

WICHITA PUBLIC LIBRARY

June 21, 2019

Submitted via Website Upload

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Appeal from USAC Decision on Appeal dated April 23, 2019

Applicant Name: Wichita Public Library
Funding Year: 2015-16
Billed Entity Number: 137924
Form 471 Application Number: 1035195
Funding Request Number: 2816971

Dear Sir or Madam:

Through this appeal, the Wichita Public Library ("Library") is seeking to correct the error of the Universal Service Administrative, Co. ("USAC") in issuing a Commitment Adjustment of \$75,600.00, implemented in USAC's correspondence of August 10, 2018 (Exhibit 1). The Library timely appealed this USAC decision. On April 23, 2019, the Library's appeal was erroneously denied. Exhibit 2.

The Library now requests review of the USAC decision by the Federal Communications Commission (FCC) pursuant to 47 C.F.R. Part 54, Subpart I.

Basis for Appeal

USAC erred in its conclusion that "[t]he price of eligible products and services was not the primary factor in the vendor selection process." Exhibit 2. While the Library inaccurately labeled the most-weighted factor in vendor selection as "Cost and Quality of Service," **only cost was actually considered** in scoring for this category. **Importantly, the lowest cost provider was selected.**

Alternatively, the Library requests that the FCC waive application of the rule that otherwise requires the Commitment Adjustment due to the Library's inaccurate labeling of the most weighted factor as "Cost and Quality of Service." Application of such a rule, placing form over substance, would be arbitrary and capricious.

Relief Sought

The Commitment Adjustment of \$75,600.00 should be reduced to zero.

Standard of Review

The FCC reviews decisions of USAC on a de novo basis. 47 C.F.R. § 54.723.

Undisputed Facts

In 2015, Library issued a Request for Proposal for public internet service at the Library's various multiple locations. Exhibit 3. The relevant Request For Proposal (RFP) documents were created by utilizing a prior template to which the requirement of cost being the most-weighted factor did not apply. The title "Cost and Quality of Services" was an accidental holdover from those documents. See Exhibit 3, p. 6. (RFP.)

Four companies submitted responses to this RFP and all were asked to interview. During the interviews, two of the companies' bids, AT&T's and Cox Communications', were discovered to be out of compliance with the RFP. Cox Communications could not offer "symmetrical" service. AT&T did not offer a 12 month contract. See, e.g., Exhibit 4. (Under "Ability to Meet or Exceed Requirements"), Exhibit 6 (Various notes of selection panel.)

Of the two remaining responders, Hubris Communications offered a total annual price of \$84,000.00 (without additional fees), while Network Tool & Die's proposed price was \$92,100 plus fees of \$6,000.00. See Exhibit 5 (Rate Comparison Sheet.)

In weighting the selection criteria, "Cost and Quality of Service" was given a weighting of 25 out of 100 points. No other criteria received more than 20 points. See Exhibit 7 (Bid Evaluation Matrix.)

The vendor selection committee (1) was aware that cost needed to be the most-weighted factor, (2) made sure that that it was, and (3) used the "Cost and Quality of Service" to compare only pricing, without regard to quality of service. In the Bid Comparison Matrix, Exhibit 4, which was created to assist the vendor selection staff with their duties, the only note under the criterion Cost and Quality of Service is 'See Rate Comparison Sheet.' The Rate Comparison Sheet, Exhibit 5, lists only pricing of services per amount of bandwidth, i.e. cost of services.

Hubris Communications was selected to provide the service by the vendor selection panel and ultimately did provide the services pursuant to an executed contract. See Exhibit 1, p. 4.


Conclusion

Contrary to the conclusion of the USAC, the price of eligible products and services was the primary factor in the vendor selection process. Accordingly, the rationale for USAC issuing the October 10, 2018 Commitment Adjustment Letter (Exhibit 1) is incorrect and should be reversed.

Regardless, the Library selected the qualified bidder that charged the least for the internet services at issue. Therefore, in the alternative, enforcement of the applicable rule should be waived in this instance to support a just and equitable resolution.

Thank you for your attention to this matter.

Sincerely,



Cynthia Berner
Director of Libraries
Wichita Public Library