

[Back](#)

Selective Review News Brief Series – Competitive Bidding

May 13, 2009

This is the second in a series of three short News Briefs to help you understand key aspects of the Selective Review process.

Competitive Bidding

Form 470 and Requests for Proposals (RFPs)

Program rules do not require you to issue an RFP. However, it is often a good idea to have one. Your state and/or local procurement rules may require you to issue an RFP. It is important that you are compliant with both FCC rules **AND** your state and/or local procurement rules.

If you have released or intend to release an RFP, you must indicate "YES" in Block 2 of your [Form 470, Description of Services Requested and Certification Form](#). Also, state in Block 2 where the RFP is available. Failure to indicate your intent regarding an RFP may result in your funding request(s) being denied.

Competitive bidding review

The competitive bidding review is done to establish that a fair and open competitive bid was conducted. To understand how you conducted your bidding process, your reviewer will ask for all of the documentation used and referenced in your process. You will be asked to provide a copy of RFP(s), addenda, notes, memoranda and any other documentation related to your competitive bidding process. This includes copies of both winning bid proposals and proposals not selected.

Here are some of the things we look for during the review:

- **Does the establishing Form 470 indicate your intent to seek a multi-year contract and/or a contract with voluntary extensions?** Applicants do not have to post a Form 470 annually for contractual services if they indicate on the Form 470 Block 2 Item 7 that they are seeking a multi-year contract and/or voluntary contract extensions.
- **Are your competitive bidding requests based directly on your technology plan?** Keep in mind that your technology plan should establish how information technology and telecommunications infrastructure will be used to achieve educational goals, specific curriculum reforms, or library service improvements.
- **Do your competitive bidding documents clearly describe the specific products and services you are seeking?** You should avoid using generic or encyclopedic service descriptions in your Form 470 and/or RFP. Using a generic or encyclopedic RFP makes it difficult for service providers to compose a responsive bid.
 - Examples of generic Form 470 or service description terms include "all eligible services," "any E-rate products," or "all telecom services."
 - Examples of "encyclopedic" service descriptions are copies of the entire Eligible Services List or "grocery" lists of services that do not identify specific products or services.
- **Was your Form 470 or RFP available, for 28 days before you selected a vendor or executed a contract?** Your Form 470 and RFP must be available to bidders for 28 days. Your RFP deadline or response date must be on or after your Form 470 Allowable Contract Date. Note that if you issue an RFP after you post your Form 470, your RFP must be available for 28 days. If your RFP deadline is prior to the Allowable Contract Date, you may issue an addendum to the RFP making potential bidders aware that the RFP due date will be either the same date as the Form 470 Allowable Contract Date or later.

Following are some examples of competitive bidding processes that WERE NOT open for 28 days and DO NOT meet program requirements:

- **You post a Form 470 on October 1, issue an RFP on October 8, and then close your competitive bidding process on October 29.** Although the Form 470 was available for 28 days, the RFP was only available for 22 days. Therefore, program requirements were not met. Both the RFP and the Form 470 must be available to potential bidders for a minimum of 28 days.
- **You post a Form 470 and issue an RFP on October 1, stop accepting bids on October 15, and then begin your bid evaluation process on October 29.** Although you waited 28 days before you began evaluating your bids, you only accepted bids for a period of 15 days. Program requirements state that you must accept bids for a minimum of 28 days.
- **You issue an RFP on September 24 with a response deadline of October 22, post a Form 470 on October 1, and close your competitive bidding process on October 29.** This does not meet program requirements because responses to the RFP were due before the Form 470 had been posted for 28 days. In other words, since your RFP bids were due October 22 and your Form 470 was posted on October 1, RFP responses were due after the Form 470 had only been posted for 22 days. Bidders must have a minimum of 28 days from the posting date of the Form 470 or issuance date of the RFP to respond.

State or local procurement requirements vs. E-rate competitive bidding requirements

Being compliant with E-rate program requirements does not excuse you from your obligation to be compliant with all applicable state or local procurement requirements. In general, when E-rate program requirements and state or local requirements differ, you should comply with the requirements that are more stringent to ensure that you are in compliance with both.

For example, the E-rate program requires the competitive bidding process to be open for at least 28 days. If your state or local procurement regulations require you to keep the competitive bidding process open for 35 days, you must also meet this 35-day requirement. Conversely, if your state or local procurement regulations require you to keep the competitive bidding process open for 15 days, and you meet this requirement, you cannot then state that you have also met the E-rate program's 28-day competitive bidding requirement.

Note that when you complete the Item 25 Certification on the Form 470 you state: "I certify that I have reviewed all FCC, state, and local procurement/competitive bidding requirements and that I have complied with them."

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[Back](#)