Program Compliance

What We Do and Why We Do It

Schools and Libraries Division

Washington, DC • Seattle • Denver • Chicago • Newark • Los Angeles • Atlanta

September/October 2008

Overview

- Roles for all

- Technology Plans

- Forms 470 and RFPs

- Competitive Bidding

- Vendor Selection Process

- Heightened Scrutiny

Know Your Role

- **Applicants**
  - Write tech plan, file Form 470 and write RFP, evaluate bids, select provider, document the process, file Form 471, select invoice method

- **Service Providers**
  - Respond to 470/RFPs, assist with preparing Item 21 attachments, provide technical answers on questions regarding specific goods and services requested, but NOT on competitive bidding; file SPIs and/or approve BEARs

- **Consultants**
  - Make sure that you have a Letter of Agency from your customer

Tech Plan Requirements

- Creation date before filing of the Form 470/RFP
  - Month and year that the plan is "written"
- Five elements
  - Goals/strategy for using technology
  - Professional development strategy
  - Needs assessment
  - Sufficient budget
  - Evaluation process

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Tech Plan Requirements

- Sufficient detail to support and validate the services requested

- Cover all 12 months of the funding year

- Be approved by a USAC-certified Technology Plan Approver (TPA) before Form 486 is filed or services start, whichever is sooner

- In general, cover not more than 3 years

Competitive Bidding

- **Fair and open competitive bidding process**
- Avoid conflicts of interest
  - Independent consultant ⇔ Service Provider
  - Applicant ⇔ Service Provider
- Open competition and bid evaluation
- Follow the rules – FCC and state/local
- Read the contract fine print
- Retain your documentation
  - Retain, retain, lessen your pain…

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Forms 470

- Indicates the services and categories of service which you are seeking discounts
- Must be based on tech plan
- Must be posted for 28 days
- Indicates if you are planning/have issued RFP
  - Can only correct this by posting new Form 470
- Indicates any special requirements and/or disqualification factors
- Indicates who will be receiving the services

Requests for Proposal

- FCC rules do not require RFP but state and local procurement rules may

- Must be based on your tech plan

- Must be available to bidders for at least 28 days
  - Count 28 days from the later of the two posted (470 and RFP)

- FCC rules refer to RFPs generically but they may have a variety of names

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Form 470 and RFP Issues

- Ensure that you post for correct categories of service

  – PIA can switch the bucket on your services on your 471 if you make a mistake in classifying the services

- Be able to explain what you were asking for (avoid generic descriptions or statements that are overly broad or encyclopedic)

- Post for what you want (multi-year contract, type of service, voluntary contract extensions)

Vendor involvement

- Service providers cannot:
  - Determine the types of service the applicant will seek on a Form 470
  - Assist applicants with the filling out of the FCC Form 470 which requires an applicant's certification
  - Negotiate with prospective bidders
  - Run the competitive bidding process for the applicant
  - Be privy to information about the bid not shared with other potential bidders

Imposing Restrictions

- Applicants can set some requirements for bidders.

  - For example, applicants may require service providers to provide services that are compatible with one kind of system over another (e.g. Apple vs. Windows).

- Qualifications/disqualification factors must be spelled out to all interested parties

  - Retain documentation of notice and review

Vendor Selection

- Keep documentation of your selection process

- Create your selection matrix and **follow it**

- If using a multi-round selection process, price of the eligible goods and services must be the primary factor in every round.
  - This includes tie breaker rounds

- USAC sample evaluation matrix available

Most Cost Effective

- Selecting the winning bidder
  - Price of the ELIGIBLE goods and services must be the primary factor.
  - 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 Step 4: Construct An Evaluation for weighting samples

Cost-Effectiveness

- Solution must be cost-effective (not just *the most* cost-effective)
  - *Ysleta* Order, para. 54: 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
  - Be prepared to explain why a solution with higher than average pricing is cost-effective.
  - Provide as specific an answer with as much objective information as possible.

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Free Services

- Applicants and service providers are prohibited from using Schools and Libraries support to subsidize the procurement of ineligible or unrequested products and services or from participating in arrangements that have the effect of providing a discount level to applicants greater than that to which applicants are entitled.

- Can't use E-rate to get free stuff (ineligible or eligible). You must back out the value of that stuff in your vendor selection process.

Free Services

- Must deduct the value of the "free stuff", discounts, trade-in etc, from the pre-discount amount in order get equal comparison between offerings
- Cost of eligible goods and services cannot be inflated to cover for "free" ineligible stuff
- A proportionate cost allocation is required between eligible and ineligible components.

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Free Services Example

- Discount rebate
  - Cost for product = $100 pre-discount
  - Rebate of 20% is available
  - Can only apply for $80 ($100*80%) pre-discount
- "Free products" included in a bid
  - Vendor A: $10,000 including $1,000 of free products
  - Vendor B: $8,000 for products – no free products
  - Must compare:
    - Vendor A: $9,000 ($10,000 - $1,000) to Vendor B: $8,000

Paying Your Share

- There is still no free lunch

- You will always have to pay at least 10% or more depending on your discount

- Service providers cannot give you the money (directly or indirectly) to pay for your non-discounted share

  - Funds cannot come from the service provider or an entity controlled by the service provider where funding is contingent upon selecting that provider.

  - Service provider bills can't be ignored or waived.

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Budget Review

- Purpose is for you to show us you can fund your share

- Operating budget (or draft) has dates that cover the funding year (July – June)

- Budget documentation should clearly identify applicant's share (e.g., expense line item)

- Can provide letter for reasonable expectation

- More about "reasonable expectation"

  – You don't have the money in your hands now but expect to have it after July 1

  – We understand that your budget cycle may not coincide with our review cycle

  – Will have to "show the money" during Form 486 review for the entire BEN for the year

  – If a shortfall, we will work with you to cancel FRNs

Payment Plans

- **Applicants are required to pay their share at the same time that USAC pays the discount amount.**
  - Service Provider certifies that the invoices they submit are for services that "have been billed to service provider's customers."
  - Therefore, deferred payment plans that allow the applicant to pay after USAC has paid will jeopardize a funding request.
  - FCC Rules include a presumption that the non-discount share will be paid within 90 days.

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Heightened Scrutiny

- May include review of:
  - Budget
  - Necessary Resources
  - Competitive Bidding and Contracts
  - Technology Plan
  - Cost Effectiveness
  - Pattern Analysis
  - Targeted questions based on potential violations
- [Selective Review Information Request](#) (SRIR) contains some of the questions we may ask

Necessary Resources

- Do you have the other necessary resources?
  - Are there end user computers?
    - Must have reasonable plans to fully utilize all internal connections for which you are requesting discounts (e.g., 2-year plan to get computers for all network drops)
  - Do you have software to run on the computers?
  - Staff trained on how to use the technology?
  - Electrical capacity?
  - Can you maintain your eligible and ineligible equipment?

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Pattern Analysis

- USAC reviews a group of applications, usually looking at competitive bidding information.

- Are there any elements that are the same across applications?

- Applicants are asked about the specific similarities.

- Applicants will be asked for an explanation of why the similarities exist.

Certifications

- Applicants certify that:
  - Have secured access to necessary resources
  - Have complied with all FCC, state and local competitive bidding and procurement regs
  - Non-discount portion of the costs for eligible services will not be paid by the service provider
  - No kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture
  - Failure to comply with program rules could result in civil or criminal prosecution
  - Persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the program are subject to suspension and debarment from the program

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Retain, retain, retain

- Retain documents to show your compliance:
  - Letters of Agency and any agreements with all consultants
  - Technology Plan (both draft and final approved version) and CTPA Plan Approval letter
  - RFP, including evidence of publication date and any solicitation you did
  - Any and all bids (winning and losing)
  - Email to yourself if you get no or one bid

Retain, retain, retain

- Retain documents to show your compliance:
    - Documents describing bid evaluation criteria and weighting
    - Any correspondence with potential bidders
    - Documents related to the selection of the service provider(s)
    - Signed and dated copies of contracts
    - Also, see further list on USAC website
- Keep for 5 years after last date to receive service
    - for FY 2009 **at least** June 30, 2015

Lack of Documentation

- Leads to difficulties answering PIA

- Delays your FCDL

- Reduces/denies funding

- Leads to further questions from auditors

- Could result in you having to return cash to USAC

Questions?