provided to these vendors as RFPs.<sup>11</sup>

5. We disagree with Washington's characterization of its FCC Form 470 and the supplementary documents. The supplementary documents, which were not available to all potential bidders, but were only provided to vendors that responded to Washington's FCC Form 470, included a far more detailed description of the services Washington was seeking to purchase than its FCC Form 470, and contained explicit instructions concerning the procurement process.<sup>12</sup> By not including this information on its FCC Form 470 or indicating on the FCC Form 470 that supplemental information was available to interested bidders, Washington created the risk that it artificially constricted the potential pool of applicants that could meet its specific requirements. Indeed, at least two vendors that inquired about Washington's FCC Form 470 specified that they were unable to provide a proposal for the requested services without more information.<sup>13</sup>

6. As the Commission has observed, a fair and open competitive bidding process is fundamental to the integrity of the E-rate program.<sup>14</sup> Competitive bidding is vital to limiting waste and assisting schools and libraries in receiving the best value for their limited funds.<sup>15</sup> Because of the importance of the competitive bidding process to the program, the Commission has consistently required that all bidders be treated equally and that no bidders receive an unfair advantage.<sup>16</sup> Failure to provide a detailed description of the desired services on the FCC Form 470 or on a publicly available RFP, the existence of which is not disclosed on the FCC Form 470, undermines the framework of the competitive bidding process by suppressing fair and open competitive bidding. We therefore find that Washington violated E-rate program's competitive bidding rules by submitting an FCC Form 470 that did not contain sufficient information to enable prospective service providers to formulate bids.<sup>17</sup>

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<sup>11</sup> See Request for Review at 2.

<sup>12</sup> See *id.* at Attach. 2, 3.

<sup>13</sup> See, e.g., E-mail from Chris Simon, AMS.NET, to Tom McNinch, Washington Unified School District (dated Jan. 19, 2010) (stating that "... [t]here is not enough detail on the 470 to provide a quote/proposal."); E-mail from Lisa Joubert, Decotech Systems, to Tom McNinch, Washington Unified School District (dated Jan. 11, 2010) (stating that "I am unable to provide quotes with the information on the 470").

<sup>14</sup> See *Universal Service First Report and Order*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076-80, paras. 570-80 (requiring applicants to conduct a fair and open competitive bidding process when seeking support for eligible products and services); *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, 5425-26, para. 185 (1997) (*Schools and Libraries Fourth Order on Reconsideration*) (stating that competitive bidding is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates).

<sup>15</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 480; see also *Schools and Libraries Fourth Order on Reconsideration*, 13 FCC Rcd at 5425-26, para. 185.

<sup>16</sup> See, e.g., *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26939, para. 66 (2003) (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources).

<sup>17</sup> See FCC Form 470; see also 47 C.F.R. § 54.503 (2011); 47 C.F.R. § 54.504 (2009).

7. ACCORDINGLY, IT IS ORDERED, pursuant to 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 appeal filed by Washington Unified School District on June 11, 2013 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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