**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 Erie 1 BOCES, West Seneca, NY ) September 27, 2017

14224 )

)

)

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

Support Mechanism )

**Request for Review or Waiver**

Requestor: Erie 1 BOCES

Billed Entity Number: 149384

FCC Registration Number: 0007672454

Funding Request Numbers: 1699068632, 1699068873, 1699068935, 1699068939, and 1699075416

Form 471 Number: 161021260

In accordance with Sections 54.719 through 54.721 of the Commission’s Rules, Erie 1 BOCES (Erie) requests the Federal Communications Commission (Commission) review a decision of the Schools and Libraries Division of the Universal Service Administrative Company (Administrator). Erie filed an appeal with the Administrator on July 11, 2017 which was denied via notification in the EPC system on September 27, 2017.

Consistent with precedent in the Allendale decision,[[1]](#footnote-1) hurricane and disaster relief orders,[[2]](#footnote-2) an attestation audit of Erie by Ernst and Young for contracts issued in 2004 and 2005, and documentation for previous Administrator application reviews for contracts here under appeal, Erie asks the Commission to overturn this Administrator decision. Alternatively, and in the public interest, Erie asks the Commission to waive any minor rule violations in this case and provide needed funding for schools and school districts associated with Erie’s 2016 funding requests.

**Background**

In 1948 the New York State legislature enacted a law creating Boards of Cooperative Educational Services (BOCES) to provide cooperative educational services to New York school districts. Erie has 19 members generally in western New York. The Western New York Regional Information Center (WNYRIC) is a division of Erie 1 BOCES that provides informational and technological services to support instructional and administrative functions. The WNYRIC serves over 100 School Districts covering 7 counties. One major benefit Erie provides member school districts is cooperative purchasing to reduce procurement costs and award shared, cost-effective contracts through bulk purchasing. Erie has secured E-Rate eligible cooperative contracts for member schools since the early years of the program.

Erie has filed over 6,000 Funding Requests totaling almost $100,000,000 in E-Rate funding commitments over the past two decades. Erie issues an average of 15 RFPs and awards nearly a dozen contracts each year on behalf of applicants. Erie makes every effort to comply with the myriad of E-Rate rules and regulations.

During review of application number 161021260, it was discovered that an archived box containing bid responses for several contracts had been misplaced. Erie provided all documentation available to show the reviewer that the contract was properly reviewed and awarded; however, the reviewer denied funding stating “FCC Rules require applicants to retain all documentation for ten years regarding the competitive bidding process. During application review, you were asked to provide all bids associated with this funding request and you were unable to do so. Therefore this FRN is denied.”

Erie filed an appeal with the Administrator, which was denied on September 27, 2017 and included here as Attachment A. In the appeal, Erie stated that the documents were kept by the Erie Purchasing Department and speculated a custodian had mistakenly disposed of the records. Erie immediately changed its document storage policy requiring the E-Rate contact to approve document disposal and is now storing all E-rate related files in a secure, restricted location in their warehouse. Erie is also keeping electronic copies of all E-rate bid documentation.

**Discussion**

Securing cost-effective and beneficial contracts for member school districts that comply with state and local procurement laws and regulations is a major function for Erie. Document retention is part of that function which Erie takes very seriously. In the two decades of the Universal Service program, this is the first instance of missing documentation for the approximately 300 E-Rate eligible contracts awarded by Erie. The exact cause of the missing documentation can only be speculated, and Erie continues an exhaustive search for missing files from all available sources.

The Commission recognizes instances where competitive bidding documents may be destroyed in man-made or natural disasters such as hurricanes, floods, fires or other.[[3]](#footnote-3) In this case, documents that were over ten years old and stored in a document warehouse have not been located.

Erie’s procurement policy is to award contracts to the vendor proposing the lowest price. For each FRN here under appeal, Erie provided the Administrator with bid evaluation sheets demonstrating the lowest price offer was selected. In accordance with Allendale, any other minor bid violation should be waived.[[4]](#footnote-4) Original bid pricing for all vendors was preserved on the bid evaluation sheets. Bid evaluation sheets are included here as Attachment B.

After denial of Erie’s initial appeal, Erie contacted the Administrator requesting all application review records submitted for the affected FRN. In 2008 the Administrator conducted an attestation audit of numerous funding requests for Fund Years 2004 and 2005. Erie requested the Administrator provide all documents associated with the audit but was informed that the document retention policy for audits was no more than seven years, which had elapsed, and that documents were no longer available. An attestation audit is comprehensive in nature and reviews all aspects of E-Rate compliance including winning and losing bids. The audit included funding requests associated with Form 470 numbers 162380000463488 and 956710000504334. Form 470 Number 162380000463488 resulted in contracts for two FRN here under appeal, numbers 1699068939 and 1699068632. Form 470 number 956710000504334 resulted in a contract for one FRN here under appeal, number 1699068873. There were no adverse monetary findings from the audit. A copy of the audit is included here as Attachment C. The Administrator reviewed and agreed with the audit findings.

Had there been an adverse finding for one of the underlying contracts, Erie would have immediately taken steps to ensure those contracts were in compliance with E-Rate regulations. Having no adverse monetary findings, Erie was confident contracts awarded in 2004 and 2005 were in full compliance with all E-Rate regulations and continued to use them during the subsequent decade.

Erie has requested documents from the Administrator for any review related to Form 470 numbers 795520000600892 and 729150000625839, but has not received a response as of this filing. Erie reserves the right to supplement and amend this filing as new facts become available.

The bids for the 5 FRN’s were all publicly opened and awarded bids. The relevant department team reviews the bid materials and makes a recommendation to the Erie Purchasing Manager. The Purchasing Manager then reviews all the bid information received and makes a final recommendation to the Erie 1 BOCES Board of Education. The Board then reviews all the information and makes a decision to approve or deny the bid award. A copy of the Erie 1 BOCES Board of Education award approvals for each FRN is included here as Attachment D.

**Conclusion**

Erie has a long track record of compliance with federal, state, and local procurement laws as well as E-Rate regulations. The record shows that price was used as the primary consideration for each procurement, and that contracts were awarded to the lowest price bid response, in accordance with the Allendale decision. Original bid pricing was preserved on evaluation sheets.

During an attestation audit all bid documents were delivered to and reviewed by the Administrator. The Administrator concluded that procurement was done in accordance with program regulations in place at the time and had no monetary findings. The Administrator, through the audit was delivered and reviewed bid documents.

Alternatively, and in the public interest, Erie asks the Commission to waive any minor procurement violations and overturn funding denial for all FRN’s here under appeal. There was absolutely no waste, fraud or program abuse with procurement or administration of these contracts.

Erie reserves the right to supplement this appeal with new information as it is discovered.

Respectfully Submitted this 24th day of November, 2017,

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Patrick Doyle

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1. Allendale County School District, DA 11-723, Rel. April 21, 2011, CC Docket Number 02-6. [↑](#footnote-ref-1)
2. DA 17-984, Rel. October 6, 2017 at 5: “We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by Hurricanes Harvey, Irma, and Maria. We waive section 54.516(a) of our rules with respect to such destroyed records…” Similarly, Sandy and Katrina orders. [↑](#footnote-ref-2)
3. Hurricanes Irma, Maria, Harvey, Katrina, Superstorm Sandy, Orders, etc. [↑](#footnote-ref-3)
4. Allendale at 7: “…we find that the petitioners selected their respective vendors using price as the primary consideration in accordance with E-rate program rules.” [↑](#footnote-ref-4)