

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of:)
)
Request for Review of Decisions) Docket No. 02-6
of the Universal Service Administrator)
)

Reference:

Applicant Name: Roosevelt Union Free School District
Entity Number: 123864
Funding Year: 2006
Form 471 Numbers: 538495 and 538496
Funding Request Numbers: 1491400, 1491401, 1491402, 1491403, 1491407, 1491408,
1491409, 1491410, 1491411, 1491410, 1495663, 1495664,
and 149566

Background:

Funding for all referenced FRNs was denied as the result of a Selective Review for the stated reason that: "Consultant services were rendered prior to the signing of a consulting agreement or a Letter of Agency, authorizing the consultant to act on your behalf." We believe that these decisions are inconsistent with FCC rules and, in any event, are inconsistent with the facts. We ask that these decisions be reviewed and reversed.

Consultant Agreement Requirements under FCC Rules:

Based on our review of establishing FCC Orders, we believe that the only possible basis for the denial reason in this case is one sentence in the record retention section (Para. 48) of the Fifth Report and Order (FCC 04-190) stating that: "If consultants are involved, beneficiaries must retain signed copies of all written agreements with E-rate consultants."

We note that this description of documents that must be retained is part of a broader record retention list explicitly provided “for illustrative purposes.” Nowhere else in the Fifth Order (or in any other FCC Order) is there an adoption of any rule requiring any form of consultant agreement or LOA to be executed prior to the time a consultant begins work with an applicant. At most, this section of the Fifth Order requires only that the applicant to retain any consulting agreements — if there are such agreements.

The status of any actual or potential FCC rules regarding applicant use of consultants is most recently found in the FCC’s Third Report and Order and Second Further Notice of Proposed Rulemaking (FCC 03-323) released December 23, 2003, that states, in part (Para. 91): “We seek comments on whether applicants should be required to identify any consultants or other outside experts...that aid in the preparation of an the applicant’s technology plan or in the applicant’s procurement process.” The FCC has not yet ruled on whether consultants must be so identified, much less whether signed agreements must be in place before services are rendered.

Our conclusion — and one that we trust the FCC will clearly affirm in its decision — is that there is no program rule requiring a consultant to have a contract or letter of agency in place before beginning work with an applicant.

Potential Bidding Violation Issue:

In addition to the specific denial explanation language associated with each FRN quoted above, we note that there were identical labels in the two FCDLs referring to each FRN denial decision reading “Selective – Bidding Violation.” In this case, “Selective” presumably refers to decisions reached as the result of a Selective Review. The reference to “Bidding Violation” is more disturbing.

Although a bidding violation issue was not explicitly raised by USAC, we are concerned with one implicitly negative reference in USAC’s denial of our initial appeal (dated February 27, 2007) to language that was included in Item 12 of Roosevelt’s Form 470 for FY 2006. In providing guidance to potential bidders, the Form 470 stated: “BIDS OR INFORMATION REQUESTS MUST REFERENCE THIS FORM 470 NUMBER & MUST BE FAXED TO THE

CONTACT PERSON SHOWN IN BLOCK 1. FOR DOCUMENTATION PURPOSES, COPIES OF ALL BIDS AND INFORMATION REQUESTS SHOULD ALSO BE FAXED TO E-RATE CENTRAL @ 516-832-2877.”

It should be stressed that this language was specifically designed to encourage compliance with FCC procurement and record retention rules. Because E-Rate Central is not listed as a point of contact in its clients’ Form 470s (nor its RFPs), and plays no role in the clients’ vendor selection process, it is nevertheless concerned that its clients comply strictly with the FCC bid assessment rules. By requesting copies of bids or information requests from prospective vendors, E-Rate Central places itself in a better position to confirm with its clients that any and all interested vendors were given proper consideration.

We see nothing in any actions taken by Roosevelt or E-Rate Central in this case, nor in any USAC funding, that would be cause for any concern regarding competitive bidding violations.

Agreements in Place Prior to Rendering Services:

Although E-Rate Central disagrees with USAC’s interpretation of the consultant agreement requirements implicit in the FCC’s Fifth Order, it had in fact complied with both the spirit and letter of that interpretation. The following explanation, provided to USAC in our initial appeal, but ignored in USAC’s appeal decision, is worth reiterating.

It was our understanding of the documents requested during the Roosevelt Selective Review that PIA’s primary concern regarding E-Rate Central’s assistance to the district was that we were authorized to respond on its behalf. We therefore procured and provided a Letter of Agency from Roosevelt covering 2006-2007 and the succeeding year.¹ It is clear, in hindsight, that this is not what Selective Review wanted; it was apparently looking for an agreement dated before Roosevelt posted its Form 470 for FY 2006. Had we known that was the issue, the documentation could have been — and can be — provided. In fact, E-Rate Central has been

¹ Adding, as always in our replies, a request to be notified, and an offer to provide additional information, if there is a need for further corrections or clarifications.

duly authorized to work with Roosevelt since Program Year One. The following points regarding E-Rate Central's authorization should be noted:

1. E-Rate Central has no direct contractual agreement with Roosevelt, is not paid by Roosevelt, and does not "act on its behalf." E-rate support services rendered to Roosevelt are all provided indirectly through other educational agencies.
2. At the broadest level, E-Rate Central is under contract with the New York State Education Department ("NYSED") to provide E-rate support services to all schools and libraries in the State. In this regard, Roosevelt is a special case because it is operating under the direct control and supervision of NYSED.
3. E-Rate Central provides more substantial E-rate support such as forms preparation and PIA support — but specifically not bidding — to Roosevelt through a Nassau BOCES cooperative service agreement ("CoSer"). Roosevelt and other Nassau districts agree to participate in this CoSer on an annual basis through either a signed Letter of Intent or an equivalent online enrollment process.
4. In a practical sense, Roosevelt's only explicit acknowledgment and acceptance of E-Rate Central's role as an E-rate consultant is in the district's use of E-Rate Central as the contact — but not the signer — on Roosevelt's Forms 471, 472, 486, and 500 (and specifically not a contact on Roosevelt's Forms 470).

Summary:

By this appeal, we ask the Commission to consider the following three points:

1. There is no E-rate program rule requiring "the signing of a consulting agreement or a Letter of Agency" prior to the rendering of consultant services. As such, there is no basis for USAC's denial of the referenced FRNs in Roosevelt's two FY 2006 applications.
2. There is certainly no indication of any bidding violations. To the contrary, extra steps were taken to encourage strict compliance with all competitive procurement rules.

3. Even if the FCC disagrees with point #1, there is ample evidence — not requested by USAC² nor considered upon appeal — to indicate that E-Rate Central was, in fact, authorized to provide consultant services to Roosevelt prior to the beginning of the FY 2006 application cycle.

Respectfully submitted on behalf of
Roosevelt Union Free School District,



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² As required by the FCC's *Fayette County* decision (DA 05-2176).