



E-rate Program

Program Compliance

Fall 2010 Applicant Trainings

Washington, DC | Newark | Minneapolis | Los Angeles | Kansas City | Jacksonville | Portland | Dallas/Fort Worth



Overview

- Know Your Roles
- Technology Plans
- Competitive Bidding Do's & Don'ts
- Forms 470 and RFPs
- Vendor Selection
- Pre- Commitment "Must Knows"
- CIPA Compliance
- Post Commitment "Must Knows"
- Document Retention



Know Your Role

- **Applicants**
 - Write tech plan(Priority 2 services only), file Form 470 and write RFP, evaluate bids, select provider, document the process, file Form 471, get tech plan approved, file Form 486, select invoice method, file BEARs, retain docs
- **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; file SPAC, retain docs
- **Consultants**
 - Follow the role of their client – either applicant or service provider, obtain a consultant registration number, retain docs



Know Your Role

When you don't follow your role

- FRNs are denied

Program Compliance Denials	
Form 470	\$ 4,573,327.00
Competitive bidding	\$ 36,227,592.00
Contracts	\$ 6,714,749.00
Insufficient Documentation	\$ 22,632,050.00
Necessary Resources, Tech Plan, Cost Effectives	\$ 7,905,485.00
Total \$ Denied	\$ 78,053,203.00

Tech Plans prior to FY 2011

- Required for all categories of service (excluding basic telecom and VOIP)
- Creation must precede 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

New Tech Plan Requirements

- New requirements apply to FY 2011 and beyond
- **IC and BMIC ONLY** require a tech plan
 - Be aware of potential bucket switches from P1 to P2 (e.g., P1 on premise equipment moved to IC)
- Budget is no longer tech plan element
- A written tech plan is
 - **not** needed prior to posting Form 470 when you are using a state Form 470
 - **needed** prior to posting Form 470, if P2 services are not addressed in the existing tech plan (e.g., requesting servers, routers)

New Tech Plan Requirements

- A revised tech plan is **not** needed prior to posting Form 470 , if an existing approved tech plan is in place which covers a portion of the upcoming funding year
 - Must have approved tech plan prior to the start of service or when the Form 486 is submitted whichever is earlier

Example:

- Posted Form 470 – December 15, 2010
- Current approved tech plan expires December 1, 2011
- A written tech plan is not required at the time Form 470 is posted

Tech Plan Requirements for Everyone

- Created by schools or libraries **ONLY** (no service providers involvement)
- Sufficient detail to support and validate the services requested
- Should cover the funding year
- Approved by a USAC-certified Tech Plan Approver (TPA) before Form 486 is filed or services start, whichever is sooner
- Must follow FCC rules **and** your DOE state or local technology plan requirements
 - Your DOE may require a tech plan for P1 services

The Competitive Bidding Process

- Must be **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 Form 470/RFP responses and contract fine print

Vendor Involvement

- Service providers **cannot**:
 - Determine the types of service the applicant will seek on a Form 470
 - Prepare, assist applicants with the filling out of the FCC Form 470
 - Sign, certify and/or submit Form 470
 - Negotiate with prospective bidders
 - Assist or run the competitive bidding process for the applicant

Vendor Involvement

- Service providers **cannot**:
 - Be privy to information about the bid not shared with other potential bidders
 - Provide charitable donations that have a relationship to the competitive bid and would circumvent FCC competitive bidding rules
 - Offer or provide any gifts or other things of value to those personnel of eligible entities involved with E-rate program

Applicants Involvement

- Applicants **can**:
 - Have pre-bidding discussions
 - Discuss their product offering with SPs
 - Learn about new technologies from SPs
 - Have product demonstrations
 - Encourage and seek vendors to bid
 - Receive **de minimis** gifts
 - Modest refreshments, not offered as a part of a meal
 - Items with little intrinsic value intended **solely** for presentations

Applicant Involvement

- 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
 - Solicit or accept any gift or

Applicant Involvement

- Applicants **cannot**:
 - Solicit or receive gifts worth \$20 or more or exceed \$50 per school or library employee from any single service provider participating in or seeking to participate in the E-rate program per year.
 - Gifts include meals, travel and entertainment (e.g., sporting events, trips)

Forms 470

- Indicates the services and categories of service which entities are seeking
- Must be based on tech plan (if applicable)
- Must be posted for 28 days
- Indicates if they are planning/have issued RFP
- Indicates any special requirements and/or disqualification factors
- Indicates who will be receiving the services
- Posting a new Form 470 not required, if Form 470 is for multi-year contract and signed multi-year contract, until the contract expires

Requests for Proposal

- FCC rules refer to RFPs generically but they may have a variety of names (Request for Quotes, Scope, or Work)
- FCC rules do not require RFP but state and local procurement rules may
- Must be based on entities' tech plan (if applicable)
- Must be available to bidders for at least 28 days
 - Count 28 calendar days from the later of the two posted (470 and RFP)
 - **Example:** RFP posted on December 1, Form 470 posted on December 15,
 - December 15 starts the 28 days count

Form 470 and RFP Issues

- Applicants must ensure that they post for the correct category of service
 - PIA can switch the category of services if applicants make a mistake on their Form 471
- Sufficient detail in Form 470
 - Cannot provide **generic descriptions** (e.g., All eligible telecom services, Digital Transmission Services)
 - Cannot provide **laundry lists** of products and services

Form 470 and RFP Issues

- Third party entities
 - Non-state agencies that conduct the competitive bidding and contract negotiations on behalf schools or libraries
 - (e.g., Joint Power Authorities)
 - Must have a Letter of Agency (LOA) to act on behalf of applicants

Form 470 and RFP Issues

- Third party entities cont'd
 - If multiple vendors are selected, applicants must conduct a **mini-bid** to award contract
 - Make sure to memorialize your decision
 - Document retention rules apply
 - Generally, applicant completes the Form 471

Imposing Restrictions

- Set some eligible services requirements
 - Applicants may require service providers to provide services that are compatible with one kind of system over another (e.g. Cisco compatible).
 - Applicants cannot state make and model on Form 470 or RFP, may state equivalent make and model

Imposing Restrictions

- Disqualifying Bidders
 - Qualifications/disqualification factors must be spelled out to all interested parties prior to the bid evaluation begins
 - Available to all in Form 470 and/or RFP

Imposing Restrictions

- Disqualifying Bidders cont'd
 - Disqualification factors should have yes/no responses and cannot be scored on a **range**
 - **Yes/No Examples**
 - Was the bid submitted by the response date?
 - Was the bid certified?
 - Did the vendor attend the pre-bid walk through?
 - **Range Score Examples**
 - Using on a scale to rank the vendors (e.g., Very high, high, poor)

Bid Evaluation

- Retain all vendor selection documentation (*remember document retention rule*)
 - Winning and losing bids, correspondences, memos, bid evaluation documents, etc.
- Price of the eligible goods and services must be primary factor in all rounds
 - [USAC sample evaluation](#) matrix available
- Vendor evaluation begins after 28 day waiting period

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
 - Applicants must be able 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.
 - Service Providers may work with the applicant to help them understand the technical needs for this expensive solution.

Free Services

- Can't use E-rate to get free stuff (ineligible or eligible)
- Must deduct the value of the "free stuff", discounts, trade-in etc, from the pre-discount amount in order get equal comparison between offerings

Example: Discount rebate

- Cost for product = \$100 pre-discount
- Rebate of 20% is available
- Can **ONLY** apply for \$80 (\$100*80%) pre-discount

Free Services

- A proportionate cost allocation is required between eligible and ineligible components.
- Cost of eligible goods and services cannot be inflated to cover the “free” ineligible stuff

Example: “Free products” included in a bid

- Vendor A: \$10,000 products includes \$1,000 of free ineligible products (Deduct \$1,000 free products)
- Vendor B: \$8,000 for eligible products – no free products
- Must compare:
 - Vendor A: **\$9,000** (\$10,000 - \$1,000) to Vendor B: **\$8,000**

Pre-Commitment SPIN Changes

- [Corrective SPIN](#) change is same service provider corrections to the SPIN
 - Data entry errors
 - Service provider mergers, or been acquired by another vendor

Post-Commitment SPIN Changes

- Operational SPIN change is to different service provider
 - Breach of contract or service provider is unable to perform
 - Newly selected service provider must receive the next highest points value in the original bid evaluation (if there was more than one bidder)

Contracts Overview

- A contract must be signed and dated by the applicant prior to the Form 471 certification postmark date
 - Applicant must not sign a contract before the Allowable Contract Award Date (CAD)
 - Service providers may sign before the CAD
 - When state and/or local contract law doesn't require signature and/or date, the applicant will be given the opportunity to complete a certification statement.
- A purchase order may be considered a contract **ONLY** if your state considers it a contract

Contracts Overview

- Voluntary Contract Extensions
 - Are allowable when the option for contract extensions is stated in the original provision of the contract
 - Applicant must rebid the services (i.e., file a new Form 470) if contract extensions are not stated in the contract or RFP

Contracts Overview

- Service Delivery Extension
 - Deadline for implementation of nonrecurring services is September 30 following the close of the funding year
 - Applicants may request a service delivery extension from USAC for non-recurring services
 - File a Form 500 to adjust the contract expiration date

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

State Master Contracts

- Only applies to state agencies, state procurement
- Multiple winners always require vendor selection justification
- If multiple vendors can provide the services to you, then you must conduct a **mini-bid** based on FCC rules.
 - Do not need to file another Form 470
 - But comply with all FCC Rules regarding vendor selection (i.e., most cost effective, price must be primary, cost-effectiveness)
- Contract Award Date = Date you decided to purchase off State Contract.
 - Memorialize your decision to purchase off a State Contract in an email to yourself or the file.

State Master Contracts

- If a State Master Contract expires either before the funding year starts or during a funding year, you may be able cite a [State Replacement Contract \(SRC\)](#) on your FRNs.
- Form 470/Contract requirements:
 - Existing State Master Contract posted on a State Form 470
 - Replacement State Master Contract posted on a State Form 470
- USAC can make commitments using the SRC SPIN, but cannot pay invoices until a SPIN change to “real” provider has been processed.



Pre-Commitment

Paying Non-Discount Share

- There is still **no free lunch**
- Applicants will always have to pay at least 10% or more depending on their discount
- Service providers cannot give the money (directly or indirectly) to pay for the 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.
 - If applicant can't show proof of payment during invoice review; invoice may be denied.



Pre-Commitment

Budget Review

- Purpose is for applicant to show us they can fund their 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 that funds secured by 7/1



Pre-Commitment

Necessary Resources

- Check applicant's certification that they have them.
 - 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 they have software to run on the computers?
 - Staff trained on how to use the technology?
 - Electrical capacity?
 - Can they maintain the eligible and ineligible equipment?



Pre-Commitment

Certifications Forms 470 & 471

- 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



Pre-Commitment

Certifications Forms

- Service Providers certify that:
 - For SPIs, services have been billed to customers on behalf of eligible entities and for eligible services, and exclude charges already invoiced
 - *SPs, if asked, must provide detailed cost breakouts of services to applicants*
 - They may be audited
 - *Prices were arrived at independently, without communicating with other bidders regarding pricing, intent to bid and how you determined your pricing*
 - Their prices won't be disclosed to another bidder before the bid opening



Pre-Commitment

Heightened Scrutiny

- May include review of:
 - Budget
 - Necessary Resources
 - Competitive Bidding and Contracts
 - Targeted questions based on potential violations
- [Selective Review Information Request](#) (SRIR) contains some of the questions we may ask
- These reviews will take additional time and will hold up commitments until they are completed



CIPA Compliance

Children Internet Protection Act requirements:

- Proof of public notice of public meeting or hearing
- Proof of public meeting or hearing
- Copy of Internet Safety Policy
- Technology protection measure
- Applicants must be CIPA compliant when receiving Internet access in the telecom service category

Documentation Tip:

- Must maintain documentation from prior years if it supports current funding year
- Filter documentation examples: maintenance logs, filtering logs, proof of purchase or vendor filter description



Post-Commitment

Payment Plans

- **Are NOT Allowed**
- 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.”
 - 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.



Post-Commitment

Service Delivery

- Service providers and applicants should work together to facilitate delivery of service
- Monitoring receipt of service
 - Both parties (SP and applicant) should monitor delivery of service
 - Don't rely on the other party's records
 - Keep documentation of service delivery and any service interruptions
 - Applicants get Quarterly Disbursement Report
 - Applicants may request [Invoice Check](#)



Post-Commitment

Invoice Review

- SP/App must review BEAR/SPI to ensure:
 - Only eligible services are being billed
 - Only services that were approved on the Form 471 are being billed
 - Services were delivered consistent with the FCDL and any agreements
 - Any service interruptions are accounted for
- Credits or discounts are apportioned to both USAC and the applicant



Document Retention

- Document retention timeframes:
 - 5 years from **last date to receive service**
 - FY 2011 – this is at least **June 30, 2017**
 - Any document from a **prior year** that supports current year must be kept until 5 years from last date to receive service as well
 - E.g., Contract from 2005, used to support FY 2011 FRNs, must be kept until at least **June 30, 2017**
- Documents may be retained in electronic format or paper
- Must maintain documentation from prior years if it supports current funding year



Document Retention

Retain documents to show your compliance:

- Letters of Agency and any agreements with all consultants
- Technology Plan (dated 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), competitive bidding correspondence, notes, memo, etc
- Email to yourself if you get no or one bid
- CIPA documents



Document Retention

Retain documents to show your compliance:

- Consortium Letters of Agency or contracts with the consortium leader
- Compliance review documents (PIA, TPA, CIPA, Invoice)
- Signed and dated contracts
- Invoices, bills
- Asset registries, inventory logs
- Also, see further list on USAC website



Document Retention

Service Providers must retain:

- Copies of your bids
- Contracts signed with applicants
- Correspondence with applicants regarding bidding process
- Proof of delivery of the service
- Documentation of any service down time
- Logs of maintenance performed



Document Retention

- Applicants must retain all documents that show compliance with all FCC rules
- See complete lists:
 - [Documentation Retention Requirements](#)
 - [Documentation Checklist](#)
 - [E-Rate Binder Table of Contents](#)



Program Compliance Questions?