

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of a Decision of the Universal Service Administrative Co. for Anaheim Union High School District)	Administrator Correspondence Dated January 20, 2016
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket Nos. 02-6, 13-184
)	

**REQUEST FOR REVIEW OF DECISION OF THE UNIVERSAL SERVICE
ADMINISTRATION COMPANY, SCHOOLS AND LIBRARIES DIVISION BY ANAHEIM
UNION HIGH SCHOOL DISTRICT, OR IN THE ALTERNATIVE, REQUEST FOR A WAIVER
OF SECTION 54.503(c)(1)(i) OF THE COMMISSION'S RULES**

Appellant/Organization Name	Anaheim Union High School District
Funding Year	2015
Entity Number	143784
FCC Form 471 Number	996018
Funding Request Number	2878058

In accordance with sections 54.719 through 54.721 of the Commission's rules, Anaheim Union High School District (“AUHSD” or “Applicant”) requests the Federal Communications Commission’s (“FCC” or “Commission”) review of a decision of the Schools and Libraries Division of the Universal Service Administrative Company (“USAC” or “Administrator”)¹. AUHSD requests the Commission consider the information set forth in this appeal that supports AUHSD’s compliance with the Commission’s competitive bidding rules and to fully reinstate the funding associated with the contract awarded under the bidding process described.

BACKGROUND

In Program Integrity Assurance (“PIA”) Review, USAC identified a service submitted under the Applicant’s funding request for Internal Connections and re-classified it as Basic Maintenance of Internal Connections. Because the Applicant’s Form 470 had only indicated Internal Connections and Managed Internal Broadband Services, USAC determined that the Applicant had not complied with the Commission’s 28-day competitive bidding rules. USAC funded the Internal Connections portion of the funding request, but denied the portion deemed Basic Maintenance of Internal Connections. The Applicant then appealed USAC’s decision, but the Administrator maintained its position that the Applicant was not in compliance of the Commission’s competitive bidding rules.

ISSUE

The service in question, CPES-SS-PREMIUM, denied under the funding request was proposed in a response to an RFP² posted by the applicant for Category Two firewall services. The proposal submitted

¹ January 20, 2016 Administrator's Decision on Appeal

² AUHSD_2015-07_E-Rate 18_Firewall

in the response by the service provider contained a package of equipment, installation, training, and services for a Checkpoint firewall system.

In the RFP, which was posted in conjunction with a Form 470 for a minimum of 28 days, the applicant required bidders to provide the following (see page eight):

Each Offeror must propose a Schedule of Fees and Charges (pricing) including the following information:

a. Equipment

i. Hardware and software (if applicable)

1. Manufacturer, make, and model

2. Technical information including detailed specifications and product literature

b. Labor

i. Detailed breakdown of hours and manpower to be used

ii. Qualifications of manpower

iii. Training, including classroom time, per diem expenses, or any other expenses deemed necessary by Offeror

c. Miscellaneous

i. Warranties

ii. Any other expenses deemed necessary by Offeror

The applicant then provided additional specifications for the firewall system starting in Attachment 5 of the RFP document.

Several bids were received by the applicant in response to the FCC Form 470 and RFP which ran a total of 35 days. The bid submitted by Mark Enterprises was considered to be the most cost effective, with the cost of E-rate eligible services given the highest consideration. In its bid, Mark Enterprises included CPES-SS-PREMIUM which is technical support and advanced hardware replacement for one year. These line items were included to fulfill the requirement “Any other expenses deemed necessary by Offeror” as necessary to firewall service.

During PIA review, the amount of advanced hardware replacement for the line items, identified as 20% of the cost by the manufacturer, was removed from the funding request as ineligible. At that same time the reviewer identified the line item CPES-SS-PREMIUM as Basic Maintenance of Internal Connections and deemed it ineligible for funding because the Form 470 posted by the Applicant included only Internal Connections and Managed Internal Broadband Services and not Basic Maintenance of Internal Connections. The reason for denial was as stated: “The FCC Form 470 that established the competitive bidding process for this FRN did not include service of this type; therefore it does not meet the 28 day competitive bidding requirement.”

DISCUSSION

It is not clear how USAC came to the determination that the Applicant did “not meet the 28 day competitive bidding requirement” when the Applicant did post a Form 470 for a minimum of 28 days and had its RFP open for 35 days. While the Basic Maintenance of Internal Connections checkbox was not technically selected on the Form 470 posted by this Applicant, the Applicant included all critical specifications to the service needed in its RFP for firewall service. The Applicant was not primarily seeking a basic maintenance service – it was seeking a firewall service. It was the service provider’s decision to include basic maintenance as a necessary component of the firewall service. Practically speaking, it is very difficult for an applicant to predict all of the components that a service provider will include in its bid as part of a solution ahead of posting the Form 470, especially in the technology marketplace where services change and evolve on an almost daily basis. In addition, there is some inherent fluidity to the different types of services listed as eligible for Category Two, and depending on the service provider, these may span Internal Connections, Managed Internal Broadband Connections, and Basic Maintenance of Internal Connections.

There seems to be an increasing level of futility to having the three separate sub-categories of service under Category Two. If an applicant checks a box for Basic Maintenance of Internal Connections on its Form 470, most service providers logically assume that the applicant is seeking basic maintenance on a stand-alone basis, not as a component of an Internal Connections service. The Form 470 itself does not lend itself well to communicating to bidders the primary intent of a solicitation for bids. Rather each possible type of service is given equal presence on the form. Without an RFP, a Form 470 alone is not enough to indicate the true intent of the applicant.

This Applicant clearly stated its intent in its published RFP, which was made available to bidders for 35 days, and multiple bids were submitted in response to its solicitation. It does not appear that there was any harm inflicted on service providers by the Applicant not checking the box for Basic Maintenance of Internal Connections, rather the only harm was to the Applicant in the denial of funding for an eligible service.

The situation encountered by this Applicant highlights a program that penalizes applicants with “gotcha” types of so-called rule violations. The FCC has already modified the FCC Form 470 under Category One to eliminate the subcategories of Telecommunications and Internet Access. We hope that there will be a similar common-sense approach to Category Two services so that applicants are not needlessly denied funding.

Please reconsider denying the \$24,992.45 in funding that this applicant would be entitled to if it were not for a ministerial error.

REQUEST FOR WAIVER

In the event that the Commission does not grant AUHSD’s appeal, the District requests, in the alternative, and pursuant to Section 1.3 of the Commission’s Rules, that the Commission grant a waiver of its rules to permit AUHSD to qualify under the Telecommunications Act 47 C.F.R § 1.3. For the

reasons detailed below, AUHSD believes such a waiver is equitable and consistent with the Act as well as prior Commission waivers relating to compliance with the 28-day competitive bidding rule and other competitive bidding requirements.

There is no evidence in the record that AUHSD engaged in activity intended to defraud or abuse the E-rate program. Denying its request for funding would create undue hardship and prevent it from receiving E-rate funding for work already performed by the contracted service provider. Accordingly, good cause exists to grant AUHSD a waiver of section 54.511(a) of the Commission's rules.

We appreciate your consideration of our request. Any additional questions, concerns or request for additional documentation related to this appeal should be directed to:

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Most Sincerely,

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