



E-rate Program

Program Compliance

Spring 2011 Service Provider Trainings

Overview

- Know Your Role
- Technology Plans
- Fair and Open Competition
- Gifts
- Contracts
- Pre-Commitment Issues
- SPIN Changes
- Document Retention

- **Applicants**

- Write tech plan (Priority 2 services only), file Form 470 and write RFP, evaluate bids, select provider, document the process, file Form 471 and Item 21, 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

Technology 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

Who needs a technology plan?

- New requirements apply for FY 2011 and beyond
- **No longer** required for:
 - Priority One (Telecom and Internet Access)
- **Still required** for:
 - Priority Two services (internal connections and Basic Maintenance of Internal Connections)
- Beware of potential bucket switches
 - P1 on-premise equipment moved to Internal Connections

Four (Not Five) Required Elements

- Four Required Elements
 - Goals and Strategies; Professional Development; Needs Assessment and Evaluation
- Applicants no longer have to include a section on budget
 - This information is covered by certification on necessary resources (“I certify that the entities I represent or the entities listed on this application have secured access to all of the resources to pay the discounted charges ...”)

Technology Plan Timing

- Technology Plan Approval → no change
 - All applicants requesting Priority 2 services, must have an approved plan that covers at least part of the upcoming funding year prior to the start of service, or the filing of the Form 486, whichever comes first.

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 Form 470/RFP responses and contract fine print

6th Report and Order

- New Order provides further detailed information regarding fair and open competition requirements
- Provides specific examples of rule violations
- Examples given are not an exhaustive list

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

Service Providers **Cannot:**

- Be privy to information about the bid not shared with other potential bidders (“inside information”)
- Provide charitable donations that have a relationship to the competitive bid and would circumvent FCC competitive bidding rules or influence the E-rate competitive bidding process
- Provide charitable donations that function as inducements to make additional purchases of eligible products or services

Service Providers **Cannot:**

- Offer or provide 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 etc.)

Service Providers Can:

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

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.

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 follow the stricter of state/local or FCC rules
- Counted per funding year

Gift Exceptions

- Items worth \$20 or less (meals, pencils, pens, hats, t-shirts etc) as long as those items do not exceed \$50 per funding year per employee from any one source (eg. service provider) are OK.
 - Single source means gifts from all employees, officers, representatives, agents, independent contractors, or directors of the service provider.
- Items with little or no intrinsic value such as certificates and plaques are OK

Gifts Exceptions

- Gifts to family and friends when those gifts are made using personal funds of the donor (without reimbursement from the employer) and are not related to a business transaction or business relationship are also exempt.

Charitable Donations

- Gift rules are not intended to discourage companies from making charitable contributions to schools, as long as those contributions are **NOT** directly or indirectly related to an E-rate related procurement.
- Charitable donations violate FCC rules if given for the specific purpose of influencing the E-rate bidding process.
- Donations are prohibited when they function as inducements to make purchases from the donor in violation of competitive bidding requirements, reduce the applicant's share of the payment for its services, or might otherwise serve to increase the demand for an existing donor's services.

Fair & Open Competition

Gift Examples

Gifts OK	Gifts NOT OK
Coffee and donuts at a presentation	Meal at presentation over \$20
Door Prize: Ball cap worth \$20 or less	Door Prize: \$30 gift card
Certificate or plaque presented at conference	Gold watch given as thank you gift
	Travel, food or lodging at conference, even if you are speaking on behalf of the provider
Pens handed out a conference worth \$20 or less	Conference giveaways: any item exceeding \$20 in value (eg briefcase)
Holiday present to sibling, not reimbursed by company, paid with own funds	Customer Appreciation meal/gift exceeding \$20

Gift Examples

Gifts OK	Gifts NOT OK
<p>Joe Applicant get \$18 lunch from Larry, the Cable Guy. No other meals or gifts during the funding year from anyone employed by, or representing, the Cable Company.</p> <p>No Rule Violation = Total gift below \$20 and \$50 threshold.</p>	<p>Joe Applicant get \$12 lunch from Larry, the Cable Guy three times during the funding year. (Total: \$36 total). Larry's boss, takes Joe to lunch for \$18. (Total from Cable Company: \$54).</p> <p>Rule violation = exceeded \$50 threshold</p>
<p>Jane Applicant wins mousepad at a conference from Internet R Us. (Value = \$8)</p> <p>Jane Applicant also receives \$15 box of chocolates from Internet R Us.</p> <p>No Rule Violation = Both below \$20 and did not exceed \$50 threshold.</p>	<p>Jane Applicant wins a wireless mouse and mousepad at a conference from Internet R Us. (Value = \$24 +\$8)</p> <p>Rule violation: One gift exceeded \$20 threshold.</p>

Gift Examples

Gifts OK	Gifts NOT OK
<p>Joe Applicant attends a conference and picks up a free ballpoint pen and stress ball from a company he's never heard of. No further gifts are given. No Rule Violation = Total gift below \$20 and \$50 threshold.</p>	<p>Joe Applicant is invited to a customer appreciation lunch at a seminar. Meal value = \$22 Rule violation = exceeded \$20 threshold</p>
<p>Jane Applicant received a bag of peaches in the summer from a provider. Value of peaches = \$10 No other gifts are given by anyone from that company for the rest of the funding year. No Rule Violation = Below \$20 and did not exceed \$50 threshold.</p>	<p>Jane Applicant is invited to speak at a conference regarding services she gets from a provider. The provider offers to pick up travel costs. Rule violation: Total gift exceeded \$20 threshold.</p>

Form 470

- Indicates the services and categories of service which entities are seeking
- Must be based on tech plan (if applicable)
- Must be posted for at least 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

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
 - Applicants must memorialize their 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)

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
 - 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?
 - Is the bidder licensed and insured?

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
- 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**

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

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

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 conducting state procurements
- Multiple winners always require vendor selection justification
- If multiple vendors can provide the services to applicants, then the applicant must conduct a **mini-bid** based on FCC rules.
 - Applicants do not need to file another Form 470
 - But they must comply with all FCC Rules regarding vendor selection (i.e., most cost effective, price must be primary, cost-effectiveness)
- Contract Award Date = Date applicant decides to purchase off State Contract.
 - Applicants should memorialize their decision to purchase off a State Contract in an email to themselves or the file if no separate documentation is required by the State Master Contract.

State Master Contracts

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

Necessary Resources and Budget

- 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?
 - Is there sufficient electrical capacity?
 - Can the applicant maintain all of the equipment ?
 - Can the applicant pay their share?

Paying Non-Discount Share

- All E-rate applicants must pay their non-discounted share
- Service providers cannot give the money (directly or indirectly) to pay for the non-discounted share
 - Non-discounted share cannot be a charitable donation from the provider
 - 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.

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.

Service Provider Annual Certification

- 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

Applicant Certifications on Form 470 and 471

- 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 SPIN changes

- Corrective SPIN changes only
 - These are limited to correcting data entry errors, such as listing the wrong SPIN on a funding request
 - State Replacement Contract SPIN changes

Post-Commitment SPIN Changes

- Corrective SPIN changes allowed
- Operational SPIN changes allowed, but
 - Must have legitimate reason to change, such as Breach of Contract or provider unable to perform; **and**
 - Must select provider with next highest point value in evaluation
 - If only single bidder, then can select new provider consistent with state and local rules

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

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



Questions?

Thank you!