

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
Schools and Libraries	)	CC Docket No. 02-6
Universal Service Support Mechanism	)	
	)	
Request for Review and/or Waiver by	)	
the Lincoln County School District	)	Application No. 161036733
of a Funding Decision by the	)	
Universal Service Administrative Company	)	
	)	

**REQUEST FOR REVIEW AND/OR WAIVER  
BY THE LINCOLN COUNTY SCHOOL DISTRICT  
OF A FUNDING DECISION BY THE  
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

Pursuant to sections 54.719 and 54.722 of the Commission's rules,<sup>1</sup> the Lincoln County (TN) School District<sup>2</sup> (Lincoln County or the District) hereby respectfully requests a review of a Universal Service Administrative Company (USAC) decision to deny Schools and Libraries Universal Service (E-rate) funding for Funding Year 2016.

USAC denied Lincoln County's application because it determined that Lincoln County violated the Commission's competitive bidding requirement that its RFP be available for bidders for the required 28 days.<sup>3</sup> To the contrary, Lincoln County had its RFP posted for 30 days, waited another week before selecting a winning bidder, and nearly another month before signing a contract. USAC determined that Lincoln County's clarification removing four entities from a

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<sup>1</sup> 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a).

<sup>2</sup> Billed Entity Number 128288.

<sup>3</sup> See Exhibit 1, USAC Funding Denial.

pricing worksheet was “significant” information that USAC believes should have reset the 28-day clock for the competitive bidding process.

Judicial and Commission precedent makes it clear that the removal of four locations cannot reasonably be considered an RFP modification significant enough to restart the 28-day clock, especially when the District could have simply chosen not to purchase services for those locations without making any changes to its RFP. The District was doing interested bidders a favor by clarifying which buildings needed services instead of requiring them to submit installation pricing for services the District knew it did not want to purchase. The inconsequential change to its RFP had no effect on the competitive bidding process.

Instead of analyzing RFP modifications individually to determine how significant they are, USAC has apparently created a bright-line rule that “*any documentation* providing the [sic] additional or modifying the original information . . . be uploaded into the FCC Form 470 in the EPC Productivity Portal and made available for [an] additional 28 days before selecting a service provider.”<sup>4</sup> The Commission has established no such requirement; indeed, USAC itself acknowledges there is no such rule by noting that “program procedures” provide this directive.<sup>5</sup>

If the Commission upholds USAC’s determination, it will mean that every question answered as part of the competitive bidding process will restart the 28-day clock. That will unnecessarily add time and expense to every competitive bidding process without any possible benefit. If the Commission wants to establish a standard going forward, it should at least confine its review only to those changes that increase the scope of the bid – by, for example, adding a

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<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> *Id.*

significant number of locations (say, more than 10) – changes that alter the type of services sought, or changes to the length of the agreement.

In addition to creating a rule requiring applicants to restart the 28-day clock for *any* change to their FCC Form 470/RFP, no matter how inconsequential, USAC also relies on an interpretation of the 28-day rule that is inconsistent with the plain language of the rule. Lincoln County urges the Bureau to reject any interpretation of the rule that requires the competitive bidding itself to remain open for 28 days, because that interpretation is unsupported with the language of the rule itself.

For these reasons, Lincoln County urges the Bureau to reverse USAC's decision to deny Lincoln County's application for funding year 2016. In the alternative, Lincoln County requests that the Bureau grant it a waiver.

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## I. BACKGROUND

The Lincoln County School District is located in Fayetteville, Tennessee, and serves 3,838 students. Lincoln County's discount rate for funding year 2016 was 80 percent.

On February 16, 2016, Lincoln County posted a Request for Proposal (RFP) for E-rate eligible services, including WAN services for 12 buildings in the district.<sup>6</sup> The allowable contract date was March 15, 2016. The RFP required potential vendors to indicate their interest in the project and submit an "intent to propose."<sup>7</sup>

Vendors also had to attend a pre-bid conference on February 26, 2016. The purpose of this meeting was to answer any questions the potential bidders may have about our bid and clarify anything in the RFP, as is a standard practice of the District. During the on-site pre-bid conference, it was discussed that the District has existing self-provisioned fiber at four administrative buildings in close proximity to its data center. As a result, there was no need for vendors to bid for services at those sites.

To clarify that services were not needed at those four sites, on March 10, 2016, the District revised its "attachment B," on which bidders were supposed to include their proposed pricing, to remove those four sites.<sup>8</sup> The bidding process ended on March 17, 2016. The District's technology director sent his recommendation to the school board on March 24, 2016. The District signed its contract with the winning bidder on April 25, 2016, and received final approval by the county commissioners on April 19, 2016. Lincoln County filed application 161036733 on May 4, 2016, seeking \$86,400.

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<sup>6</sup> See Exhibit 2, RFP, and Exhibit 3, Original Pricing Sheet.

<sup>7</sup> *Id.*

<sup>8</sup> See Exhibit 4, Revised Pricing Sheet.

USAC denied Lincoln County's request for services for FRN 1699081309 with the following explanation:

DR1: Documentation that contained information needed for potential bidders to respond to your RFP was not available for 28 days in the E-rate Productivity Portal before selecting your service provider. On 3/10/2016 you uploaded a modified list of recipients of service (removed 4 sites) that contains significant information for the bidders to be able to respond to the FCC Form 470 and RFP. However, this documentation was not available in the E-rate Productivity Portal for 28 days before you selected the service provider. Therefore, this FRN is denied. Program procedures require the FCC Form 470, RFP and any documentation providing the additional or modifying the original information in your FCC Form 470 and/or Request for Proposal be uploaded into the FCC Form 470 in the E-rate Productivity Portal and made available for additional 28 days before selecting a service provider.

Lincoln County appealed USAC's denial on January 17, 2016. USAC denied the appeal on August 16, 2017, this time simply finding that Lincoln County violated the 28-day rule. Appeals are due within 60 days.<sup>9</sup> As such, this appeal is timely filed.

## **II. LINCOLN COUNTY'S MINOR REVISION TO ITS RFP DID NOT REQUIRE A RESTART OF THE 28-DAY COMPETITIVE BIDDING PERIOD.**

The deletion of four locations did not constitute a change "significant" enough to require the applicant to restart the 28-day clock. First, the deletion of the four administrative locations was a minor change that in no way affected bidders' ability to respond to the RFP. Second, there is no Commission rule that requires applicants to keep open the competitive bidding process for an additional 28 days after any additional documentation is posted on the E-rate Productivity Portal (EPC). USAC's denial of Lincoln County's application on those grounds is inconsistent with Commission requirements, unnecessarily extends the competitive bidding process, and effectively establishes a new rule.

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<sup>9</sup> 47 C.F.R. § 54.720(a).

**A. The Revision of the Pricing Worksheet Was Not a “Significant” Change to the RFP.**

In order to understand that this is a minor change that would not necessitate a new 28-day period, it is helpful to look at precedent regarding the “cardinal change” principle for determining whether a contract modification is within the scope of the original contract, or whether it changes the contract substantially enough that the contract must be rebid. USAC did not use the term “cardinal change” in its denial, but it uses the term on its website and in training. As such, the analysis of what constitutes a material modification to a contract for purposes of determining whether a new competitive bidding process is required is helpful in explaining how out of line USAC’s decision is with the prevailing legal norms.

In the *Fourth Order on Reconsideration* in 1997, the Commission adopted the “cardinal change” doctrine in order to allow universal service recipients to make minor modifications to contracts without having to initiate a new competitive bidding process.<sup>10</sup> The Commission explained that the cardinal change principle “recognizes that a modification that exceeds the scope of the original contract harms disappointed bidders because it prevents those bidders from competing for what is essentially a new contract.”<sup>11</sup> The Commission identified “adding a few additional lines to an existing contract” as an example of what would *not* constitute a cardinal change.<sup>12</sup> Similarly, the U.S. Court of Appeals for the Federal Circuit found that a change in bandwidth did not constitute a “cardinal change,” requiring a new contract.<sup>13</sup>

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<sup>10</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, 13 FCC Rcd 5318, ¶¶ 224-228 (1997) (*Fourth Order on Reconsideration*).

<sup>11</sup> *Id.* ¶ 228.

<sup>12</sup> *Id.* ¶ 224. In the *Fourth Order on Reconsideration*, the Commission relied on precedent from the United States Court of Appeals for the Federal Circuit. *See id.* ¶ 227 & n.692.

<sup>13</sup> *AT&T v. Wiltel*, 1 F.3d 1201, 1205-06 (Fed. Cir. 1993) (finding that a contract modification that upgraded T1 dedicated transport circuits to T3 circuits was not a cardinal change).

USAC itself describes “cardinal change” in a blog post on its website.<sup>14</sup> In that post, USAC appears to be discussing both changes to an FCC Form 470 and an accompanying request for proposal as well as a Form 471.<sup>15</sup> USAC specifically states that “cardinal changes” are “changes that if you had included them in your original FCC Form 470, other service providers who didn’t bid on your request may have done so.”<sup>16</sup>

This precedent makes it difficult to understand how a change to eliminate four administrative buildings from an RFP could possibly require a new 28-day waiting period. The Commission and the Federal Circuit Court of Appeals have found, respectively, that “a few additional lines” of unspecified content and a significant modification of the bandwidth provisioned do not qualify as cardinal changes, even though both of these things indisputably change—or have the potential to change—the core substance of the contract.

Here, Lincoln County did not change the scope or type of services. A service provider may be encouraged to bid if additional entities are added, but it is highly unlikely that a service provider that was considering bidding decided not to because 12 locations was too many, but eight would have been just right. This is especially true given that the four locations deleted are within a block of each other. The written clarification was not a substantial change to the scope of the RFP, as it was not asking for additional services nor was it adjusting the bid in a manner that would make it easier for a vendor to participate. These sites were the easiest to serve, given

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<sup>14</sup> <http://filealongwithrate.org/cardinal-changes/>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* We note that USAC uses different wording in various places. On its website, USAC also describes cardinal changes as “[c]hanges that significantly alter your original funding request.” See <http://filealongwithrate.org/cardinal-changes/>. In the EPC instructions, USAC describes them as “[m]aterial changes to your RFP that affect the scope of the services for which you have requested (e.g., a change that has more than a negligible effect on the price, quantity, quality or delivery of the service). EPC Filing Instructions for FCC Form 470, at 12. An EPC pop-up window describes cardinal changes as adding services and adding locations.



their location and distance from the aggregation point. A vendor that was not already considering bidding would not have decided to bid due to this change. USAC's apparent conclusion that a vendor would have decided to bid but for the inclusion of those four cites is not only speculative, but is unjust and inconsistent with program goals.

To simplify the process for the proposers, the District clarified that those four sites would not need pricing. It was efficient for the District to revise its pricing sheet as it would have been a waste of the carriers' resources to bid and a waste of District resources to spend time evaluating pricing for services they had no intention of purchasing.

Further, program rules allow for the correction of clerical errors.<sup>17</sup> Lincoln County's correction was just that – a correction. It was an error that the four buildings were included on the RRP when they did not need services.

#### **B. USAC's Determination Is Inconsistent With Commission Rules.**

USAC stated in its funding denial that "any documentation" modifying the original information in an FCC Form 470 and/or RFP must be uploaded into the E-rate Productivity Portal and made available for an additional 28 days before selecting a service provider. But there is no such requirement in the Commission's rules, which USAC acknowledged in Lincoln County's FCDL, noting that it was relying on "program procedures" to deny the application.

Lincoln County followed the process it outlined in its RFP: after conducting the pre-bid conference, it allowed potential vendors a little more than a week to submit questions. It answered those questions within three days, and, after that, vendors still had more than a week to submit their bids. If the Bureau upholds USAC's determination in this appeal, it will be establishing a new rule (without a rulemaking) that requires applicants to restart the 28-day

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<sup>17</sup> <http://filealongwitherate.org/ministerial-clerical-errors/>.

competitive bidding process clock *every time they answer a question posed by a potential vendor*. This is not an exaggeration. USAC stated that “any documentation” must be uploaded into EPC and made available for 28 days. Such a rule would unnecessarily lengthen the competitive bidding process and could mean additional late-filed applications.

USAC cited “program procedures” in its FCDL, but USAC does not have the authority to create “procedures” that have the effect of denying an entire year’s worth of funding. Only the Commission can establish such rules, after a notice-and-comment rulemaking. USAC also does not have the authority to interpret Commission rules, but USAC’s determination here is an interpretation of the 28-day rule that no Commission precedent supports. At best, then, USAC’s application of the 28-day rule was an inappropriate and unsupported interpretation of the Commission’s rule; at worst, USAC is creating a new rule. Throughout the history of the program, applicants have responded to questions on their RFPs without restarting the 28-day clock for every clarification, and only a directive from the Bureau or the Commission can establish such a requirement. If the Bureau decides to issue such a directive, it should do so on a prospective basis so that applicants know what is expected of them before they conduct their competitive bidding processes and file their applications. In the meantime, the Bureau should reject USAC’s application of the 28-day rule and grant this appeal.

### **III. LINCOLN COUNTY’S REQUEST FOR PROPOSAL INCLUDED SUFFICIENT INFORMATION TO ALLOW POTENTIAL VENDORS TO BID, AND IT WAITED 28 DAYS BEFORE MAKING A COMMITMENT WITH ITS SELECTED PROVIDER**

The Commission’s rules require schools and libraries to provide sufficient information for a vendor to submit a bid.<sup>18</sup> Lincoln County’s original RFP provided sufficient information

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<sup>18</sup> 47 C.F.R. § 54.503(c)(1).

for vendors to submit their bids, and the subsequent clarification did nothing to undermine potential bidders expectations after reviewing the original RFP. If the clarification had not been issued, the vendors still would have been able to submit responsive bids. The bids might have included additional information that Lincoln County did not need, but they would have contained the information Lincoln County needed to determine the best bidder for the locations for which it wanted services. Lincoln County could have merely ignored the bids for the additional four locations and omitted those services from the final contract.

In addition, Lincoln County waited 28 days after it posted its Form 470/RFP before making commitments with its selected provider. USAC found that Lincoln County failed to leave its RFP open for the 28 days required by Commission rules. Section 54.503(c)(4) of the Commission's rules requires a district to wait 28 days after posting the FCC Form 470 before signing a contract.<sup>19</sup> The rule itself does not say anything about the length of the competitive bidding process.

Specifically, the rule requires applicants to wait 28 days after the posting of the FCC Form 470 "before making commitments" with the selected service provider, and Lincoln County did exactly that. Its Form 470 was filed on February 16, 2016, and the Lincoln County Commission approved the vendor award on April 19, 2016 – more than two months later. The contract was signed April 25, 2016. Therefore, Lincoln County did not violate the 28-day rule.

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<sup>19</sup> 47 C.F.R. § 54.503(c)(4) ("That entity shall then wait at least four weeks from the date on which its description of services is posted on the Administrator's Web site before making commitments with the selected providers of services.").

The Commission nonetheless now apparently interprets the 28-day rule to require that the competitive bidding period remain open for 28 days.<sup>20</sup> While USAC should not apply the rule in a way that conflicts with the plain language of the text, Lincoln County satisfied this requirement as well. It posted its RFP on February 16, 2016, and proposals were due on March 17, 2016.

#### **IV. UPHOLDING USAC'S DETERMINATION WILL INCREASE THE TIME AND EXPENSE ASSOCIATED WITH THE COMPETITIVE BIDDING PROCESS WITHOUT ANY BENEFIT.**

Lincoln County urges the Bureau to consider the consequences of upholding USAC's denial. If the Commission upholds USAC's determination, it will mean that every question answered as part of the competitive bidding process will restart the 28-day clock. That will unnecessarily add time and expense to every competitive bidding process without any possible benefit. USAC's position cannot possibly be consistent with the goals of the Act. If anything, minor RFP revisions such as the one in this case, which make the scope of services requested clearer to potential bidders without significantly changing the parameters of the original RFP, should be welcomed rather than punished.

If the Commission agrees with USAC's interpretation despite the harm it would cause to the Program, it should say so on a prospective basis, rather than in a pending appeal, so that applicants know what is expected of them before they conduct their competitive bidding

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<sup>20</sup> Compare *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757, 8758-59 ¶ 4 (2007) (*Aberdeen Order*) ("The applicant must wait 28 days after the FCC Form 470 is posted to the USAC website or after public availability of an applicant's RFP, whichever is later, before entering into an agreement with a service provider for the requested services."), with *Application for Review of a Decision of the Wireline Competition Bureau by Dooly County School System, Vienna, Georgia*, CC Docket No. 02-6, Order, 28 FCC Rcd 8612, 8613 ¶ 2 (2013) ("After submitting an FCC Form 470, the applicant must wait at least 28 days after the date that the FCC Form 470 is posted and the date the RFP is issued, whichever is later, before closing the competitive bidding process and making commitments with the selected service providers." (emphasis added)).

processes and file their applications. If the Commission wants to establish a standard going forward, it should at least confine its review only to those changes that increase the scope of the bid –by, for example, adding a significant number of locations (say, more than 10) – changes that alter the type of services sought, or changes to the length of the agreement.

**V. IN THE ALTERNATIVE, THE COMMISSION SHOULD WAIVE ITS  
COMPETITIVE BIDDING RULES BECAUSE THERE WAS NO HARM TO  
THE COMPETITIVE BIDDING PROCESS**

As we have explained, Lincoln County did not violate the Commission's competitive bidding rules. If the Commission disagrees, however, we respectfully ask the Commission to waive its rules.

Any of the Commission's rules may be waived if good cause is shown.<sup>21</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>22</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>23</sup>

As we have noted above, there was no effect on the competitive bidding process. All Lincoln County did was remove four sites that had been listed in the original RFP, a minuscule change that could not possibly have affected any provider's decision to bid. Potential bidders were not misled as to the scope of the services.

Further, we ask that the Bureau consider the point of E-rate competitive bidding rules. The Commission established the rules to ensure the process is fair and open. With a fair

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<sup>21</sup> 47 C.F.R. § 1.3.

<sup>22</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

<sup>23</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

competitive bidding process, applicants should receive the benefit of the best proposals from which to select the most cost-effective services. Denying an application because a school district removed locations that it did not need services for is not serving the policy purpose underlying the rules. Finally, there is no evidence of waste, fraud or abuse in the competitive bidding process.

## **VI. CONCLUSION**

We respectfully request that the Bureau grant this appeal and instruct USAC to fund Application 1699081309. Lincoln County School District met the Commission's 28-day competitive bidding requirements as described above.

Respectfully submitted,

LEWIS, THOMASON, KING, KRIEG  
& WALDROP, P.C.

By: /s/ Charles W. Cagle  
Charles W. Cagle, BPR No. 13738  
424 Church Street, Suite 2500  
P.O. Box 198615  
Nashville, TN 37219

## **CERTIFICATE OF SERVICE**

This is to certify that on this 13<sup>th</sup> day of October, 2017, a true and correct copy of the foregoing Request for Review was sent via email to the Schools and Libraries Division, Universal Service Administrative Company at the [Appeals@sl.universalservice.org](mailto:Appeals@sl.universalservice.org) address.

/s/ Charles W. Cagle  
Charles W. Cagle

## **Attachments**

- Exhibit 1: USAC Funding Denial
- Exhibit 2: RFP
- Exhibit 3: Original Pricing Sheet
- Exhibit 4: Revised Pricing Sheet



## Exhibit 1

FRN	FRN Status	471 Application Number	471 Application Status	BEN	Billed Entry Name	Applicant City	Applicant State	Service Provider Name	Fund Year	Orig Funding Request	Orig FRN Service Type	Wave Number	FCDL Date	FCDL Comment for 471 Application	FCDL Comment for FRN	Appeal Wave Number	Revised FCDL Date	FRN Committed Amount
1699081309	Denied	161036733	Committed	128288	LINCOLN COUNTY SCHOOL DISTRICT	FAYETTEVILLE	TN	ENA Services, LLC	2016	\$86,400.00	Data Transmission and/or Internet Access	25	12/12/2016	MR1-The applicant did not submit any RAL corrections.	DR1-Documents that contained information needed for potential bidders to respond to your RFP was not available for 28 days in the E-rate Productivity Portal before selecting your service provider. On 3/10/2016 you uploaded a modified list of recipients of service (removed 4 sites) that contains significant information for the bidders to be able to respond to the FCC Form 470 and RFP. However, this documentation was not available in the E-rate Productivity Portal for 28 days before you selected the service provider. Therefore, this FRN is denied. Program procedures require the FCC Form 470, RFP and any documentation providing the additional or modifying the original information in your FCC Form 470 and/or Request for Proposal be uploaded into the FCC Form 470 in the E-rate Productivity Portal and made available for additional 28 days before selecting a service provider.	17	8/16/2017	\$0.00

## **Exhibit 2**



## **LINCOLN COUNTY, TENNESSEE**

**Cole Bradford**  
**Finance Director**

### **REQUEST FOR PROPOSAL/BID**

**Date:** February 16, 2016

**Product/Service:** Managed Internet Services, Firewall, Content Filter, Lit and Dark Fiber service

**Bid Opening:** 2:00 p.m., March 17, 2016, Lincoln County Finance Department, Courthouse  
Basement Conference Room, Fayetteville, TN

Notice is hereby given that the Lincoln County Finance Department requests proposals for the above product/service. A complete set of General Terms & Conditions, Bid Specifications, and Bid Forms are attached. Bidders are cautioned to read this document carefully. If you have any questions concerning this bid, please contact Brad Luna, Lincoln County Department of Education (931) 438-1467 or Cole Bradford, Lincoln County Finance Department (931) 438-1565.

#### **ACCEPTANCE AGREEMENT**

The undersigned agrees to comply with all provisions as stated in the Bid Specifications of the Finance Department, Lincoln County, if awarded the bid. I(We) hereby certify that if the contract is awarded to our firm that the Finance Director, Purchasing Agent, members of the County Legislative Body, or other officials, employees, or members of the Board of Education or Highway Commission are not financially interested or have any personal beneficial interest either directly or indirectly in the purchase of supplies, materials, equipment or contractual services for the County, and we will not give or offer the Director or Purchasing Agent or assistant or employee any rebate, gift, or otherwise any money or other things of value whatsoever, or any promise, obligation, or contract for future reward or compensation.

(Please PRINT or TYPE)

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

PHONE: (    ) \_\_\_\_\_ FAX: (    ) \_\_\_\_\_

EMAIL: \_\_\_\_\_

REPRESENTATIVE SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

  
\_\_\_\_\_  
Cole Bradford, Lincoln County Finance Director

## **GENERAL TERMS AND CONDITIONS**

**PRODUCT OR SERVICE:**       **Managed Internet Services, Firewall, Content Filter, Lit and Dark Fiber service**

**DEADLINE FOR RECEIVING BIDS:**   **2:00 p.m., March 17, 2016**

1. **Bid Format:** **SEALED BID.** Bid forms must be completed in ink or typed, signed in ink, and free from alterations. FAXED BIDS will not be accepted. BIDS MUST BE CLEARLY MARKED ON OUTSIDE OF ENVELOPE WITH “RFP-Internet-16-21” AND OPENING DATE. Lincoln County is not responsible for the confidentiality of bids inadvertently opened during mailing or receipt thereof. Unsealed bids will not be accepted. *Any bid received after time and date indicated above will not be considered.*
2. **Bid Opening:** Unless otherwise stated, bids will be opened publicly and read aloud in the **Courthouse Basement Conference Room, 112 Main Avenue South, Fayetteville, TN 37334 on above stated deadline date.**
3. Prospective bidders who are authorized, licensed, and capable are requested to submit bids to provide these needed product(s) and/or service(s) for Lincoln County.
4. It shall be the responsibility of the bidder to submit a bid response that complies with the conditions and specifications of the Request for Proposal; Policies and Procedures of Lincoln County, applicable laws of the State of Tennessee, and any other applicable laws, regulations, and requirements.
5. It is the intent of this Request for Proposal to secure competitive bid responses. The specifications herein are intended only to indicate the general character, style and quality of the item(s) desired. Bidders are encouraged to propose and offer equipment, supplies, or service either as specified herein, or equal to or better in character, style, and quality to items specified herein. Any exceptions to the specifications must be listed on a separate sheet entitled “Exceptions to Specifications.” *Bids taking complete or major exceptions will not be accepted.*
6. Bidders agree that other parts and services not specified but which might be needed by Lincoln County in fulfillment of the procurement transaction will be made available at prices equal to or less than the lowest price charged other non-profit or governmental organizations.
7. Lincoln County reserves the right to increase or decrease quantities to be purchased over the life of this agreement and to reject any or all bids or any part of any bid, to waive technicalities, or to accept other than the bid with the lowest cost meeting all specifications. *Lincoln County may accept any bid deemed in the best interest of the County, whether or not it is the low bid.*
8. Any bid submitted should be for the total cost to Lincoln County.
9. Payment will be made within thirty (30) days of the date vendor bill is received and signed by an authorized County representative.
10. Evaluation and award of bids will be made to one or more bidder(s) who meet the requirements of the Finance Department of Lincoln County.
11. **IMPORTANT! Bidder must use bid form(s) (if provided) included in this bid package, and bid must be signed by authorized representative of company/business placing bid at time bid is received by Lincoln County. If not, bid will be rejected at time of bid opening.**

## **RFP-Internet-16-21**

### **1. Introduction background and overview:** Introduction

The intent of this RFP is to request Managed Internet Services and WAN services for the Lincoln County School District, referred to as District throughout this RFP. The District currently has 7 schools, 4 administrative facilities and one multi-use Pre-k/alternative school/administrative facility. The District is requesting pricing for Managed Internet Access (MIA-Egress), Lit and Dark Fiber Services, and Managed Content Filter and Firewall services. However, responders to this RFP may also provide responses to additional services and or goods that will complement and/or supplement the services requested through this RFP as an additional Attachment (Burstable Egress bandwidth options, advanced firewall services, advanced content filtering services, etc.).

The awarded contract(s) will be valid for a minimum of 3 years, starting on July 1, 2016 and ending June 30, 2019. If both the District and the successful bidder both agree, this contract may be extended an additional 2 years for 12 month terms, renewable annually during the regular E-rate season for a maximum of 60 months.

### **2. Managed Internet Access and Lit/Dark Fiber:** The District is requesting Managed Internet Access (Egress) to our main SBA Data Center. Additionally, the District is asking for a separate proposal for Dark and Lit Fiber Wide Area Network Access (WAN). Pricing for Managed Internet Access and Lit fiber service will require the proposer to provide all equipment necessary to provide a turnkey managed internet service that will terminate on the District Local Area Network (LAN). Dark Fiber proposals will require pricing for the leasing of Dark Fiber monthly, but all equipment necessary to utilize or "light up" dark fiber will be provided by the District. Proposers for Lit/Dark Fiber must offer both Lit and Dark Fiber service options with their proposals.

- a. Lit fiber shall support multiple VLANs, OSPF Routing capability of LAN traffic, multi-cast routing, SNMP access to any proposer router(s)/equipment for monitoring of errors, CPU, memory, network utilization, packet rates, etc. by the District. Managed Internet Access will require SNMP monitoring access of equipment as well.
- b. The District is not requesting to own Dark fiber, but lease dark fiber. All maintenance, repair, locating services etc. will be the responsibility of the proposer and should be included in the monthly cost. The District is requesting the cost be amortized over 3 years for any special construction charges relating to dark or lit fiber.
- c. A basic firewall service is requested as part of this RFP for Managed Internet Access. Erate ineligible components of any firewall solution (including DDOS, advanced firewall services, Intrusion Protection Services, malware detection, application control, etc.) should have separate pricing as a supplemental/enhanced feature. Only basic firewall services are allowed by Erate rules if it is included as part of the traditional offerings of the proposer.
- d. If providing a basic firewall, the proposer will coordinate with the District to modify any firewall rules and provide configurations details for auditing purposes in a timely manner. If no managed basic firewall is provided, 3 points will be deducted from the Technical Proposal section.
- e. If no managed content filter service is provided, 5 points will be deducted from the Technical Proposal section.
- f. The proposer must have a clearly defined help desk with online ticket tracking for the District, email support and a toll free number with a minimum support time from 7am until 7pm CST weekdays.
- g. Graphical reports of bandwidth utilization for Egress/Lit Fiber will be available for use by the District for both Inbound and Outbound traffic by multiple criteria, including by hour, day, week, month etc. Data will be available for a minimum of 12 calendar months. Data will include Minimum, Maximum, and Average rates. An option for 95% percentile is also requested.
- h. The District should have the ability to add other users to any portal or other provider services as needed.

- i. The District is requesting at least 254 (/24 subnet) of IPV4 addresses to be used at its discretion for NAT translations and other services vital to the operation of the network. Proposer must also be capable of handling IPV6 in both WAN and LAN environments.
  - j. Egress proposers should have an accessible DNS server available for district use as part of the service provided.
  - k. Installation cost must be provided for all locations listed in Attachment B. This cost should include any equipment, labor, tools, supplies and or testing necessary to have a fully functional managed Internet service. Proposer will work with the District to complete the work in a timely manner and during mutually agreed hours.
3. **Technical requirement for Content Filtering and Basic Firewall**
- a. The District is not required to accept any content or firewall solution from the proposer. This will be an optional service available for purchase by the district. The District currently utilizes a Dell NSA6600 SonicWALL firewall/content filtering appliance to supplement/enhance filtering and firewall policies provided by its current provider.
  - b. Any content filtering solution must have the ability to integrate with the District Active Directory infrastructure.
  - c. The content filter will have at a minimum the required categories to meet CIPA compliance. Further granular controls by user and/or group based on Active Directory is requested. Failure to meet the Active Directory criteria will cause a reduction in 2 points in the Technical Proposal section.
  - d. Content filter should have multiple reporting options, include top visited sites, top blocked sites, top blocked categories, top visited categories, top blocked and used search phrases, and top blocked users.
  - e. The District will have the ability to lookup a URL's current category rating by searching either online or on the applicable firewall/content filtering appliance.
  - f. District must be able to provide documentation of CIPA compliance via exports of URLs/Categories blocked.
4. **SLA (Service Level Agreements):** Provide the district with reasonable SLA agreement for network availability, latency, packet loss, installation intervals for new or modified services, response time for major/minor outages, consequences for noncompliance with SLA including financial penalties and terms for contract termination. Industry standard SLA of 99.99% uptime is preferred with a packet latency of <=50ms and <=.25% Packet Loss. Include financial penalties for failure to meet any SLA and a process of how the SLA will be monitored for compliance.
5. **Contractor Personnel Requirements:** Contractor is responsible for complying with TCA 49-5-413 which requires all contractors to pass a criminal history records check by the Tennessee Bureau of Investigations and the Federal Bureau of Investigation for each employee prior to starting work in any facility with students present.
6. **Performance Bond:** The District requires a performance bond in the amount of \$250,000 for the first 12 months of the contract. Proposer failure to provide the bond within 7 days of being notified of apparent winning bid will result in proposal rejection and the next best proposal will be selected based on the evaluation criteria from Section 17. If the District decides to award multiple contracts, the bond will be pro-rated to cover only the services offered in the amount to cover 1 year of service and any installation or other cost. This bond will ensure continuous services for the District in the event the proposer fails to meet the requirements of this RFP in a timely manner or the contract is terminated for cause and the District loses Erate funding.
7. **Terms and Conditions:** The District will provide their standard contract as an attachment to this RFP. Any exceptions to these contract terms must be expressed in the proposal submitted. Exceptions to District contract terms will be considered in the assessment of Responsiveness.
8. **Inquiries:** All questions regarding this RFP must be submitted by no later than 2:00 pm on March 2, 2016. All questions should be submitted via email to [rfp@lcdoe.org](mailto:rfp@lcdoe.org). All official answers will be posted on our website at [www.lcdoe.org/rfp](http://www.lcdoe.org/rfp). It is the proposer's responsibility to check this website often for any updates to the RFP.

9. **Intent to Propose:** The District request that all companies wishing to respond to this RFP email a signed Letter of Intent by the deadline listed in the Schedule of Events. Included in this intent to propose should be the email address, name and number of the main contact for notifications of updates to the RFP.
10. **Pre-Bid Conference:** A Pre-bid conference will be held for any interested proposer. The pre-bid conference will be held at the Technology Office, 910 Hedgemont Ave, Fayetteville, TN 37334.
11. **Schedule of Events:** Below is the anticipated schedule of events.

Event	Date
RFP Issued	2/16/16
Intent to Propose	2/23/16
Pre-bid Conference	2/26/16 1:00 pm
Written Question Deadline	3/7/16
Response to Questions Posted to Web	3/10/16 4:00pm
Proposal Due	3/17/16 2:00 pm

12. **Responsive Bids:** Bids must contain the following items to be deemed Responsive.
  - a. Signed Acceptance Agreement from 1<sup>st</sup> page of RFP
  - b. Followed format requirement from Section 17
  - c. All items from Section 13 complete and as instructed
  - d. All items from Section 17i-17v were provided as requested
  - e. If proposing Lit/Dark fiber WAN, must have pricing for both Lit and Dark fiber
  - f. Proposer must provide a valid Erate Service Provider Identification Number (SPIN Number) with their proposal.
  - g. Terms and Conditions Acceptance/Exceptions/additions
13. **Proposals Instructions:**
  - a. All proposals shall be delivered to: Lincoln County Finance Department, C/O Brad Luna, 112 Main Ave S, Rm B104, Fayetteville TN 37334 by 2:00 pm on March 17, 2016. Any proposal received after 2:00 pm on March 17, 2016 will be rejected.
  - b. Proposers must submit 2 copies of the proposal along with one electronic copy of the proposal on a DVD/CD or USB Flash/thumb drive.
  - c. Provide District with digital copies of the Excel Spreadsheets of Price Proposals, Installation Charges and supplemental pricing along with the electronic copies in item 13b
  - d. Proposal must be signed by an officer or employee of the company legally authorized to enter a contract for the company.
14. **Evaluation:**
  - a. All proposals will first be reviewed to ensure a proposal has met all guidelines to be responsive in section 12.
  - b. The Technology Department will evaluate all components and award points as designated in the Evaluation Criteria section of this RFP.
  - c. The Technology Department may contact proposers during the evaluation cycle for clarification on proposals and ask for clarifications in writing.
  - d. The District reserves the right to negotiate a final and best contract.
15. **RFP Errors/omissions/conflict:** If a proposer identifies any conflict, error, discrepancy or other irregularity in the RFP, the proposer shall immediately notify the District of the issue in writing. All modifications, if any, will be provided in writing by the District on our RFP webpage [www.lcdoe.org/rfp](http://www.lcdoe.org/rfp). Failure to notify the District of a known conflict prior to submission of the proposal shall nullify any and all protests of the discrepancy.



16. **Proposals and Proposal Cost:** The District shall not pay any costs associated with the preparation, submittal, or presentation of any proposal.

17. **Evaluation Criteria:**

**Response Format:** The proposal shall be divided by the tabs listed below. Failure to follow this format or include any item below may result in dismissal of proposal. Proposals will be assigned points based on the following items:

- i. **Technical Approach and Timeline (20 points)**
- ii. **Experience and Qualifications (15 points)**
- iii. **Price (40 points)**
- iv. **Capacity and Past Performance (30 points)**
- v. **Contract Terms (5 points)**

i. **Technical Approach and Timeline:**

- a. Provide your solution for Managed Internet Access
- b. Provide your solution for Content Filtering
- c. Provide your solution for Basic Firewall
- d. Provide your terms for SLA
- e. Provide years of experience with Erate and understanding of program rules
- f. Provide a detailed timeline of installation of proposed services
- g. Provide details of communication for various aspects of your proposal
- h. Provide details of how service will be monitored for performance
- i. Provide procedures for documentation and record keeping (10 years from last date of service for Erate documentation)
- j. Describe in detail the online tools available to the District to monitor the network, make account changes to administrative staff, view utilization, billing or other related services.
- k. Describe how proposers current networks are protected from external threats, DDOS attacks and other security related intrusions from a backbone perspective

ii. **Experience and Qualifications**

- a. Provide details of team supporting this proposal/contract.
- b. Provide details of the organizational structure of your company
- c. Provide details of experience in services offered in this RFP to other K-12 customers

iii. **Price:**

- a. Provide a completed Price Proposal (Attachment A)
- b. Provide a completed Installation Cost worksheet (Attachment B)
- c. Proposer may provide supplemental/complimentary pricing for value added services not specifically covered by this RFP. Services should be related to the scope and intent of this RFP and not be a catalog bid of all services. Any supplemental pricing will not be considered for the evaluation of this RFP or weighted in the awarding of points. The District reserves the right to accept or reject any supplemental pricing during contract negotiation. Label any supplemental pricing as Attachment D.
- d. If there are any other cost, such as warranty, lifecycle cost, etc. please provide this info at the bottom of (Attachment A).
- e. All prices shall include any delivery/shipping/setup fee to the District.
- f. The District may award a contract but choose not to act on the award. The District is not guaranteeing any specific quantity of items in the RFP. A purchase order will be required to start any service relating to a new contract. The District may choose to purchase services from one of two Tennessee Internet Consortiums in lieu of any contract awarded locally.

- g. Each table in Attachment A will have a separate cost evaluation point value, and an average cost points of all tables will be used to determine final cost points on the Price Proposal. The Price Proposal and the Installation Proposal points will be averaged together to arrive at a final cost evaluation score. All evaluation points will be based on 40 possible points.
- h. The District may choose to award separate contracts for (1) Managed Internet Access services for Egress/Firewall/Content Filter and (2) Lit/Dark Fiber for WAN Services. The District will choose the most cost effective means of WAN delivery. The District reserves the right to only award a contract for Managed Internet Access (Egress)/Firewall/Content Filter.

iv. **Capacity and Past Performance:**

- a. Provide an estimate of how many K-12 clients are currently being provided similar services to the scope of this RFP
- b. Describe the ability to expand and meet future demands of the District
- c. Describe the details of installation, setup and timeline to install services for the District
- d. Please list at least 5 references and contacts from K-12 sector with similar scope and size.

v. **Contract Terms and Conditions:** The District Standard contract is provided in Attachment C.

- a. List any exceptions to the general terms and conditions.
- b. Any additional terms, or documents containing terms, that the Proposer submits for inclusion in the final contract or as a requirement for the District to sign prior to using or receiving Proposers goods or services, are to be listed as an exception.
- c. Failure to disclose these at the time of submitting the Proposal is grounds for disqualification as non-responsive.
- d. If no exceptions are taken, include a statement to that effect in the proposal.
- e. Exceptions, or additions, to the standard terms, which the District considers non-negotiable, may be grounds for declaring your proposal as nonresponsive.

### **Exhibit 3**

School	Address	City	State	Zipcode	Fiberoptic Installation Cost Egress One Time Fee	Fiberoptic Installation Cost Lit Fiber One time Fee	Fiberoptic Installation Cost Dark Fiber One Time Fee
Blanche School	1649 ARDMORE HWY	Taft	TN	38488			
NINTH GRADE ACADEMY	900 MAIN AVE S	Flintville	TN	37335			
STONE BRIDGE ACADEMY (SBA)	1107 HEDGEMONT AVE	Fayetteville	TN	37334			
FLINTVILLE SCHOOL	37 FLINTVILLE SCHOOL RD	Fayetteville	TN	37334			
HIGHLAND RIM ELEM SCHOOL	111 HIGHLAND RIM RD	Fayetteville	TN	37334			
SOUTH LINCOLN ELEMENTARY SCH	362 SMITH MILL RD	Fayetteville	TN	37334			
UNITY ELEM-JR HIGH SCHOOL	259 BOONSHILL PETERSBURG RD	Petersburg	TN	37144			
INFORMATION SYSTEMS/ DOE	203 WEST DAVIDSON DR	Fayetteville	TN	37334			
LINCOLN COUNTY HIGH SCHOOL	1233 HUNTSVILLE HWY	Fayetteville	TN	37334			
LINCOLN COUNTY SCHOOL DIST FEDERAL PROGRAMS	910 HEDGEMONT AVE	Fayetteville	TN	37334			
LINCOLN COUNTY SCHOOL DISTRICT BUILDING	206 E DAVIDSON STREET	Fayetteville	TN	37334			
LINCOLN COUNTY TRANSPORTATION DEPARTMENT	1010 HEDGEMONT AVENUE	Fayetteville	TN	37334			
New Sites will assume comparable/average cost	TBD						

If cell is filled with Black, Pricing is not applicable

## **Exhibit 4**

School	Address	City	State	Zipcode	Fiberoptic Installation Cost Fiber Optic One Time Fee	Fiberoptic Installation Cost Lit Fiber One time Fee	Fiberoptic Installation Cost Dark Fiber One Time Fee
Blanche School	1649 ARDMORE HWY	Taft	TN	38468			
NINTH GRADE ACADEMY	900 MAIN AVE S	Flintville	TN	37335			
STONE BRIDGE ACADEMY (SBA)	1107 HEDGEMONT AVE	Fayetteville	TN	37334			
FLINTVILLE SCHOOL	37 FLINTVILLE SCHOOL RD	Fayetteville	TN	37334			
HIGHLAND RIM ELEM SCHOOL	111 HIGHLAND RIM RD	Fayetteville	TN	37334			
SOUTH LINCOLN ELEMENTARY SCH	362 SMITH MILL RD	Fayetteville	TN	37334			
UNITY ELEM-JR HIGH SCHOOL	259 BOONSHILL PETERSBURG RD	Petersburg	TN	37144			
LINCOLN COUNTY HIGH SCHOOL	1233 HUNTSVILLE HWY	Fayetteville	TN	37334			
New Sites will assume comparable/average cost	TBD						

If cell is filled with Black, Pricing is not applicable