

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of
Decisions of the
Universal Service Administrator by
Spokane School District 81
Spokane, WA
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-767972, 768452,
768621, 768701
CC Docket No. 02-6

ORDER

Adopted: May 10, 2013

Released: May 10, 2013

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

1. Consistent with precedent, we deny three requests from Spokane School District 81 (Spokane) seeking review of decisions made by the Universal Service Administrative Company (USAC) denying funding under the E-rate program (more formally known as the schools and libraries universal service support program). In its decisions, USAC determined that Spokane violated the Commission's competitive bidding requirements by considering the price of eligible and ineligible items as the primary

1 See, e.g., Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26430, para. 52 (2003) (Ysleta Order) (explaining that "[t]he prices relevant for our competitive bidding requirements are those of eligible services"); Request for Review by Tulsa Technology Center of a Decision of the Universal Service Administrator, CC Docket No. 02-6, Order, 26 FCC Rcd 13006, 13007, para. 2 (Wireline Comp. Bur. 2011) (Tulsa Order) (specifying that "[a]pplicants cannot consider the cost of ineligible services in selecting a winning bidder").

2 See Letter from Diane Boudreau, Spokane School District 81, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 16, 2012) (regarding funding year 2010 FCC Form 471 application number 767972); Letter from Diane Boudreau, Spokane School District 81, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 16, 2012) (regarding funding year 2010 FCC Form 471 application number 768452); Letter from Diane Boudreau, Spokane School District 81, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 16, 2012) (regarding funding year 2010 FCC Form 471 application numbers 768621 and 768701) (collectively, Requests 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).

factor in its vendor selection process.⁴ Based on our review of the record, we agree with USAC's determinations and find that Spokane violated the Commission's competitive bidding requirements.⁵

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.⁶ The Commission's rules provide that these entities must seek competitive bids for all services eligible for support.⁷ 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.⁸ 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.⁹

3. After reviewing the record, we find that USAC correctly denied Spokane's requests for support. The record shows that Spokane considered four criteria in its vendor evaluation process: "capital and life cycle costs" (representing 35 percent of the total evaluation weighting), "technical fit to requirements" (representing 25 percent of the total evaluation weighting), and "support and self-manage capabilities" (each representing 20 percent of the total evaluation weighting).¹⁰ In its Requests for Review, Spokane acknowledges that it included the price of both E-rate eligible and ineligible items in the "capital and life cycle costs" criterion of its vendor evaluation process.¹¹ Spokane argues that, in order to conduct a fair and accurate vendor evaluation, both E-rate eligible and ineligible costs must be considered when selecting the winning bid.¹² According to Spokane, its school board and the public expect Spokane to take into consideration the full cost of a purchase, not just the parts that may or may

⁴ See Letter from USAC, Schools and Libraries Division, to Diane Boudreau, Spokane School District 81 (dated Oct. 15, 2012) (regarding FCC Form 471 application number 767972); Letter from USAC, Schools and Libraries Division, to Diane Boudreau, Spokane School District 81 (dated Oct. 15, 2012) (regarding FCC Form 471 application number 768452); Letter from USAC, Schools and Libraries Division, to Diane Boudreau, Spokane School District 81 (dated Oct. 15, 2012) (regarding FCC Form 471 application number 768621); Letter from USAC, Schools and Libraries Division, to Diane Boudreau, Spokane School District 81 (dated Oct. 15, 2012) (regarding FCC Form 471 application number 768701).

⁵ See 47 C.F.R. § 54.504 (2009); *see also* 47 C.F.R. § 54.503 (2011).

⁶ See 47 C.F.R. §§ 54.501-54.502.

⁷ See 47 C.F.R. § 54.504 (2009); *see also* 47 C.F.R. § 54.503 (2011).

⁸ See *id.* See also Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (FCC Form 470).

⁹ See 47 C.F.R. § 54.504 (2009); 47 C.F.R. § 54.503 (2011) (stating that an eligible entity shall seek competitive bids for all services eligible for support); 47 C.F.R. § 54.511 (stating that when selecting a provider of eligible services, the applicant shall select the most cost-effective service offering with price being the primary factor considered). See also USAC, Schools and Libraries, Competitive Bidding, <http://www.usac.org/sl/applicants/step03/evaluation.aspx> (last visited May 6, 2013) (Competitive Bidding Guidance) (noting that the most heavily weighted price factor cannot include ineligible costs, although those costs can be included in an evaluation as long as they are in a separate price factor that is weighted less heavily).

¹⁰ See Requests for Review.

¹¹ *Id.*

¹² *Id.*

not receive E-rate support.¹³ Spokane further claims that, if the price of ineligible items had been excluded from the “capital and life cycle cost” criterion, the contract awards would have been the same.¹⁴

4. Although applicants may consider factors other than the pre-discount prices of eligible services when determining whether a particular offering is the most cost-effective, applicants must use the price of eligible services as the primary factor when selecting the winning offer for E-rate supported services.¹⁵ Based upon our review of the record, we find that Spokane failed to use the price of eligible services as the primary factor in selecting the winning bid. Additionally, although Spokane argues that the contract awards would have been the same if the price of the ineligible items had been excluded from the “capital and life cycle cost” criterion, that alone does not demonstrate compliance with the applicable rule; nor does Spokane provide evidence to support that assertion. Indeed, the record does not identify the eligible and ineligible items that were included in each bid for each of the funding requests at issue, and the price for each of those services. As such, it is not possible to compare what the results of the bid evaluation would have been if the price of ineligible items had been excluded from the bid evaluation, assuming *arguendo* that the submitted bids would have been the same had Spokane’s FCC Form 470 weighted the price of eligible services most heavily.

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 Requests for Review filed by Spokane School District 81 ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029-30, para. 481 (1997) (subsequent history omitted) (noting that price should be the primary factor in selecting a bid, but acknowledging that applicants may also take other factors into consideration); *Ysleta Order*, 18 FCC Rcd at 26429-30, paras. 50-53 (stating that applicants may take other factors into consideration, but in selecting the winning bid, price [of eligible items] must be given more weight than any other single factor); *Tulsa Order*, 26 FCC Rcd at 13007, para. 2; 47 C.F.R. § 54.511.