

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

In the Matter of)	
)	
Request for Review of a)	
Decision of the)	
Universal Service Administrator by)	
)	
Spokane School District 81)	File No. SLD-514942
Spokane, WA)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: May 2, 2013

Released: May 2, 2013

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

1. Consistent with precedent,¹ we deny a request from Spokane School District 81 (Spokane)² 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).³ In its decision, USAC determined that Spokane violated the Commission's competitive bidding requirements by releasing a request for proposal (RFP) despite having indicated on its FCC Form 470 that an RFP did not exist.⁴ Based on our review of the record,⁵ we agree with USAC's

¹ See, e.g., *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); *Request for Review of a Decision of the Universal Service Administrator by Coahoma County School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11201 (Wireline Comp. Bur. 2011); *Request for Review of a Decision of the Universal Service Administrator by Cascade School District #422; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6865 (Wireline Comp. Bur. 2011) (all explaining that an applicant must describe with specificity the services it is seeking to purchase on its FCC Form 470, or indicate on the form that it has an RFP available providing detail about the requested services).

² See Letter from Diane Boudreau, Spokane School District 81, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 1, 2012) (regarding funding year 2006 FCC Form 471 application number 514942, funding request numbers (FRN) 1453311, 1452858, 1453207, 1453383, 1453399, and 1453426) (Request for Review).

³ 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).

⁴ See Letter from USAC, Schools and Libraries Division, to Michelle Huss, Spokane School District 81 (dated Sept. 4, 2012) (regarding FCC Form 471 application number 514942 (FRNs 1453311, 1452858, 1453207, 1453383, 1453399, and 1453426)).

⁵ See 47 C.F.R. § 54.723.

determination and find that Spokane violated the Commission's competitive bidding requirements.⁶ We therefore direct USAC to continue recovery actions against Spokane.

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.⁷ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.⁸ The applicant must provide this description on its FCC Form 470 or indicate on the form that it has an RFP available providing detail about the requested services.⁹ The RFP must be available to all potential bidders for the duration of the bidding process.¹⁰ After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹¹

3. The record is clear that Spokane failed to indicate the existence of an RFP for internal connections on its FCC Form 470.¹² In its Request for Review, Spokane states that this omission was an administrative error and did not interfere with its competitive bidding process.¹³ However, Spokane's RFP provided a far more detailed description of the services Spokane was seeking to purchase than its FCC Form 470, and it contained explicit instructions concerning the procurement that were not included on the FCC Form 470.¹⁴ For example, the RFP described the desired services as "Cisco Aironet 1131AG Access Point, approximate quantity- 200 each (no substitutions)" and "Cisco Aironet 1232AG Access Point, approximate quantity- 100 each (no substitutions)."¹⁵ The RFP also provided the following instruction for interested bidders: "All bidders must read and understand this Invitation to Bid in its entirety. There may be special instructions either in the terms and conditions or as an integral part of the bid document that will impact the bidder's ability to perform."¹⁶ By not indicating the existence of an RFP on its FCC Form 470, Spokane's noncompliance with the rules created the risk that it artificially constricted the potential pool of applicants that could meet its specific requirements. Because only those vendors receiving the RFP were privy to details and specific instructions concerning the procurement of the desired services, not all prospective service providers were on a level playing field.

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

⁷ *Id.*

⁸ *Id.*

⁹ See, e.g., Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (FCC Form 470).

¹⁰ See FCC Form 470.

¹¹ See 47 C.F.R. § 54.504 (2006); *see also* 47 C.F.R. § 54.503 (2011).

¹² See Request for Review.

¹³ *Id.*

¹⁴ See Spokane Public Schools, Invitation to Bid, Bid 02-06 Cisco Wireless Access Points (released Dec. 1, 2005) (Spokane RFP).

¹⁵ *Id.* Note that applicants are prohibited from referencing specific manufacturers, products or services on their FCC Form 470 or RFPs unless they also use the words "or equivalent" with any description of the manufacturer's name, brand, product, or service when seeking bids. See *Request for Review of a Decision of the Universal Service Administrator by Queen of Peace High School; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 16466, 16469, para. 8 (Wireline Comp. Bur. 2011).

¹⁶ See Spokane RFP.

4. As the Commission has observed, a fair and open competitive bidding process is fundamental to the integrity of the E-rate program.¹⁷ Competitive bidding is vital to limiting waste and assisting schools and libraries in receiving the best value for their limited funds.¹⁸ 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.¹⁹ Failure to indicate the existence of a detailed RFP on an applicant's FCC Form 470 undermines the framework of the competitive bidding process by suppressing fair and open competitive bidding. Therefore, after reviewing the record, we affirm USAC's decision and find that Spokane violated E-rate program rules by failing to indicate on its FCC Form 470 that it intended to issue an RFP for the services at issue.²⁰

5. 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 Spokane School District 81 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076-80, paras. 570-80 (1997) (*Universal Service First Report and Order*) (subsequent history omitted) (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).

¹⁸ 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.

¹⁹ 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).

²⁰ See FCC Form 470; 47 C.F.R. § 54.504 (2006); see also 47 C.F.R. § 54.503 (2011).