**Appeal Letter**

**Appeal Date: March 1, 2017**

**Date of NCOMAD: December 30, 2016**

**Form 471: 981438**

**FRN 2694887**

**Funding Year: 2014**

**Billed Entity Number: 128642**

**FCC Reg. Num.: 0011543444**

**Appeal prepared by: Gary Rawson**

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**Funding Commitment Adjustment Explanation as stated in the NCAL dated December 30, 2016:**

**“During an audit, it was determined that this funding commitment must be rescinded in full. The applicant failed to retain or produce at the request of the Administrator the following documentation pertaining to its competitive bidding process for FRN 2694887: The proposals submitted by two losing bidders were destroyed and not available. FCC rules require schools and libraries, as well as service providers, to retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least five years after the last day of service delivered in a particular Funding Year, and to produce such records upon a request of an auditor or other authorized representative. FCC rules further provide that a non-compliance with the FCC’s recordkeeping and auditing rules by failure to retain records or to make available required documentation is a rule violation that warrants recovery of any disbursed funds for the time period for which the information/documentation is being sought. Since you failed to retain the above specified documentation or produce the above specified documentation upon request of an auditor, the bid comparison matrix could not be validated and your compliance with the competitive bidding process could not be determined. As a result, your funding commitment has be rescinded in full and USAC will seek recovery of the $191,110.29 of improperly disbursed funds from the applicant.”**

**Basis for Appeal:**

**In 2005 the Mississippi Department of Information Technology Services (ITS) performed a Competitive Bid to establish a multi-year State Master Contract. Three Vendors responded to the RFP. One of the three responses (AT&T) was determined to not meet requirements of the RFP and was disqualified. The other two responses qualified and proceeded to the evaluation stage. One of the remaining two vendors (Qwest) did not respond with the network design requested in the RFP. That vendor did not include a major consolidation circuit that is required for a state network design. ITS, after making a conservative estimate of the cost of the overlooked consolidation circuit, evaluated the vendor’s pricing anyway. Based upon pricing submitted by both vendors, the third vendor (BellSouth) was awarded the contract. This evaluation process and award determination were performed in an open and fair fashion with all vendors fully aware of how ITS reached its decisions. Not once did a vendor complain that AT&T was disqualified unjustly, or that Qwest’s response did not include the consolidation circuit, or that BellSouth’s cost proposal was not the lowest. Not once did anyone file a protest against the Competitive Bidding Process.**

**The two Bid Proposals were destroyed by Mississippi Department of Archives and History six years after the procurement process was performed. The destruction of the documents was in accordance with the State of Mississippi’s Document Retention Policy. The documents were not destroyed to keep an auditor or anyone else from reviewing the losing bids. It was simply a clerical error on the part of an employee in calculating when a set of documents could be destroyed.**

**The information provided in all three bids were the basis for ITS’ determination that only one vendor could provide the services ITS was seeking and that those services were being offered at the lowest price available. The justification for awarding the contract to one vendor as well as the justification for not awarding to the other two vendors was detailed and documented in a formal document called the ITS Board Write-up (Attached document titled “RFP 4000 board write up). The purpose of the Board Write-up has always been to condense the contents of bid proposals into a more easily understood and readable document for the Board and any other interested party, including the responding vendors. As can be seen in the attached document, excerpts from the bid proposals are merged with the Bid Evaluators’ response to what the vendors are offering. This serves as a synopsis of the proposal for everyone’s ease of understanding, and it serves as verification of the vendors’ proposal. Because the Board Hearing is a public meeting, any vendor can contest any part of the Write-up. Attending the Board Hearing is the Governor’s appointed ITS Board, a representative from the State Attorney General’s Office, a sitting member of the Mississippi Legislature, vendors who submitted proposals for the procurement as well as other vendors that provide services to the State of Mississippi, and to the upper level management of State Government Agencies.**

**The basis for the COMAD is this: “Since you failed to retain the above specified documentation or produce the above specified documentation upon request of an auditor, the bid comparison matrix could not be validated and your compliance with the competitive bidding process could not be determined.” A Board Write-up and the Evaluation Matrix are two separate processes generating two separate documents. The Evaluation Matrix is included in the Board Write-up and is used to support the recommendation for contract award. Please examine page 5.8 of the Board Write-up (attached) and you will find language that documents and supports the competitive bidding decisions. The Board Write-up, by definition, “…validates compliance with the competitive bidding process…” and should be accepted as alternative documentation for the losing bids.**

**There is no evidence of Waste, Fraud, or Abuse. There is no evidence that the contract was not awarded to the vendor offering the most cost effective pricing. There is no evidence of an improper procurement.**

**A mistake was made regarding the retention of the losing bids, and ITS has adopted new Document Retention Policies as detailed in two attached documents (ITS Procedure For Keeping ERATE projects and ITS Project Route Slip, January 2017) to ensure that mistake is not repeated.**

**Therefore, as there is no evidence the program has been harmed and no funds have been improperly disbursed, I respectfully request reversal of the monetary effect of the Audit finding requiring the full recovery of Disbursed Funds totaling $191,110.29. The basis of this request is that a fair and open competitive bidding process was performed and documented. Formal documents supporting the process were provided to the auditors as requested.**

**Gary Rawson**

**Mississippi Department of Information Technology Services**