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DEPARTAMENTO PARA EL DESARROLLO SOCIAL COMUNITARIO

June 8, 2015

Letter of Appeal

Universal Service Administrative Company
Schools and Libraries Division – Correspondence Unit
30 Lanidex Plaza West, P.O. Box 685
Parsippany, NJ 07054-0685
Via: *Certified Mail and email: appeals@sl.universalservice.org*

Dear USAC Administrator:

Appellant/Applicant Entity: **Biblioteca Abelardo Díaz Alfaro**
Billed Entity Number: **16052522**
Billed Entity FCC Registration Number (FCC RN): **0019729235**
FCC Form 471 Application Number: **989482**
Applicant's Form Identifier: **16052522-IA**
Funding Year: **2014**

Contact Person: **Sara I. Benítez, Director, Departamento para el Desarrollo Social Comunitario**
Contact address: **Municipio de San Juan, P.O. Box 7179, San Juan, PR 00923-8179; Tel: (787) 480-4248 e-mail: SIBENITEZ@SanJuanCiudadPatria.com**

Service Provider: **A New Vision in Educational Services & Materials (NEVESEM) (SPIN 143022659)**

Funding Requests Nos. (FRN's): **2699874, 2699916, 2699986, 2700194, 2700262, 2700302, 2700361, 2700381, 2700460, 2700510, 2700529, 2700554, 2700594, 2700632, 2700651, 2700716, 2700737, 2700808, 2700832, 2700890, 2700909, 2701010**

Appeal Reason: **FCDL Funding Commitment Decision Letter for Funding Year 2014 dated April 9, 2015 - Denied for determination that a bona fide application was not submitted.**

USAC's Explanation for Denial: *"The FRN is denied because the FCC Form 470 does not comply with the statutory mandate that applicants submit bona fide requests for services... The additional specifications provided in the e-mail serves to re-start the bidding process and bidders should have been given 28 days from the date of that email to provide a bid responsive to the specifications as stated in the email."*

Sara I. Benítez Delgado

Directora

P.O. Box 70179

San Juan P.R. 00936-8179

Tel. (787) 480-4000 ext. 4247, 4248, 4244

Fax (787) 754-2718

Under the FCC's competitive bidding rules, applicants must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services or any services for which the applicant is seeking a new contract. In its Form 470, the applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services; and provide this description on its FCC Form 470 or indicate on the form that it has an RFP available providing detail about the requested services. According to the aforementioned rules, the RFP must be available to all potential bidders for the duration of the bidding process. And, after submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers. *See* 47 C.F.R. § 54.504 (2006); *see also* 47 C.F.R. § 54.503 (2011); *see also* Form 470.

In your April 9, 2015 letter, USAC informed the Municipality of San Juan of its decision in regard to our appeal of USAC's Funding Year 2014 Funding Commitment Decision Letter for the Application Number above. The basis for USAC's denial of said funding was a finding to the effect that the Municipality's FCC Form 470 was "encyclopedic" and did not list only those services for which funding was actually sought, and thus, potential bidders "would not be able to compose a responsive bid without seeking additional information". The fact that several potential bidders required additional information and the Municipality provided specifications not included in its FCC Form 470 in a subsequent e-mail was cited as grounds for this finding. Thus, USAC found that said subsequent email re-started the bidding process and the bidders should have been given 28 days from such date to provide a bid responsive to the specifications as stated in the email.

The Municipality of San Juan respectfully disagrees with USAC's Administrator's Decision on Appeal and as per said communication of April 9, 2015, hereby appeals with USAC's finding that an RFP was not available for service providers to review for 28 days (from release date to due date). The email dated 03/18/2014, was sent to vendors as a follow-up to FCC Form 470 of **February 13, 2014**. It is hereby again clarified that this communication **was not a new RFP**. This was done because some vendors had questions regarding the specifications for the bids for FCC Form 470. The Municipality understood that a communication via email to all bidders clarifying individual questions presented was the most efficient and fair method to answer them, instead of doing so in an individual basis.

This is another example of the limited availability of eligible, qualified potential vendors for these services in the Island. The Municipality's FCC Form 470 was done in the same manner as previous years, 2010, 2011, 2012 and 2013. These forms had been reviewed and audited by USAC and there had never been a finding that they were "encyclopedic" or insufficient in their content. It is respectfully submitted that the questions that arose during the bidding process stem from the inadequate expertise in this area from the potential bidders, not from a deficient FCC Form 470 for FY2014.

The follow-up email was the Municipality's effort to observe a fair and open competitive bidding process, which is fundamental to the integrity of the E-rate program. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076-80, paras. 570-80 (1997) (*Universal Service First Report and Order*) (subsequent history omitted) (requiring applicants to conduct a fair and open competitive bidding process when seeking support for eligible products and services); *Federal-State Joint Board on Universal Service; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5425-26, para. 185 (1997) (*Schools and Libraries Fourth Order on Reconsideration*) (stating that competitive bidding is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the

services are provided at the lowest possible rates).

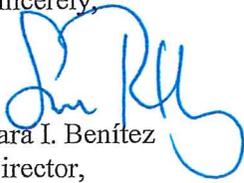
The bidding was competitive and was clearly done to avoid any waste or misuse of the limited funds available and with the acknowledgment of the importance of the competitive bidding process to the program. The Municipality fully complied with FCC's requirement that all bidders be treated equally and that no bidders receive an unfair advantage. *See, e.g., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26939, para. 66 (2003) (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources).

As stated, **this was not a new RFP**. The email dated 03/18/2014, was sent to all potential bidders as a follow-up to FCC Form 470 of February 13, 2014. In order to be fair to all bidders, all questions were answered at the same time. However, this action did not involve a new RFP. All potential bidders were treated equally, even when they were clearly ineligible to provide the services as requested in our FCC Form 470. Accordingly, not only the Municipality granted **28 days** before vendor evaluation/selection was performed. It granted **34 days** before selecting the winning bid. See table below and attached documentation:

Event	Date
USAC 470 application 838040001220193 (Exhibit 1)	February 12, 2014
FCC FORM 470 838040001220193 (Exhibit 2)	February 13, 2014
Email sent to FCC 470 FY 2014 (Exhibit 3)	February 13, 2014
E-mail sent to all bidders of follow-up re: Broadband Specifications (not RFP) (Exhibit 4)	March 18, 2014
Answers from Bidders due	March 19, 2014
Request for Approval from Bid Board (Exhibit 5)	March 25, 2014
Vendor Approval by Bid Board (Exhibit 6)	March 26, 2014

Thus, it is respectfully requested that USAC overturn the denial and restore full funding of these FRN's. Given the circumstances here, failure to reconsider its denial would be most unfortunate because the Municipality selected the lowest cost bid and that it did not engage in fraud, waste, abuse or misuse of funds. The monies have been earmarked received from USAC for good and valuable services received from a service provider who was selected through a fair and unbiased competitive bidding process and who, as an undisputed fact, offered the lowest cost proposal. This is a good use of E-rate funds. Thank you in advance for your time and attention reviewing this appeal. Please use the contact information above.

Sincerely,


Sara I. Benítez
Director,
Departamento para el Desarrollo Social Comunitario
Municipality of San Juan

cc: A New Vision in Educational Services & Materials