



Communication Technologies
accelerating the world of communications

Voice: 314.868.1100
Toll Free: 866.868.1100

Corporate Office, KS
East Coast: Orlando Beach, FL

email: info@cti.com
web: www.cti.com

June 14, 2010

Letter of Appeal – Request for Review/Waiver
CC Docket No. 96-45
CC Docket No. 02-6

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002

Marlene H. Dortch, Secretary:

This is a “Request for Review/Waiver” for Form 471 Applications 675773 & 693741 and all associated FRNs: 1845078; 1855087; 1903295; 1903750 & 1903789

Case # N/A

BEN and Contact Information

Appellant Names:

Dr. Jim Earle, Consultant

Applicant Name & BEN:

Colorado Spring School District 11

BEN: 142312

Contact Information:

Dr. Jim Earle

eMail: jime@ctierate.us

Phone: 866-858-2202

Fax: 866-858-1101

471 Reference & Funding Year:

Form 471: 675773

FRNs: 1845078; 1855087; 1903295

Funding Year: 2009-2010

Service Provider Information:

Qwest Corporation

FRN 1845078



Communication Technologies
specializing in the world of communications

Vocal 314.968.1100
Toll Free 866.978.1100

Corporate Office, KS
East Coast Orlando Beach, FL

email info@cti.com
web www.cti.com

Funding Commitment Decision:

“ \$0.00 - Bidding Violation”

Funding Commitment Decision Explanation: MR1: The shared discount was reduced to a requested level that could be validated by third party data... MR2: The dollars requested were reduced to remove the ineligible entities Adams Elementary School, Irving Middle School, Ivywild Elementary School, Jefferson Elementary School, Longfellow Elementary School, and Pike Elementary School... MR3: The FRN was modified from \$5,497.80/month to \$4,920.07/month to agree with applicant documentation... DR1: The vendor selection documentation created during the evaluation period did not clearly demonstrate that price was the primary factor considered in the selecting the winning service provider’s proposal... DR2: FCC rules require that the value of free products and services be factored into the evaluation of the most cost-effective provider of eligible products and services. This requirement was not met.

TW Telecom Holdings, Inc
FRN 1845087

Funding Commitment Decision:

“ \$0.00 - Bidding Violation”

Funding Commitment Decision Explanation: MR1: FRN modified in accordance with a validated RAL Request...MR2: The shared discount was reduced to a requested level that could be validated by third party data... MR3: The dollars requested were reduced to remove the ineligible entities Adams Elementary School, Irving Middle School, Ivywild Elementary School, Jefferson Elementary School, Longfellow Elementary School, and Pike Elementary School... MR4: The FRN was modified from \$7,105/month to \$6,358.38/month to agree with applicant documentation... DR1: The vendor selection documentation created during the evaluation period did not clearly demonstrate that price was the primary factor considered in the selecting the winning service provider’s proposal.

TW Telecom Holdings, Inc
FRN 1903295

Funding Commitment Decision:

“ \$0.00 - Bidding Violation”



Communication Technologies
specializing in the world of communications

Vocal 314.993.1100
Toll Free 866.993.1100

Corporate Office, KS
East Coast Orlando Beach, FL

email info@comptek.com
web www.comptek.com

Funding Commitment Decision Explanation: MR1: FRN modified in accordance with a validated RAL Request...MR2: The shared discount was reduced to a requested level that could be validated by third party data... MR3: The dollars requested were reduced to remove the ineligible entities Adams Elementary School, Irving Middle School, Ivywild Elementary School, Jefferson Elementary School, Longfellow Elementary School, and Pike Elementary School... MR4: The FRN was modified from \$4,710/month to \$4,215.06/month to agree with applicant documentation... DR1: The vendor selection documentation created during the evaluation period did not clearly demonstrate that price was the primary factor considered in the selecting the winning service provider's proposal.

471 Reference & Funding Year:
Form 471: 693741
FRNs: 1903750 & 1903789
Funding Year: 2009-2010

Service Provider Information:
Counter Trade Products, Inc.
FRN 1903750

Funding Commitment Decision:
“ \$0.00 - Bidding Violation”

Funding Commitment Decision Explanation: MR1: The shared discount was reduced to a requested level that could be validated by third party data... MR2: The dollars requested were reduced to remove the ineligible entities Adams Elementary School, Irving Middle School, Ivywild Elementary School, Jefferson Elementary School, Longfellow Elementary School, and Pike Elementary School... MR3: The FRN was modified from \$1,681,300 to \$1,615,698 to agree with applicant documentation... DR1: The vendor selection documentation created during the evaluation period did not clearly demonstrate that price was the primary factor considered in the selecting the winning service provider's proposal.

Service Provider Information:
Counter Trade Products, Inc.
FRN 1903789

Funding Commitment Decision:



Communication Technologies
specializing in the world of communications

Vocal: 314.993.1100
Toll Free: 866.993.1100

Corporate Office, KS
East Coast: Orlando Beach, FL

email: info@comptek.com
web: www.comptek.com

“ \$0.00 - Bidding Violation”

Funding Commitment Decision Explanation: MR1: The dollars requested were reduced to remove the ineligible entities Adams Elementary School, Irving Middle School, Ivywild Elementary School, Jefferson Elementary School, Longfellow Elementary School, and Pike Elementary School... MR2: The FRN was modified from \$1,041,284 to \$787,224 to agree with applicant documentation... DR1: The vendor selection documentation created during the evaluation period did not clearly demonstrate that price was the primary factor considered in the selecting the winning service provider’s proposal.

This Request for Review and Waiver of USAC Decision the listed FRNs for Bidding Violation on Price, as the primary factor.

This request for Review/Waiver is for the 2009-2010 funding year. The reason for this request is that the denial of the requests were based upon the USAC stating that:

“Bidding Violation.”

It is our contention that the filing of the Form 471 and associated FRN was in compliance and in fact went above the requirement to insure proper bidding for a fair and open bidding process with Price being the highest factor.

Waiver Requests. A waiver is a request to waive an FCC policy, rule, or deadline such as the Form 471 application filing window deadline. For example, if you missed the filing deadline for Form 471 because of extenuating circumstances, **USAC cannot** waive the deadline but you can ask the FCC to waive the rules in your case by filing a waiver request with the FCC. USAC advises us that only the FCC can grant a waiver only in special circumstances and when a deviation from the rules would serve the public interest. Also, the waiver standard generally requires a showing of circumstances that could not be avoided even with careful planning..

We believe that there were special circumstances and that the waiver will serve the best interests of the students served by Colorado Springs School District in the State of Colorado.

Situation:

The Forms 470 requesting services and bidding were all listed on RockyMountainBidSystems.com or on an available RFP from the Business Office.



Communication Technologies
specializing in the world of communications

Vocal 314.966.1100
Toll Free 866.970.1100

Corporate Office, KS
East Coast Orlando Beach, FL

email info@cti.com
web www.cti.com

Evaluation requirements were clearly stated and used by the district to initially certify eligible bidders. After that the District used an evaluation that placed pricing as the determining component. All eligible bidders received the same scoring if they meet the requirements listed on the RFPs. After that the companies were looked at and pricing was evaluated and in all cases the lowest price bidder was awarded the contract. **See attached fax document** that was sent to the Selective Reviewer. The District did everything it could to ensure a fair and open bidding process. The FRNs that were denied were for a 5-year contract for Priority 1 and Priority 2 services. If this is not reversed, at least for the Priority 1 services, the District will not be able to receive eRate funding for a period of 5 years, due to existing contracts and the denial of funding. This places an extreme hardship on the District and the students of Colorado Springs.

The problem with the Vendor Selection Document is that it does not clearly state that price was the determining factor. It states: “selected on Best value – meeting the criteria placed within the RFP and Price.” The document itself clearly demonstrates that all vendors were scored equally on the RFP Criteria thus leaving price as the determining factor. In all cases, the lowest bidder received the bid. Thus it is our contention that Pricing was the primary factor in the selection process and that these FRNs should be approved and funded. The wording of “Best Value” really means “BEST PRICE” .

The intent of the eRate program is to fund school for their Telecom, Internet and Internal Connects as appropriate. This clearly is a District that needs the funding and has tried to be “Fair and Open” in all of the services requested. The District has met all of the intentions of the program and believes that the FCC should rule in its favor and allow the students and the District to be funded for services required as per the intent of the program.

I will be happy to supply any other documentation that the FCC would like to examine related to this request. I hope that the reviewers of this request see that the District in no way tried to break any program rules and regulations but made an error in the manner it stated the evaluation criteria. The lowest bidder was accepted in all cases.

You favorable decision is requested on this appeal and waiver request.

Sincerely,

Jim Earle, PhD

Dr. Jim Earle
Consultant



Communication Technologies
accelerating the world of communication

Voice: 314.868.1100
 Toll Free: 866.868.1100

Corporate Office, KS
 East Coast: Ormond Beach, FL

email: info@cti.com
 web: www.cti.com

Jun 14 10 09:32p

Federal Programs Complain

386-673-1345

p.1



You've received this fax from:

Jim Earle, PhD
 CTI eRate Services
 3005 Monaghan Dr
 Ormond Beach, FL 32174

Return Fax: 866-858-1101
 Voice: 866-858-2202

Fax Cover Sheet

To:	Jane Giancamillo	From:	Jim Earle
Fax:	(973) 599-6515	Pages:	5 (Including Cover Sheets)
Ref.:	Selective Review	Date:	09/11/11

Jane

Please see the attached Vendor Selection Documentation Summary pages. This document is a summary of the criteria used in the evaluation of the FRNs on Application 675773. Previous memo sent in response to this request stated the criteria used. The evaluation team, lead by Mr. Ray Caplinger and the Contracting Officer Ms. Kris Odom after all bids were reviewed, compiled the information and this document reflect a summary of the decisions made. All vendors that met the minimum RFP requirement received a 3 on the Scoring Sheet Criteria (this has been previously sent for each FRN and is noted in the individual RFPs). Bids then were evaluated on the basis of pricing. The final determination was on "Best Value". On all FRNs the "Best Value" was also the lowest price vendor.

In relation to the following remaining question:

1. For **frn 1903789**, in response to the SRIR you indicated that bids for networking equipment were received from Counter Trade Products, Shi and FRII. In response to the follow-up questions, you provided bids from Counter Trade Products, Shi and Imagine Technologies. A bid was provided from Imagine Technologies and not FRII. Please explain.

Response: The previously sent data was do to a clerical error. FRII only submitted the bid for FRN 1903295. The bid documentations sent in for FRN 1903789 were the bids received. Therefore, Imagine Technologies should had been on that FRN rather than FRII. I hope that this explains the difference.



Communication Technologies
accelerating the world of communication

Voice: 316.868.1100
Toll Free: 866.868.1100

Corporate: Wichita, KS
East Coast: Orlando Beach, FL

email: info@cti.com
web: www.cti.com

Jun 14 10 09:33p

Federal Programs Complian

386-673-1345

p.2

November 11, 2009

471 Application #	693741 & 675773
Billed Entity #	142312
Billed Entity Name	Colorado Springs School District
Contact Name	Dr. Jim Earle
Contact Phone #	866-858-2202
Contact email	jime@ctierate.us



Communication Technologies
specializing for world of communication

Vocal: 314.868.1100
 Toll Free: 866.878.1100

Corporate: Wichita, KS
 East Coast: Orlando Beach, FL

email: info@cti.com
 web: www.cti.com

Jun 14 10 09:33p

Federal Programs Complan

386-673-1345

p.3

FRN 18415087					
Company	TW Telecom	Paetec	MicroTech Tel	Qwest	
Bid Quote	\$9,395.00	\$11,995.47	\$7,997.00 + Install Fee of \$21,050	\$10,760.51	
Price					
Scoring Sheet Criteria*	5	2	3	3	4
	3	3	3	3	3
TOTAL POINTS	8	5	6	7	7
<p>* If vendor met all criteria on the RFP they received a minimum score of 3. If exceeded, a score of 4 or 5</p> <p>Winning Vendor: TW Telecom - selected on best value - meeting the criteria placed within the RFP and Price.</p>					

FRN 1903295					
Company	TW Telecom	BOCESS	FRII	Qwest	
Bid Quote	\$2,995.00	\$5,000.00	\$4,375 + \$1,500 Set-up fee	\$3,848.31 + \$1,320 Install	
Price					
Scoring Sheet Criteria	5	2	3	3	4
	3	3	3	3	3
TOTAL POINTS	8	5	6	7	7
<p>* If vendor met all criteria on the RFP they received a minimum score of 3. If exceeded, a score of 4 or 5</p> <p>Winning Vendor: TW Telecom - selected on best value - meeting the criteria placed within the RFP and Price.</p>					



Communication Technologies
accelerating the world of communications

Voice: 314.968.1100
 Toll Free: 866.968.1100

Corporate Office, KS
 East Coast: Orlando Beach, FL

email: info@comptek.com
 web: www.comptek.com

Jun 14 10 09:33p

Federal Programs Complain

386-673-1345

p.4

FRN 1845078			
Company	Qwest	Integra	MicroTech Tel
Bid Quote	\$5,497.80	Not Technically acceptable	\$5,610.00
Price	5		4
Scoring Sheet Criteria	3		3
TOTAL POINTS	8	0	7
<p>* If vendor met all criteria on the RFP they received a minimum score of 3. If exceeded, a score of 4 or 5</p> <p>Winning Vendor: Qwest - selected on best value - meeting the criteria placed within the RFP and Price.</p>			

FRNs 1903693 & 1903718			
Company	Information Systems Consulting		
Bid Quote	40% off Published List & 32.5% off Smart Net Maintenance		
Price	5		
Scoring Sheet Criteria	3		
TOTAL POINTS	8		
<p>* If vendor met all criteria on the RFP they received a minimum score of 3. If exceeded, a score of 4 or 5</p> <p>Winning Vendor: Information Systems Consulting - selected on best value - meeting the criteria placed within the RFP and Price. Sole bidder.</p>			



Communication Technologies
specializing for world of communication

Voice: 314.868.1100
 Toll Free: 866.868.1100

Corporate: Wichita, KS
 East Coast: Orlando Beach, FL

email: info@cti.com
 web: www.cti.com

Jun 14 10 09:34p

Federal Programs Complian

386-673-1345

p.5

FRNs 1903750 & 1903789		Company	Counter Trade Products	Shi	Imagine Technologies
	Bid Quote		36% off Published List	32% off Published List	29.70% off Published List
	Price		5	4	3
	Scoring Sheet Criteria		3	3	3
	TOTAL POINTS		8	7	6
* If vendor met all criteria on the RFP they received a minimum score of 3. If exceeded, a score of 4 or 5		Winning Vendor: Counter Trade Products - selected on best value - meeting the criteria placed within the RFP and Price.			



Communication Technologies
accelerating the world of communication

Voice: 386.673.1345
 Toll Free: 866.673.1300

Corporate Office, KS
 East Coast Orlando Beach, FL

email: info@compta.com
 web: www.compta.com

Jun 14 10 09:34p

Federal Programs Complian

386-673-1345

p.6

HP Officejet J4500 All-in-One series

Fax Log for
 Federal Programs Complian
 386-673-1345
 Nov 11 2009 11:40AM

Last Transaction

Date	Time	Type	Station ID	Duration	Pages	Result
Nov 11	11:37AM	Fax Sent	19735996515	2:11	5	OK

Note:

image on Fax Send Report is set to On

An image of page 1 will appear here for faxes that are sent as Scan and Fax.