**Before The**

**Federal Communications Commission**

**Washington, DC 20554**

**In the Matter of:**

)

Request for Review of a decision )

by the Schools and Libraries Division ) Administrator Correspondence Dated

for Glynn County Public Schools, ) August 7, 2017

Georgia )

)

)

Schools and Libraries Universal Service ) CC Docket No. 02-6

Support Mechanism )

**Request for Review**

In accordance with Sections 54.719 through 54.721 of the Commission’s Rules, Glynn County Public Schools (Glynn) appeals a decision of the Schools and Libraries Division of the Universal Service Administrative Company (Administrator). This appeal comes timely submitted within 60 days of the Administrator decision.

**Requestor: Glynn County Public Schools**

**Billed Entity Number: 127476**

**FCC Registration Number 0011880978**

**Funding Request Number:** [**2184031**](http://e-ratecentral.com/us/reports/frnDetail_all.asp?v=&frn=2184031&fy=2011)**, 2184430**

**Form 471 Numbers: 804867 and 804835**

In correspondence dated August 7, 2017, the Administrator denied appeals submitted by Glynn. For these FRN the Administrator cited a litany of reasons for denial. The Administrator decision and audit report are attached here. The decision mirrored audit findings from USAC’s Internal Audit Division. Glynn will show the audit conclusions and USAC decision to rescind funding were improper.

**Audit Finding 2**

In finding 2 the auditor found that “The Beneficiary’s bid evaluation process failed to demonstrate the most cost-effective bid was selected using price of the eligible services and equipment as the primary factor.”

To reinforce its opinion, the auditor unilaterally altered the Progressive bid, remove installation and equipment then reevaluate the price comparison:

“Progressive submitted a bid proposal for the wireless access points and controllers, as requested in the Beneficiary’s RFP, for a total cost of $101,084. Progressive’s bid proposal included 10 additional wireless access points and one additional controller as compared to the number of wireless access points and controllers in the MXN bid proposal. In order to compare the costs proposed for the same amount of equipment, IAD removed the cost per unit for the 10 additional wireless access points and one controller from the Progressive bid proposal and determined that the quoted cost for a comparable number of internal connections in the Progressive bid proposal amounted to $92,814. Thus, in comparing the same amount of internal connections, the cost of the MXN bid proposal would amount to $194,783, which was 210 percent, or more than twice the cost of Progressive’s bid proposal of $92,814 for the same amount of equipment.”[[1]](#footnote-1)

This statement demonstrates the absolute lack of knowledge the auditor has regarding E-Rate procurement regulation and policy and public procurement in general. It is similarly disturbing that the Administrator reviewed this statement and agreed to the finding.

First, Progressive proposed an ***alternative*** solution to the one requested in the RFP. Progressive had the burden to demonstrate that its solution was equal or superior to the equipment listed in the RFP. Knowing the proposed radios and controllers were less robust than the ones listed in the RFP, the Progressive proposal included additional radios and controllers. The additional radios and controller were an attempt by Progressive to show their proposal was equal to or greater than equipment specified in the RFP. By removing the additional equipment for a price comparison, the auditor overstepped its authority. The proper evaluation, as Glynn did, was to compare the entire bid from both vendors. Other non-price factors included the opinion by Glynn that the Progressive bid did not included enough radios to equal the MXN bid, despite additional radios in the Progressive bid.

Second, in rescoring bids, the auditor removed all installation charges. This is a violation of E-Rate program rules in force at the time. For Fund Year 2011, equipment purchase and installation must be provided by the same vendor; therefore, E-Rate requests for equipment and installation must be evaluated together. In Fund Year 2012 a number of applications were denied by the Administrator “…because more than 30% of the request amount is for the installation service, which was deemed ineligible due to different vendors between the product/service purchase and installation. The FCC’s Eligible Services List states that installation and configuration of products/services is only eligible if it is part of the contract or bid for those eligible products/services.”[[2]](#footnote-2) The Commission ultimately overturned these denials but the single contract policy was in effect in 2011. An audit must be conducted using rules in place at the time.

In accordance with program rules at the time, Glynn issued an RFP requesting pricing for both equipment and installation of Access Points and controllers. Also in accordance with program rules at the time, Glynn evaluated bids based on pricing for equipment and installation. The auditor was outside of its authority to alter the criteria for price evaluation.

Further, the price factor can only include *eligible* products and services:

“When an applicant examines and evaluates the bids received for eligible services, it must select the most cost-effective bid. The price of the eligible products and services must be the primary factor in the evaluation, but does not have to be the sole factor. Other relevant evaluation factors may include: prior experience including past performance; personnel qualifications including technical excellence; management capability including schedule compliance; and environmental objectives. Note that the most heavily weighted price factor cannot include ineligible costs, although those can be included in an evaluation as long as they are in a separate price factor that is weighted less heavily…”[[3]](#footnote-3)

Without question, the price of eligible equipment and installation from both bidders must be included in the cost factor. Also without question the two bids must stand on their own and not be second guessed by an auditor bound and determined to find improper evaluation.

In a 2013 FCC Order, DA 13-1884, for Henrico County Schools, VA the Commission denied Henrico’s Petition for Reconsideration station “We rejected Henrico’s argument that it would have selected Verizon if it had assigned price a weight of 30 percent, which would have been the highest weight assigned to any factor. We explained that Henrico’s ability to find, with the benefit of hindsight, a way to re-engineer its bidding process after the conclusion of its competitive bidding process to reach an identical result using price as the primary factor did not demonstrate compliance with the Commission’s competitive bidding rules at the time of its vendor selection process.”

Similarly, the auditor has completely re-engineered the bidding process to conclude that the Progressive price was more than two times the price of MXN - the threshold for funding denial. Had the auditor not re-engineered the Progressive bid, the price difference would have been far less than two times. The Commission is clear that such behavior is improper.

The only question to consider when evaluating the scoring is the price of *eligible* equipment and services. The auditor agrees that price was the primary consideration. “…price was assigned the highest weight…”[[4]](#footnote-4) Glynn assigned a score of 5 for Progressive as the lowest price and 4 for MXN. During audit review there was a difference of opinion between Glynn officials and auditors regarding the price evaluation. Glynn contended that the Progressive bid did not have enough access points and more switches would be required to connect the additional access points. In response to the finding Glynn made a compelling argument that the Progressive bid did not contain sufficient radios. Regardless of arguments on either side, price evaluation should be based on a formula without re-engineering or speculation.

Using the total bid price of both Progressive and MXN, the price of equipment and installation for Progressive was $170,446.71. The price for MXN was $285,553.68. The Progressive bid was 100 percent eligible equipment. The MXN installation bid included a provision for “surveys” which are not E-Rate eligible. Estimating the cost of surveys at $2,500 for all 12 locations, the MXN E-Rate eligible price is $283,053.68.

A standard price calculation formula is low price/high price times the evaluation factor. Using this formula to evaluate eligible price components, the Progressive price score remains 5 and the MXN price score is 3.01. Using this formula-based score, the overall evaluation, with all other factors unchanged from page 13 of the audit report, the Progressive final score is 3.8 and MXN is 3.803.

MXN was rightfully selected as the most cost effective vendor overall. While Glynn may have made a minor error evaluating price by including technical analysis, the outcome of the evaluation would not have changed. Glynn would have scored technical requirements on the evaluation lower, rather than in the price category. As noted in the Glynn audit response: “There needs to be about double the number of HP access points to have an equivalent solution. Actually, at double the access points, the HP solution still falls short on performance.”[[5]](#footnote-5)

Indeed, doubling the number of radios in the Progressive bid would result in a score of 4 for the MXN price component. Again, such opinion properly belonged in the technical requirements section rather than price. The fact that Progressive included more radios than the RFP required should be sufficient proof that Glynn’s conclusion was correct.

**Audit Finding 3**

In finding 3 the auditor found that “The Beneficiary Over-invoiced SLP for equipment not requested.”

Due to the long funding approval time from the submission of the 471, numerous product changes occurred by the manufacturer. Also, district needs changed over this time for several reasons, all of which are expected in technology. NOTE however, that the district ultimately purchased completely E-rate eligible products.

The vendor specified changes after the funding approval was announced and indicated that service substitutions were not necessary as the additional products were E-rate eligible and funding was available due to the changes.

A Corrective Service Substitution is in order for these changes, but all the money obtained by the district was used for the purchase of eligible products and therefore no return of funds is in order.

**Audit Finding 4**

In finding 4 the auditor found that “The Beneficiary Over-invoiced SLP for the higher cost of substituted equipment.”

Due to the long funding approval time from the submission of the 471, numerous product changes occurred by the manufacturer. Also, district needs changed over this time for several reasons, all of which are expected in technology. NOTE however, that the district ultimately purchased completely E-rate eligible products.

The vendor specified changes after the funding approval was announced and indicated that service substitutions were not necessary as the additional products were E-rate eligible and funding was available due to the changes.

A Corrective Service Substitution is in order for these changes, but all the money obtained by the district was used for the purchase of eligible products and therefore no return of funds is in order.

**Audit Finding 5**

In finding 5 the auditor found that “The Beneficiary Over-invoiced SLP for equipment and services received outside the funding year.”

The district clearly instructed the vendor to avoid delivering and invoicing any products/services before OR after the allowable timeframe indicated for each FRN. In this case, the district DID identify that the invoice was actually dated incorrectly because the products were not actually installed until July 2011. The vendor mistakenly invoiced the products noted in this finding based on their purchases from the manufacturer and NOT based on actual delivery and installation. The vendor should have invoiced after July 2011 as that would have accurately reflected the activity of delivery and installation. Since these were all eligible products and since the delivery and installation actually occurred after July 2011, there should be no order for return of these funds. In other words, this was a clerical mistake by the vendor.

**Conclusion**

Glynn County has demonstrated this audit was fundamentally flawed in its process and conclusions. The auditor improperly altered bids to manufacture a different outcome. The Commission ruled in the Henrico decision that reengineering of bids violates program rules.

Policies in place at the time of billing for this application stipulated that when purchased equipment varied from make and model numbers on the application would be treated as if a service substitution had been submitted and would be evaluated as such during invoice review. The same policies should thus apply to audits. In this case the service substitutions were proper and should not result in a Commitment Adjustment.

For Audit Finding 5 the Administrator should seek payment from the vendor and not Glynn. Clearly any improper invoice was exclusively the fault of the vendor. In accordance with program rules, the Administrator is required to seek repayment from the party at fault. Glynn had no role in invoicing for discounted equipment.

Respectfully Submitted,

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1. Audit Report Page 13 [↑](#footnote-ref-1)
2. Charlotte-Mecklenburg, NC schools FCDL Dated May 22, 2013. [↑](#footnote-ref-2)
3. Schools and Libraries Division Website: Applicant Process, Step 2, Construct an Evaluation. [↑](#footnote-ref-3)
4. Audit Report Page 13. [↑](#footnote-ref-4)
5. Audit Report Page 15. [↑](#footnote-ref-5)