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PLEASE RESPOND TO CHERRY HILL

March 22, 2005

DOCKET FILE COPY ORIGINAL

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: IN THE MATTER OF REQUEST FOR REVIEW BY RELCOMM, INC. OF DECISION OF UNIVERSAL SERVICE ADMINISTRATOR
CC Docket No. 02-6
SLD decisions 1185824, 1185996, 1185946, 1185717, 1185789 and 1185745
Year Seven E-Rate decisions dated January 11, 2005
Billed entity #123420: Atlantic City Board of Education

Dear Sirs or Madams:

This firm represents the Requesting Party, RelComm, Inc., in connection with the above Request for Review. Please accept this letter as RelComm's opposition to the motions filed by Responding Party, Atlantic City Board of Education ("ACBOE") and "Third-Party Respondent", Micro Technology Groupe, Inc. ("MTG") to dismiss the Request for Review on the basis that RelComm lacks standing as an aggrieved party to bring it. Contrary to ACBOE's and MTG's arguments, RelComm has standing as an aggrieved party to bring this Request for Review for at least two reasons.

First, RelComm responded to ACBOE's Year 7 bid request by challenging it. RelComm's president, Michael Shea, wrote a formal letter of challenge on or about January 7, 2004 to ACBOE's Year 7 bid process and sent it to the ACBOE purchasing agent, as provided for under New Jersey statute, N.J.S.A. 18A:18A-15. A true and correct copy of that letter of challenge is attached hereto as **Exhibit A**. RelComm's challenge to ACBOE's Year 7 bid raised serious questions as to the propriety of that bid and the items for which ACBOE was seeking funding. Under New Jersey bidding statutes and regulations, ACBOE should have immediately responded to RelComm's challenge. Instead, in violation of those statutes and regulations, ACBOE never responded to RelComm's challenge (although we learned through discovery in litigation with ACBOE, that ACBOE used RelComm's challenge as an opportunity to further tarnish RelComm's name with the other Year 7 bidders). A true and correct copy of ACBOE's response to other bidders but not to RelComm is attached hereto as **Exhibit B**. Unbeknownst to RelComm, with no notice to it, and without ever addressing the substantive issues raised in RelComm's challenge, ACBOE continued the Year 7 bid. RelComm did

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not submit a bid in Year 7 because it was waiting for ACBOE's response to its challenge and did not learn until it was too late that ACBOE had not suspended the bidding process. A portion of the transcript of the deposition testimony of Mr. Shea testifying on that subject is attached hereto as **Exhibit C.**[1]

RelComm also has standing to challenge the Year 7 award to ACBOE regardless whether it bid or not, because ACBOE's fraudulent and otherwise wrongful procurement of an award in Year 7 will remove, if it stands, funds from the E-rate program budget for Year 7. But for ACBOE's fraud, those funds would have been available to fund as-yet-unfunded requests for funding submitted by one or more of RelComm's school customers. Thus RelComm has been damaged by the fraudulent conduct of ACBOE and its co-conspirators.

For these reasons, the motions of ACBOE and MTG to dismiss RelComm's Request for Review of the Year 7 award to ACBOE must be denied.

Very truly yours,

FLASTER/GREENBERG P.C.

J. Philip Kirchner

JPK/kd
Attachments
cc: Deborah Weinstein, Esquire (on behalf of Alemar Consulting and Martin Friedman)
Michael J. Blee, Esquire (on behalf of ACBOE)
Ralph Kelly, Esquire (on behalf of Micro Technology Groupe, Inc.)
Schools and Libraries Division
Michael Shea
(all with enclosures)

[1] ACBOE cites the deposition testimony of Suzanne Zammit, an employee of RelComm, to the effect that RelComm decided for different reasons not to submit a bid to ACBOE for Year 7. However, Mr. Shea, the President of the company, has testified quite clearly to the contrary that he was waiting for a response from ACBOE to RelComm's Year 7 challenge.

Exhibit A

RelComm Inc.

The Reliable Communications Company

Dear Purchasing Agent:

An accordance with the provisions of N.J.S.A. 18A:18A-15, this letter is a challenge to the Atlantic City Public School District's Year 7 E-Rate bid for internal connections, Form 470, #526880000481973 (the "Bid").

As an initial matter, the Bid is defective because of the way it was scheduled. You required, as a mandatory condition of the Bid, that all prospective bidders participate in a tour of the facilities. That tour was scheduled on the afternoon of January 6, 2004, just four business days prior to the deadline for submitting bids. That schedule not only leaves inadequate time for vendors to prepare a proper and complete bid, but it also leaves inadequate time to address challenges to the Bid itself. RelComm requested information about the Bid on December 18, 2003, yet the mandatory walk-through was not scheduled until January 6, 2004, just days before bid proposals are due on January 12, 2004, despite that the District has until February 4, 2004 (another 23 days) to file its Form 471 vendor award.

To make matters worse, Martin Friedman, the District's agent who conducted the tour announced at the tour that audio or videotaping of the tour was prohibited. Mr. Friedman, when asked, gave no justification or explanation for this decision. In fact, there is no reasonable explanation for such an unreasonable policy. Indeed, the State of New Jersey routinely allows taping of facility tours such as this one to avoid discrepancies and misunderstandings in public bids. The refusal to allow videotaping of the facilities tour will have a drastic negative effect on the Bid. To make matters worse, the site diagrams given to prospective bidders at the tour are not technical in detail, but rather are merely print-outs used in connection with the fire code. For example, the site diagrams do not show the location of access points, existing computers, phones, and the like, which will make it very difficult for bidders to be precise in their bids.

The Bid is also defective because it includes a request for a design study for the District. However, a design study is something the District was required to do prior to publicizing the Bid in the first place. Requesting a design study to be included in bid proposals will only engender confusion about the scope of work among the bidders.

Martin Friedman stated during the walk-through that the Year 7 Bid was designed as a "re-bidding" of the District's Year 6 Bid to provide a back-up if Year 6 funding is not approved for the District. The technical specifications contained in the Year 7 Form 470, however, do not match in any way the District's Year 6 Form 470. To the contrary, the Year 7 Form 470 appears to be an exact copy of the winning bid proposal submitted by MTG to the District for Year 6 funding. This is a violation of FCC regulations, in that the Form 470 is not based on specifications independently developed by the School District.

Moreover, MTG's participation in the walk-through as a prospective bidder on the bid specifications which it developed itself is an obvious violation of E-Rate program regulations and also violates the spirit if not the letter of N.J.S.A. 18A:18A-15.

The bid also violates the requirements of N.J.S.A. 18A:18A-15.d. The bid requires a particular brand of switches - CISCO - without any provision for equivalents. This stands in stark contrast to the requirement in the Bid for the provision of Dell servers "or equivalent." When questioned about this at the facilities tour, Martin Friedman stated that CISCO was the equipment brand desired by the District. That requirement expressly violates the New Jersey statute, which prohibits any requirement for the furnishment of any "brand name" product unless a provision is included allowing for equivalents to that brand name to be supplied.

There are also numerous technical errors which make the Bid defective.

1. The Year 7 Form 470 includes a request for bids to replace all of the existing District network wiring. That wiring was installed only a few years ago by Lucent and is under a 20 year warranty, which still has more than 15 years remaining on it. If there is a problem with the wiring, it should be addressed to Lucent to correct that problem. The solution should not be to tear out over a million dollars of perfectly good wiring and cable and replace it at taxpayer expense. This decision, no doubt, was based upon MTG's statement in its Year 6 bid proposal that it was "not willing to provide any LAN enhancements using the existing wiring in those schools." Not only is that assumption by MTG unfounded, but it has also been accepted by the District without any independent assessment by the District whether that result is appropriate.

2. The cabling requested for some of the buildings bears no rational relationship to the actual needs of those buildings. For example, there is no rationale for providing 75 new cables for the Venice Park Building, which is a two room facility with less than seven computers, as stated in MTG proposal and in the wire count provided in the specifications by the district.

3. The requirements in the Bid are not clear. MTG's Year 6 bid promises voice-over IP capability with the new lines, because Cat 5 is capable of this. However, Lucent provided an extra Cat 5 connection in each room that can be utilized for this. If the District wants voice-over IP capability, what does it intend to do with the expensive Lucent Definity Switch system and all those existing telephone handsets through the District? They do not function this way and would have to be replaced at a tremendous cost, which is not e-ratable. The other FRN requests a Three year Telephone maintenance agreement. So this feature does not seem desired by the District at this time. It also does not warrant replacing over a million dollars worth of wiring that is only a few years old. MTG's bid proposal does acknowledge that it has not tested the lines; MTG says that is a fee based service that they offer and recommend a wire maintenance agreement through MTG, despite that the existing wiring is subject to warranties of 20 years.

4. The Bid does not acknowledge nor address the crippling environmental defects in the

District's facilities. The Bid requests UPS units, despite that they have ups units but lack outlets into which to plug them. MTG's Year 6 bid proposal recognized that the District has severe environmental issues to resolve from overheated wiring closets to a lack of proper electrical power and states that it will not even install new equipment until this is corrected. MTG knows that the network will never function properly without correction of those problems, and that brand new equipment will only be destroyed as it has been in the past. Moreover, the solutions to those problems are not e-ratable. The Bid ignores that these problems were raised in writing by Lucent., RelComm, and EUS among others, and have yet to be addressed. RelComm believes that correction of these problems is not currently budgeted and will be difficult to accomplish given the current budget deficit. These problems have been documented as the single most important cause of failure and hardware damage on the network.

5. Network Design is based on brand. Because the District provided no specifics, the network electronics are a replication of the design that already exists on the network: central core and building chassis, with gigabit backbone. The only difference is the brand of equipment request by the District. If it has already been established by several companies that improper electrical power and other environmental conditions are the single most critical cause of network failure, then why is the District replacing the existing network instead of correcting the environmental and electrical conditions? As stated in number 4 above, the District has been notified of these issues in writing by several vendors and District employees, yet it has not resolved the issues.

6. The Bid requests the replacement of the existing servers. No explanation has ever been given for this decision. However, MTG stated in its Year 6 bid that the existing servers may not run Microsoft and so recommended replacing them with new ones. Marilyn Cohen echoed this belief on the walk-through, stating that new servers were needed because the District wants to change to "Microsoft servers." Microsoft is a software, not hardware. There is no such thing as a "Microsoft server." The existing District servers are Intel which is the standard of Dell, HP/Compaq, and IBM among others, and they are perfectly capable of running Microsoft software.

For these reasons RelComm is challenging this Bid immediately and within the timelines established by the District.

Very truly yours,

Michael Shea
President

Christopher Brown, Esquire (via fax - 609-344-8271)
Lisa Mooney (via fax)
Elisha Thompkins (via fax)

Exhibit B

January 9, 2004

This is a response to the challenge letter from RelComm Inc delivered to the Atlantic City Public Schools on January 8, 2004.

Note: This challenge only addresses a single Form 470 submission (#526880000481973), that which seeks to re-bid goods and services as yet unfunded from the District's Year 6 (2003) eRate initiative.

N.J.S.A. 18A:18A-15 relates to the State's bidding statute. Pursuant to that statute, the District is exempt from the bidding requirements for eRate bidding. Without waiving the right to argue that RelComm Inc. does not have the right to challenge the Year7 (2004) bid pursuant to State statute N.J.S.A. 18A:18A-15, the District felt compelled to address these allegations.

According to eRate rules, the District can enter into an agreement or contract 28 days after it posts its Form 470 to the SLD web site. The Form 470 in question was posted on December 13, 2003 with an allowable contract date of January 10, 2004. The District made the due date 2 days later, on January 12, 2004, providing a 30-day bidding window.[1]

The District scheduled 2 walkthroughs, one for December 19, 2003 and a second for January 7, 2004. (The District is closed December 24, 2003 to January 4, 2004 for winter break.) Vendors who attended the first walkthrough had notified the District of their interest to do so prior to December 19, 2003. Those who notified the District after that date were instructed to attend the second walkthrough.

On December 19, 2003, the District decided to move the second walkthrough up a day to January 6, 2004 in order to provide some extra time to vendors attending that site visit. All vendors who expressed interest in any of the walkthroughs were notified of the change in date. During both walkthroughs, vendors were informed that they could request additional access to the buildings in order to properly prepare their proposals. No vendor has requested additional site visits. Although the complainant asked how to arrange such additional visits, they did not request to do so either.

The complainant requested an information packet on the afternoon of December 18, 2003. The packet was sent to them electronically on the afternoon of December 19, 2003. The complainant then notified the District on the afternoon of December 23, 2003 of their interest to participate in the walkthrough and received a response informing them of the

[1] Once you file your Form 470, it is posted to the SLD web site for competitive bidding. Your form must be posted for at least 28 days on the SLD web site before you can sign a contract or enter into an agreement for services, and before you can sign or submit a Form 471. (FCC Form 470 Instructions, May 2003, Page 5)

January date. Confirmation of their attendance was received on the afternoon of January 5th.

The complainant is in error when they state that Mr. Friedman conducted the tour. Mr. Friedman assisted District personnel with the tour. They are also in error when they state that Mr. Friedman "announced at the tour that audio or videotaping was prohibited." District Administrator, Marilyn Cohen, made that announcement as she did with the walkthrough on December 19th. Ms. Cohen informed the vendors that they were allowed to take still photographs of equipment and rooms.[2] Yet, in spite of Ms. Cohen's instructions, the complainant's representatives, with recording devices still active, began to interrogate her. At that point, Mr. Friedman asked them if they were still recording. The answer being in the affirmative, Mr. Friedman then asked that they follow Ms. Cohen's instructions by turning the devices off and removing them from the building.

Prospective bidders were provided with site diagrams, the total number of cable drops broken into drops per building, and a listing of active network components, also broken out by building. There is no requirement to provide a technical drawing. If anything, the complainant would be in an advantageous position, as they alone seem to be in possession of these diagrams. The challenge is also in error with regard to the inclusion of design and engineering costs, which are eRate eligible services.[3]

Mr. Friedman did state that the Form 470 # in question here is a re-bid of goods and services not yet funded from the District's Year 6 (2003) initiative. He also announced that, if the prior year is funded, the District might not move forward with this initiative. There is no requirement that the District exactly replicate the prior Year's Form 470 in its current 470 submission. One reason that this would not make sense is that the eligibility of items do no remain the same from year to year.

Also, there is no violation of FCC regulations for the District to update prior documents for use in this round of the program. MTG did not prepare or complete the Form 470.[4] ALEMAR Consulting did that at the direction of the District. Therefore there is no obvious, or any other, violation of rules or regulations for MTG to be a prospective bidder.

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[2] There is nothing in the rules that provides for videotaping or audio-taping the premises.

[3] Basic design and engineering costs necessary for installation and initial configuration are eligible only if they are coincident (i.e., occur at the same time) with the installation of eligible equipment and services and if part of a contract or bid for those eligible products or services. (Eligible Services List P.35)

[4] The Form 470 cannot be completed by a service provider who will participate in the competitive process as a bidder. If a service provider is involved in preparing the Form 470 and that service provider appears on the associated Form 471, this will taint the competitive process and lead to denial of funding requests that rely on that Form 470. (FCC Form 470 Instructions, May 2003, Page 2)

The complainant is factually incorrect when they state that "the bid requires a particular brand of switches – CISCO – without any provision for equivalents." The 470 in question clearly states under the heading Network Electronics, "Cisco Catalyst equivalent or better." Cisco was the brand accepted under the, as yet unfunded, Year 6 contract. Even though N.J.S.A. 18A does not apply, the specifications are still consistent with that provision. For issues relating to interoperability, compatibility, and manageability, Cisco would be the preferred brand for the newer Year 7 (2004) initiatives if the Year 6 initiative was funded. It was in that context that Mr. Friedman spoke of the District's preference for Cisco.

The assumptions and conclusions the complainant puts forward in the "numerous technical errors" section (#1-6) are incorrect or irrelevant. Item #3 claims the bid requirements aren't clear with regard to VOIP but there is no VOIP in the District's Year 7 requests for it is an ineligible item.[5] Also, the 3-year telephone maintenance contract is to support the Definity systems. (No one asked that question.)

The District's environmental issues are not eRate fundable and are being addressed elsewhere. The rationale, as to why decisions were made, how they were made, and who made them, does not have to be explained to a prospective bidder. Obviously, the complainant and the District have differing opinions about the state and functionality of the existing infrastructure and its components. The District does not want sensitive LAN equipment exposed in closets or in classrooms nor cables cascading across classroom floors. They want a network design that brings independent cable runs directly into all classroom and offices. They want managed cabling. They have asked for better and that is what was bid.

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[5] Voice Over IP (VoIP) Service: The Federal Communications Commission has not determined whether Voice over IP (VoIP) is a telecommunications service or an application provided over an unregulated information service. Pending resolution of this issue, VoIP service is not eligible for funding. (Effective for Fund Year 2004 and later years.) Not Eligible (Eligible Services List, October 10, 2003 MISCELLANSOUS section 32)

Exhibit C

15 A. This is the -- this is the school
16 district's percentage for the Year Two E-rate.
17 Q. Okay. And you received this check in
18 payment?
19 A. Yes.
20 Q. Okay. And this is not in dispute in
21 this case, correct?
22 A. No.
23 MR. BLEE: This is going to be marked
24 as DAC-45.
25 It was previously marked,

1 Mr. Kirchner, if you would be kind enough to get
2 it, as P-18.
3
4 (DAC-45, three page letter from
5 Michael Shea to Dear Purchasing Agent,
6 undated letter, was marked for
7 identification.)
8
9 BY MR. BLEE:
10 Q. Do you recognize this document?
11 (Indicating.)
12 A. (Witness indicating.) Yes.
13 Q. And it is authored by you, correct?
14 A. Yes.
15 Q. Is that your signature at the bottom?

16 A. Yes.
17 Q. Can you tell me what the circumstances
18 were surrounding your submission of DAC-45 to the
19 purchasing agent?
20 A. To clarify the bid specifications on
21 which they were -- the bid was founded.
22 Q. This is for Year Seven?
23 A. Yes.
24 Q. Did RelComm ever formally submit a bid
25 for the Year Seven E-rate program for internal

1 connections with the Atlantic City School District?
2 A. No. We were not notified to continue.
3 Q. I didn't hear --
4 I heard you say "no," and I didn't
5 hear the last of your response.
6 A. This letter was never responded to, so
7 we never knew that the bid actually continued.
8 Q. How do you formally submit a bid under
9 the E-rate program?
10 A. You have to submit it to the
11 authorized individual.
12 Q. Who was the authorized individual for
13 the E-rate program for Year Seven?
14 A. That would have been Martin Friedman.
15 Q. And is it your understanding that you

16 never questioned the bid?

17 A. No. We questioned the bid and did not

18 receive a response.

19 Q. Is it your testimony that that's the

20 reason you did not submit a formal bid?

21 A. Well, under the section cited above,

22 any bid is to be responded -- any bid challenged is

23 supposed to be responded to, and the bid itself is

24 to be -- you are to notify all of the other vendors

25 whether or not you've challenged successfully and

1 are continuing or whether you are postponing the

2 bid, pending clarification. And none of that

3 occurred to RelComm.

4 Q. Let's go to the second paragraph of

5 DAC-45.

6 A. Mmm-hmm.

7 Q. You write: "To make matters worse,

8 Martin Friedman, the district's agent who conducted

9 the tour, announced, at the tour, that audio or

10 videotaping of the tour was prohibited."

11 Do you understand that?

12 A. Yes.

13 Q. Is it true that RelComm videotaped the

14 Year Six bidding process?

15 A. Yes.

16 Q. Tell me the extent of your