

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a
Decision of the
Universal Service Administrator by
Pennsauken Township School District
Pennsauken, NJ
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-650758
CC Docket No. 02-6

ORDER

Adopted: May 2, 2013

Released: May 2, 2013

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

1. Consistent with precedent, we deny a request from Pennsauken Township School District (Pennsauken) 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). In its decision, USAC determined that Pennsauken violated E-rate program rules because Pennsauken failed to provide documentation regarding its vendor selection process for funding request number (FRN) 1809245 and thus could not demonstrate compliance with the Commission's competitive bidding rules.

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

1 See 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, 8636, para. 12 (Wireline Comp. Bur. 2011) (finding that petitioners violated the Commission's competitive bidding rules because they failed to provide documentation regarding the vendor selection process for the services at issue); Request for Review of the Decision of the Universal Service Administrator by Gila Bend Unified School District 24; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 26 FCC Rcd 6870, 6873-74, para. 8 (Wireline Comp. Bur. 2011) (finding that the applicant failed to retain the required documentation that would demonstrate its compliance with the Commission's competitive bidding rules).

2 See Letter from Shari D. Phillips, E-Rate Exchange, on behalf of Pennsauken Township School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Sept. 30, 2010) (regarding funding year 2009 FCC Form 471 application number 650758, funding request number (FRN) 1809245) (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 Shari D. Philips, E-Rate Exchange, on behalf of Pennsauken Township School District (dated Sept. 13, 2010) (Administrator's Decision on Appeal Letter) (ADL); Letter from USAC, Schools and Libraries Division, to Shari D. Philips, E-Rate Exchange, on behalf of Pennsauken Township School District (dated June 3, 2010) (Funding Commitment Decision Letter) (FCDL).

which the applicant is seeking a new contract.<sup>4</sup> The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.<sup>5</sup> After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.<sup>6</sup> 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.<sup>7</sup> The Commission's rules require applicants to retain all documents related to the application for, and receipt and delivery of, E-rate eligible services for at least five years after the last day of service delivered in a particular funding year.<sup>8</sup> Any document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism must be retained as well.<sup>9</sup> Applicants and service providers are required to produce such records upon request.<sup>10</sup>

3. Based on our review of the record, we affirm USAC's decision and find that Pennsauken failed to provide documentation concerning the vendor selection process for FRN 1802945 and therefore failed to demonstrate how its vendor selection process complied with E-rate program rules.<sup>11</sup> Specifically, the record shows that Pennsauken initiated a competitive bidding process for telecommunications services in funding year 2009 by filing an FCC Form 470, which was posted on December 22, 2008.<sup>12</sup> Pennsauken states that it received one bid from Magellan Hill (Magellan) in response to this posting and then selected Magellan to provide the requested services.<sup>13</sup> According to Pennsauken, Magellan was unable to provide the documentation needed to secure the service contract before the FCC Form 471 application certification deadline. Therefore, Pennsauken states that it requested and obtained an informal quote from Verizon New Jersey (Verizon) to provide the requested services.<sup>14</sup> Pennsauken then submitted its funding year 2009 FCC Form 471 application naming Verizon as the selected service provider for the FRN at issue.<sup>15</sup>

4. During the program integrity assurance review process, USAC asked Pennsauken to provide documentation explaining its vendor selection process.<sup>16</sup> Specifically, USAC asked Pennsauken to provide the bid evaluation sheets that Pennsauken created during the bid evaluation period and evidence of how it selected Verizon as its vendor (indicating the criteria used and the weighting of the criteria in percentages that identifies which criteria was the primary factor for the selection of winning

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<sup>4</sup> See 47 C.F.R. § 54.504 (2009); *see also* 47 C.F.R. § 54.503 (2011).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See 47 C.F.R. §§ 54.504, 54.511 (2009); *see also* 47 C.F.R. §§ 54.503, 54.511 (2011).

<sup>8</sup> See 47 C.F.R. § 54.516(a).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See 47 C.F.R. §§ 54.504, 54.511, 54.516 (2009); *see also* 47 C.F.R. §§ 54.503, 54.511, 54.516 (2011).

<sup>12</sup> See FCC Form 470, Pennsauken Township School District (posted Dec. 22, 2008).

<sup>13</sup> See Request for Review.

<sup>14</sup> *Id.*

<sup>15</sup> See FCC Form 471, Pennsauken Township School District (Feb. 6, 2009).

<sup>16</sup> See Letter from USAC, Schools and Libraries Division, to Shari D. Philips, E-Rate Exchange, on behalf of Pennsauken Township School District (dated Mar. 24, 2010).

bids).<sup>17</sup> Additionally, USAC asked Pennsauken to provide copies of “all correspondence between the applicant’s entity and any service providers or consultants regarding the competitive bidding process and the application process.”<sup>18</sup> Pennsauken failed to provide any documentation regarding its vendor selection process for the FRN at issue (or the alleged deficiencies of Magellan’s contract) except to produce a copy of its E-rate bid response log and the single bid submitted by Magellan.<sup>19</sup> Further, Pennsauken failed to provide copies of any correspondence, file memoranda, or documentation explaining what prevented it from executing its contract with Magellan. USAC therefore denied Pennsauken’s request for E-rate support.<sup>20</sup>

5. On appeal, Pennsauken simply asserts that it selected Verizon to provide the services at issue because Magellan was unable to secure the service contract before the FCC Form 471 application filing window deadline.<sup>21</sup> However, Pennsauken provides no documentation supporting this allegation.<sup>22</sup> Because Pennsauken has failed to demonstrate compliance with the competitive bidding rules and also appears to have violated applicable document retention requirements,<sup>23</sup> we find no basis upon which to grant the requested relief. Consequently, we deny Pennsauken’s Request for Review.

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<sup>17</sup> *Id.*; Letter from USAC, Schools and Libraries Division, to Shari D. Philips, E-Rate Exchange, on behalf of Pennsauken Township School District (dated Feb. 2, 2010) (Selective Review Information Request).

<sup>18</sup> See Selective Review Information Request.

<sup>19</sup> See Request for Review. We note that Magellan’s bid included proposed pricing for the desired services, the terms and conditions of providing the services, and signature lines to enable the parties to move forward with contract execution. See Letter from Ronald B. Johnson, Magellan Hill Technologies, to Fred Hanke, Director of Technology, Pennsauken Township School District (dated Dec. 23, 2008).

<sup>20</sup> See ADL; FCDL.

<sup>21</sup> See Request for Review.

<sup>22</sup> Note that the Commission permits applicants to initiate service provider identification number (SPIN) changes for specified reasons (e.g., the service provider went out of business or is unable to perform) after a funding commitment has been issued. See *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18802, para. 91 (2010). Applicants must have a legitimate reason for the SPIN change and be able to demonstrate why the current service provider is unable to continue with the service contract. *Id.*; see also *Request for Review of the Decision of the Universal Service Administrator by Copan Public Schools; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 5498 (2000) (*Copan Order*). We recognize that the circumstances presented here do not trigger the Commission’s SPIN change procedures. However, we take this opportunity to emphasize that if an applicant needs to make a change from one service provider to another, the applicant must provide, at a minimum, documentation demonstrating the reason for the change. See *Copan Order*.

<sup>23</sup> See 47 C.F.R. §§ 54.504, 54.511, 54.516 (2009); see also 47 C.F.R. §§ 54.503, 54.511, 54.516 (2011).

6. 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 Pennsauken Township School District IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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