

Federal Communications Commission
Washington, D.C. 20554

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In the matter of Request for Review of
the Decision of the
Universal Service Administrator by

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The Boston Public Schools
Boston, Massachusetts

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FCC DOCKET NO. 02-6
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**REQUEST FOR REVIEW OF AN ADMINISTRATOR DECISION BY THE
FEDERAL COMMUNICATIONS COMMISSION**

i. Introduction

This is an appeal seeking review of an Administrator's Decision on Appeal dated October 8, 2004 by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). By this appeal, the Boston Public Schools (BPS) seeks review of the SLD's interpretation of certain BPS funding requests as not meeting program requirements that price be the primary factor in contract award. For the reasons which follow, BPS respectfully requests that the FCC grant its appeal.

ii. Statement of the Relevant Facts

BPS is a public school system that services the City of Boston. The BPS is made up of about 140 schools servicing around 61,000 students. The BPS awarded a contract for network wiring maintenance. The contract was awarded in compliance with the Commonwealth of Massachusetts Prevailing Wage Law (M.G.L. ch. 149, sec. 26-27) as stated on the contract. The Commonwealth of Massachusetts, Department of Labor and Workforce Development has established minimum wage rates based on market

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competition in each geographic area of the state. These prevailing wage rates must be paid in certain trades on public work projects. Network wiring, including moves, adds and changes and repairs are among the types of work for which these requirements of state law apply.

Vendors submitting proposals are required to adhere to the prevailing wage rates as governed by the Commonwealth of Massachusetts, Department of Labor and Workforce Development. Thus the vendors who were issued contracts were all offering the lowest hourly rate allowed by state law. Price was therefore the primary criteria. No vendor requesting more than the lowest allowable price was considered. The Boston Public School contract was thus awarded to a specific vendor with appropriate experience and qualifications chosen from a list of vendors all offering the lowest possible price.

In the letter of October 8, 2004 the Administrator states that in their opinion the documentation provided did not support the BPS claim that price was the primary factor in vendor selection and the funding was being denied in full.

iii. Questions Presented for Review

1. In reference to the denial of funding for FRN 1008392, the questions presented for review are:
 - a. Whether selection of a vendor offering the lowest price allowed by law is evidence of the selection of the most cost effective vendor?
 - b. Whether selecting a vendor from a list of pre-qualified vendors who agree to charge the lowest price allowed by law based on their experience with the type of work involved violates program rules regarding cost

effectiveness and the necessity to use price as the primary factor in vendor selection?

iv. **Argument.**

1. **a. Selection of a vendor offering the lowest price allowed by law if clear evidence of cost effectiveness.**

The vendor selected for this project proposed the lowest price allowed by Massachusetts law. This contract was for maintenance services for internal connection wiring. Due to the wide variety of school buildings in the BPS system it is not possible to adequately specify the scope of repair work that might be required in advance so the contract was awarded on a hourly rate basis. By considering only vendors offering to perform with work at the lowest price allowed the BPS clearly made price the primary factor in its selection process.

b. A two-phase vendor selection that first compiles a list of low price vendors then selects among them based on experience is in keeping with program rules.

By choosing among the low-price vendors based on their experience in the BPS schools with the type of work involved and the special requirements of conducting projects that may involve construction in schools occupied by students. We respectfully suggest that this process is in keeping with the letter and spirit of the program rules. It uses price as the primary decision factor and considers other relevant factors to assure the most cost effective approach to the work involved.

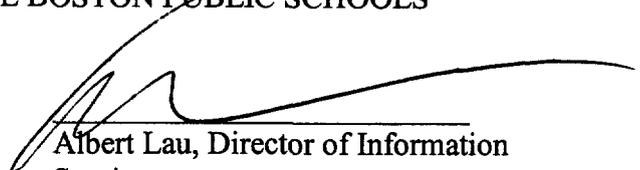
v. **Relief Sought**

For the reasons stated above, BPS respectfully requests that the FCC grant its appeal and order that BPS's application be remanded to the SLD to issue a new funding

commitment decision providing the requested discount for the subject application and funding request.

Respectfully submitted,
THE BOSTON PUBLIC SCHOOLS

By:

A handwritten signature in black ink, appearing to read 'Albert Lau', is written over a horizontal line.

Albert Lau, Director of Information
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