



E-rate Program

Program Compliance

Fall 2014 Applicant Trainings

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Overview

Overview

- Know Your Role
- Fair and Open Competition
- Document Retention

Applicants

- File FCC Form 470 and indicate whether there is, or will be, an RFP.
- Evaluate bids and select the winning service provider, using price of the eligible products and services as the primary factor in your selection process.
- File FCC Form 471 including Item 21 during the application window (the earlier you file, the better).
- Respond to inquires from PIA.
- File FCC Form 486 and select invoice method
- Document your compliance with FCC rules on an on-going basis.
- Retain documentation for at least ten years from last date of service delivery.

Service Providers

- Respond to FCC Forms 470 and RFPs.
- May assist applicants with preparing their FCC Form 471 Item 21.
- May provide technical answers to questions regarding specific goods and services requested but NOT on competitive bidding questions.
- Must file FCC Form 473, Service Provider Annual Certification Form.
- Must file FCC Form 474, Service Provider Invoice, if applicable.
- Should document your compliance with FCC rules on an on-going basis.
- Must retain documentation for at least ten years from last date of service delivery.

Consultants

- Obtain a Consultant Registration Number to be included on all FCC forms where you have provided assistance to schools and libraries with their E-rate applications for a fee.
- Follow the role of your client – either applicant or service provider.
- Avoid conflicts of interest.
- Document your compliance with FCC rules on an on-going basis.
- Retain documentation for at least ten years from last date of service delivery.

The Competitive Bidding Process

- Must be a **fair and open** process.
- Avoid conflicts of interest.
 - Applicant consultant ⇔ Service Provider
 - Applicant ⇔ Service Provider
- Open competition and bid evaluation.
- Follow all rules – FCC and state/local.
- Read the FCC Form 470/RFP responses and contract fine print.
- [6th Report and Order](#) provides further clarifications and examples of rule violations.



Fair and Open Competition

FCC Form 470

- Indicates the services and categories of service which entities are seeking.
- Must be posted for at least 28 days.
- Indicates if they are planning/have issued RFP or other documents regarding the procurement.
- Indicates any special requirements and/or disqualification factors.
- Indicates who will be receiving the services.
- Two new exemptions for FCC Form 470 filing are in effect starting in FY 2015.



Fair and Open Competition

Only Applicants Can:

- Determine the types of service you will seek on an FCC Form 470.
- Prepare and fill out the FCC Form 470.
- Sign, certify and/or submit FCC Form 470.
- Negotiate with prospective bidders.
- Run the competitive bidding process.



Fair and Open Competition

Applicants Cannot:

- Have a relationship with service providers that would **unfairly influence** the outcome of the competition.
- Furnish service providers with inside competitive information.
- Have ownership interest in a service provider's company competing for services.
- Violate applicant's own ethical regulations policy.
- Fail to describe the desired products and services with sufficient specificity to enable interested parties to bid.
- Receive gifts or donations from service providers that violate FCC rules or seek to circumvent FCC rules.



Fair and Open Competition

Applicants and Service Providers Can:

- Have pre-bidding discussions.
 - Discuss new product offerings.
 - Teach applicants about new technologies.
 - Present product demonstrations.
- Provide or receive *de minimis* items.
 - Modest refreshments, not offered as a part of a meal.
 - Items with little intrinsic value such as certificates and plaques.

Requests for Proposal

- FCC rules refer to RFPs generically but they may have a variety of names (Request for Quotes, Scope of Work, Summary of Projects, Instructions to Bidders, etc).
- FCC rules do not require RFPs but state and local procurement rules may.
- Must be available to bidders for at least 28 days.
 - Applicants must count 28 calendar days from whichever (FCC Form 470 or RFP) was posted or available last.
 - **Example:** RFP posted on December 1, FCC Form 470 posted on December 15; **December 15 starts the 28-day count**

FCC Form 470 and RFP Issues

- Applicants must ensure that they post for the correct category of service.
- Sufficient detail in FCC Form 470 to enable service providers to formulate bids.
 - Cannot provide **generic descriptions** (e.g., all eligible telecom services, Digital Transmission Services).
 - Cannot provide **laundry lists** of products and services.

Imposing Restrictions

- Cannot list specific make and model of services sought without also allowing equivalent products and/or services to be bid.
 - “XYZ manufacturer's router model 345J or equivalent”
- Applicants may set some eligible service requirements.
 - Applicants may require service providers to provide services that are compatible with one kind of system over another (e.g. Brand X compatible).
- Bidder disqualification criteria must be spelled out in FCC Form 470 and/or RFP and be available to all.

Bid Evaluation

- Retain all vendor selection documentation for at least **ten** years from the last date to receive service.
 - Winning and losing bids, correspondences, memos, bid evaluation documents, etc.
- Price of the eligible goods and services must be the primary factor or the most heavily weighted overall in any tier.
 - [USAC sample evaluation matrix](#) available
- Evaluation begins after 28-day waiting period.
- Service providers may not pay for applicant's termination charges incurred in breaking a contract.

Most Cost-Effective

- Selecting the winning bidder
 - Price of the **ELIGIBLE** goods and services must be the primary factor in the bid evaluation.
 - Other factors, including other price factors, can be considered as well; but they cannot be weighted equally or higher than cost of the eligible goods and services.
 - See [Construct An Evaluation](#) for weighting samples.

Cost-Effectiveness

- *Ysleta Order*, para. 54: Example: Routers priced at two or three times greater than the prices available from commercial vendors would not be cost-effective, absent extenuating circumstances.
- Receiving only one bid does not automatically make it cost-effective.
- Applicants must be able to demonstrate why a solution with higher than average pricing is cost-effective.

Cost-Effectiveness

- Service providers may work with applicants to help them understand the technical needs for this expensive solution.
- When placing bids to offer E-rate supported services, service providers must offer E-rate applicants their lowest corresponding, and must charge E-rate applicants their lowest corresponding price.
- *E-rate Modernization Order* – Explains that funding for individual data plans and air cards are generally not cost-effective unless applicants can demonstrate that the purchase of such services is the most cost-effective way to connect students and library patrons to the Internet.

Contracts

- Applicants must have a signed contract or ***other legally binding agreement*** in place prior to submitting their FCC Forms 471 to USAC.
- Signed contracts constitute the best evidence that a legally binding agreement exists.
- A verbal offer and/or acceptance will not be considered evidence of the existence of a legally binding agreement.
- Tariffed or Month-to-Month service purchased under contract is contracted service.
- Purchase orders must be considered a contract or legally binding agreement in this state in which you reside.
- Voluntary contract extensions are allowable only when the option is stated in the original provisions of the contract.

State Master Contracts

- A state master contract (SMC) is competitively bid and put in place by a state government for use by multiple entities in that state.
- **Single winner:** Single vendor wins the bid.
- **Multiple winners:** State awards contract to several bidders.
- **Multiple Award Schedule (MAS):** State awards contract for same goods and services to multiple vendors that can serve the same population.
 - Multiple winners always require vendor selection justification and applicants must conduct a mini-bid to award contract.

Lowest Corresponding Price

- Service providers are required to offer applicants their services at the lowest corresponding prices charged to other similarly situated customers throughout their geographic service area.
- Ensures schools and libraries in the E-rate program can receive and evaluate competing bids based on the lowest corresponding price available from vendors and are not charged more than similarly situated non-residential customers for the same services because of their E-rate participation.
- Exceptions can be made if the provider can show that they face significantly higher costs to serve this customer due to volume, mileage from facility, and/or length of contract.
- Applies to all service providers and for all service arrangements (tariff, month-to-month and contracted services).

Gifts

- Receipt or solicitation of gifts by applicants from service providers (and vice versa) and potential service providers is a competitive bidding violation.
- Service providers may not offer or provide any gifts or thing of value to applicant personnel involved in E-rate.
- Gift prohibitions are always applicable, not just during the competitive bidding process.
- Must always follow FCC rules. May also have to follow state/local rules.
- Counted per funding year.

Gift Rule Exceptions and more

- Items worth \$20 or less, including meals, if the value of these items received by any individual does not exceed \$50 from one service provider per funding year.
- Gifts to family and friends when those gifts are made using personal funds of the donor and not related to a business transaction or relationship.
- Charitable donations not directly or indirectly related to an E-rate procurement, and not intended to circumvent any other FCC rule.
- Cure violations by promptly returning any item or paying the donor its market value.
- Prizes at conferences are subject to the \$20/\$50 rule.

Necessary Resources

- Does the applicant's E-rate-supported purchase of internal connections (i.e., number of drops) match the number/capacity of the computers it owns or has budgeted to purchase, e.g., within 2 years?
- Does it have (or has it budgeted to purchase) the software needed to utilize its computers?
- Is the applicant's staff trained to use its technology or have funds been budgeted to provide such training?
- Is there sufficient electrical capacity or a budget to secure it?
- Has the applicant budgeted enough funds to maintain all of the equipment?

Paying Non-Discount Share

- All E-rate applicants must pay their non-discount share.
- Service providers cannot give the money (directly or indirectly) to pay for the non-discount share.
 - Cannot be a charitable donation from the provider or an entity with which the selected service provider has a relationship.
 - Funds cannot come from the service provider or an entity controlled by the service provider.
 - Service provider bills can't be ignored or waived.
 - If applicant can't show proof of payment during invoice review, invoice may be denied.

Document Retention Timeframes

- 10 years from last date to receive service.
 - FY 2015: this is at least **June 30, 2026**
- Any document from a prior year that supports current year must be kept until 10 years from last date to receive service as well.
 - E.g., Contract from 2010 for recurring services, used to support FY 2015 FRNs, must be kept until at least **June 30, 2026**
- Documents may be retained in electronic format or paper and must be disclosed upon request.

Documentation to retain

- Copies of bids.
- Contracts signed with service providers.
- Correspondence with service providers regarding bidding process.
- Copies of bid matrix or decision process for selecting winning bid.
- Proof of delivery of the service.
- Documentation of any service down time.
- Logs of maintenance performed.
- Documents that support cost allocation of funds for eligible services.

Questions?

With questions, please contact us!

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