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Schools and Libraries News Brief

January 8, 2010

FY2010 WINDOW COUNTDOWN

Days to window close	34
Forms 470 filed to date	26,743
Forms 471 filed to date	2,566

TIP OF THE WEEK: If you submitted your FY2010 Form 470 on paper, be sure to monitor your preferred mode of contact until we have posted your form on the USAC website. Over a third of the paper forms we receive cannot be processed without reaching out to the applicant for additional information.

Commitments for Funding Years 2009 and 2008

Funding Year 2009. USAC will release FY2009 Wave 35 Funding Commitment Decision Letters (FCDLs) January 12. This wave includes commitments for approved Priority 2 requests (Internal Connections and Basic Maintenance of Internal Connections) at 80% and above and denials at 54% and below. As of January 8, FY2009 commitments total just over \$1.95 billion.

Funding Year 2008. USAC will release FY2008 Wave 77 FCDLs January 13. This wave includes commitments for approved Priority 2 requests at 87% and above and denials at 86% and below. As of January 8, FY2008 commitments total just under \$2.45 billion.

On the day the FCDLs are mailed, you can check to see if you have a commitment by using USAC's [Automated Search of Commitments](#) tool.

Additional Information on the Competitive Bidding Process

In this issue, we cover several topics that will help you understand and plan for situations that may arise before or during your competitive bidding process.

1. State or local requirements and E-rate requirements

Compliance with E-rate program requirements is not an excuse for non-compliance with state and local 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 make sure you are in compliance with both.

For example, E-rate requires that the competitive bidding process be open for at least 28 days. If state or local procurement rules or regulations require applicants to keep competitive bidding processes open for at least 35 days, they must do so. Applicants cannot claim in this case that compliance with the 28-day E-rate requirement is sufficient.

Note that the certification in Item 25 on the Form 470 begins, "I certify that I have reviewed all FCC, state, and local procurement/competitive bidding requirements and that I have complied with them."

2. Form 470 posting date, RFP availability date, and allowable vendor selection/contract date

To comply with program rules, you must wait at least 28 days after a Form 470 is posted to the USAC website before you close your competitive bidding process, choose a service provider, sign a contract (if appropriate), and sign and submit your Form 471. We refer to the date 28 days after the Form 470 is posted as the allowable vendor selection/contract date or ACD.

Some state or local procurement rules or regulations require applicants to issue a Request For Proposals (RFP) in addition to the Form 470. In other cases, applicants may choose to issue an RFP even though one is not required by state or local procurement regulations. FCC rules require that, if you issue an RFP, it must be available to bidders for 28 days just like the Form 470.

- If you issue an RFP **after** you post a Form 470, you must wait at least 28 days after your RFP is publicly available before closing your competitive bidding process, choosing your service provider, and signing any contracts.
- If you issue an RFP **before** you post a Form 470, you must wait at least 28 days after your Form 470 is posted to the USAC website before closing your competitive bidding process, choosing your service provider, and signing any contracts.
- Remember that if you have issued or intend to issue an RFP, you must check the appropriate box or boxes (Items 8a, 9a, 10a, and/or 11a) on the Form 470.

In all cases, you must wait 28 days after the Form 470 is posted to the USAC website or after public availability of your RFP, whichever is later, before selecting a service provider or executing a contract.

The competitive bidding process must be open for 28 days. For this to occur, you must be able to receive bids during the entire 28-day period. 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.
 - This does not meet program requirements because the RFP was not available for 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.
 - This does not meet program requirements because you did not accept bids for at least 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. Bidders must have 28 days from the most recent posting or issuance date to respond.

Applicants should take reasonable steps to ensure that they have waited at least 28 days from the most recent posting or issuance date and notified potential bidders of any change.

3. Applicant and service provider responsibilities for the Form 470

When completing the Form 470, applicants must provide sufficient detail for a service provider to be able to formulate a bid. This will allow potential bidders to determine if they provide the types of services that applicants are looking for. However, service providers may well need further detail about the services in order to submit a responsive bid. Applicants should be careful to respond to bidder inquiries in a timely manner so that the applicants can meet the competitive bidding deadlines. Not responding to a potential bidder promptly can result in a compromised competitive bidding process which can result in funding denial.

However, service providers also have a responsibility to respond to posted Forms 470 with specific information. Simply sending a generic email to the applicant saying that the service provider can provide the general type of service requested is not considered a good faith response to a Form 470 posting and can be considered 'spam' and ignored by the applicant.

An applicant may choose to post questions received from potential bidders along with the applicant's answers on the applicant's website. Doing so would ensure that all potential bidders have access to the same information – a key component in the fair and open competitive bidding process.

4. Disqualification reasons

You can set out specific requirements and disqualify bids that do not meet those requirements as long as you clearly identify the disqualification reasons on your Form 470 and/or your RFP. Disqualifications should be determined prior to any substantive bid evaluation. Disqualification reasons cannot be scored on a range, but rather are binary – i.e., the bidder either meets the standard or does not meet the standard.

The following items are examples of common bid disqualification reasons:

- Service provider must register with the state procurement office.
- Service provider must have a Service Provider Identification Number (SPIN).
- Service provider must have an FCC Registration Number.
- Service provider must be bonded.

If an applicant features these four reasons as its bid disqualification reasons, bids from service providers that do not meet all four reasons are disqualified and not evaluated further. The remaining bids must then be evaluated with the price of the eligible products and services as the factor that is weighted most heavily in the bid evaluation.

5. Multi-tiered evaluation processes

If you use a multi-tiered or multi-round evaluation process, the price of the eligible products and services must be the primary evaluation factor in EACH tier or round of the process.

The following is an example of such a process:

- In the first round, the applicant uses the following evaluation criteria:
 - Price of the eligible products and services (50 points)
 - Reference check (25 points)
 - Prior experience with the applicant (25 points)
- Bidders that do not receive at least 70 points in the first round are eliminated and not considered any further.
- In the second round, the applicant uses the following evaluation criteria:
 - Price of the eligible products and services (40 points)
 - Technical solution (35 points)
 - Price of any ineligible products and services needed in order to make the solution work (25 points)

Although the applicant did not consider bids that did not meet the 70-point threshold, the first round is not a disqualification because bidders were scored subjectively on references and prior experience with the district. Note that in each round the primary factor was the price of the eligible goods and services.

6. Mandatory walkthroughs and bidders conferences as disqualification reasons

You can require that bidders participate in a walkthrough of your facility or attend a bidders conference in order to submit a bid. As long as you have clearly stated in your Form 470 and/or RFP that not attending these events is a reason for disqualification, you can disqualify bids from service providers that were not present at these events.

However, you must be sure that all bidders had access to this information and have timely notice so that they have a reasonable opportunity to attend.

Note that if you use the walkthrough or bidders conference as the only opportunity to distribute the RFP, you must then wait at least 28 days from the date you last distributed the RFP before you can close your competitive bidding process and select your service provider.

7. No bids received in response to a Form 470/RFP

A cornerstone of the E-rate program is the idea that competition will result in multiple bids which should then result in lower prices and better goods and services offered. Sometimes, however, applicants don't receive any bids. Remember that you can always encourage potential bidders to participate in your competitive process and make bidders aware of the opportunity you offer. If, in the end, you receive one bid or no bids in response to a Form 470/RFP, you may wish to memorialize this fact with an email to yourself or a memo to the file. Various review processes – including audits – may occur some time after your competitive bidding process has ended, and this email or memo may be the only documentation of what happened.

If you don't receive any bids after your 28-day waiting period, you can contact service providers again to solicit bids and can then review and evaluate any bids received as a result. However, remember that if you post a new Form 470, issue a new RFP, or amend your existing RFP, you start the clock on another 28-day waiting period.

Keep in mind that your state and local procurement rules may also require you to take certain actions when this situation occurs. As always, you must be in compliance with all of your state and local rules and regulations as well as FCC rules.

8. One bid received in response to a Form 470/RFP

In cases where you receive only one bid, you may wish to memorialize this fact with an email to yourself or a memo to the file. This will help to document that you didn't just keep only the winning bid.

Furthermore, remember that the FCC has stated that if you only get one bid, that does not automatically make the bid cost effective. Applicants should review the pricing in the bid response to determine whether the costs for the products and services are significantly higher than the costs generally available in the applicant's marketplace for the same or similar products or services. If they are significantly higher, then the bid may not be cost effective. You can refer to the [Cost Effectiveness Tip Sheet](#) for more information about cost effectiveness.

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