

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of:

)	
Request for Review of a decision)	
by the Schools and Libraries Division)	Administrator Correspondence Dated
for Puyallup School District Number 3)	May 10, 2010
Puyallup, Washington)	
)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Request for Review or Waiver

In accordance with Sections 54.719 through 54.721 of the Commission’s Rules, now comes Puyallup School District Number 3 (Puyallup) before the Federal Communications Commission (Commission) requesting review of a decision of the Schools and Libraries Division of the Universal Service Administrative Company (Administrator). This request comes before the Commission in a timely manner from the Administrator Decision Letter dated May 10, 2010.

Applicant Name: Puyallup School District Number Three
Billed Entity Number: 145268
Service Provider: Unite Private Networks
SPIN: 143029868
Form 471 Application Number: 688179
Funding Request Number: 1885674

Reason for denial:

The winning vendor was not selected in accordance with the process listed in the original vendor selection documentation provided during review.¹

And

USAC denied the funding request because the revised documentation was created and submitted after the initial denial template was issued to the applicant by Selective Review.... USAC has determined that the revised evaluation sheet (that was submitted during Selective Review) contradicts the originally submitted documentation and it was submitted after the denial template was issued to inform the applicant of the original violation.²

Background

Puyallup planned and prepared for a broadband Wide Area Network (WAN) long before the RFP for this funding request was issued. In June 2006, Puyallup contracted with network consulting firm Seitel Leeds and Associates to develop a feasibility study for improving connectivity for Puyallup's 37 school and administrative sites. Puyallup had been utilizing DS1 circuits and leasing additional circuits as bandwidth constraints limited access. The study was to determine the feasibility of Puyallup constructing and owning its WAN. While the study concluded a school district owned WAN could see a return on investment in 4.2 to 10 years, the consultants warned Puyallup would incur significant liability, overhead and permitting issues.³

After careful consideration of all issues involved with ownership of a WAN, Puyallup decided it would be more prudent to lease WAN services rather than outright ownership. One significant advantage of leasing telecommunications services is that leased services used by and for eligible entities would be granted discounts under the Schools and Libraries E-Rate Program.

¹ USAC Funding Commitment Decision Letter, Dated January 19, 2009, Page 3

² Administrator Appeal Denial Letter, Dated May 10, 2010, Page 1.

³ Puyallup School District No. 3 Request for Proposal for High Bandwidth Intra-District Metropolitan Area Network, Released January 8, 2009, beginning on Page 27 of Attachment 5.

Puyallup therefore elected to release a Request for Proposal for the equivalent of a WAN – a Metropolitan Area Network (MAN) – in conjunction with the 2009 E-Rate filing window.

Puyallup posted Form 470 Number: 200460000719663 on January 7, 2009 indicating a desire for a multi-year contract for a MAN/WAN in accordance with an RFP. The RFP was released on January 8, 2009 with responses due on February 5, 2009. The allowable contract award date for the Form 470 was February 4, 2009. Both the Form 470 and RFP were posted for the required 28 days before bids were due. The RFP contained an evaluation grid for all prospective bidders. The grid listed Price as the primary factor with a weight of 40 percent. Other factors included vendor ability to provide networking solution that best meets the defined requirements (30%), vendor prior experience providing K-12 network solutions (15%), vendor available technical support personnel and qualifications (10%), and proposal is detailed and complete (5%) for a total of 100 percent.

Puyallup engaged the services of a consultant to provide a synopsis and scoring tally of responses for Puyallup officials to consider. In a report dated February 8, 2009, Stoops Consulting, Inc. submitted scoring and recommendations to Puyallup (Original Stoops Report, Attachment 1). According to the report, Qwest and Unite Private Networks had scores of 72.7 and 71.2 respectively with the local service provider, EMAN Networks, a distant third at 54.2 points. Despite the raw score on the evaluation matrix, it was the recommendation of Stoops that Puyallup engage in final negotiations with Unite Private Networks. According to Stoops: “While Qwest has a slightly better numerical score based on the overall review *the cost benefit of the Unite Private Networks proposal over the Qwest proposal is significant.*”⁴ (emphasis added).

⁴ Original Stoops Consulting Report, February 8, 2009 Page 7.

Three Puyallup staff members reviewed the Original Stoops Report: Jay McSweeney, Director of Technology; Christina Tillman, IT Customer Services Coordinator; and Cathy McDaniel, Director of Procurement. It was immediately noted that the price figures in the Stoops report were completely inaccurate. The Qwest response, at over \$13 million, was approximately double either EMAN or Unite for a 10 year contract but the scoring indicated that Unite had the lowest price score with Qwest second and EMAN first. The calculation error was so obvious on its face that the reviewers did not require Stoops to recalculate at the time.⁵ Puyallup officials rescored the report based on the actual price responses using a spreadsheet created on February 10, 2009 (Attachment 2). The revised spreadsheet corrected mathematical errors and took into consideration the Stoops recommendation and made the selection of the most cost effective response: Unite.

On February 11, 2009 both Unite Private Networks and Puyallup schools signed a ten year, \$9,256,013 contract to build and lease a high bandwidth, Metropolitan Area Network to provide digital connectivity to all of Puyallup school district's schools and administrative buildings. All Puyallup school, local and state procurement regulations were meticulously followed with this procurement.

On February 11, 2009 Puyallup also filed the Form 471 requesting E-Rate discounts on the eligible services provided under the MAN contract. The Form 471 application requested a 49 percent discount on the yearly lease of \$280,500 and one-time non-recurring charges of \$6,451,013. Puyallup submitted the application in a timely manner to the Administrator and provided the required Item 21 attachments to substantiate the funding request.

⁵ Original Stoops Report, page 7, calculated three years of recurring charges for Unite rather than ten. See Attachment 1, page 7.

On March 16, PIA reviewer Chris Averill requested information on the funding request. Puyallup gathered and provided information to Mr. Averill until all issues appeared to be resolved by May 20, 2009. Although permissible under Administrator policy for PIA review, Mr. Averill did not request any documentation or information related to the procurement process.

Puyallup was notified on June 9, 2009 that the Puyallup applications would undergo a Selective Review by the Administrator. Ms. Heather Squire was the Administrator contact for the Selective Review. In accordance with Administrator policies, Puyallup was given one month to provide a response to the Selective Review. On June 25, 2009 Ms. Squire granted a request to extend the due date of the response to July 17, 2009. Puyallup provided a response to the Selective Review on July 15, 2009.

On July 27, 2009 Ms. Squire requested additional detailed information about E-Rate related activities within the school district including professional development, building retrofitting to accommodate network gear and computers, and all information about the vendor selection process. The July 27 correspondence also contained the following quote: “Based on the documentation you provided during the Selective Review, (FRN) 1885674 will be denied because the winning vendor was not selected in accordance with the process listed in the vendor selection documentation provided during the review. Although price was given the highest points, the vendor selected was not the one with the highest total score overall. You did not adhere to your own criteria in the vendor selection process. Applicants must select the most cost-effective provider of the desired products or services eligible for support with price as the primary factor.” This was followed with: “If the FRN should not be denied and you have alternative information, please provide the supporting documentation.” (Attachment 3, page 2).

On July 29, 2009, Puyallup contacted Stoops and requested that the mathematical error contained in the Original Stoops report be corrected to clearly reflect accurate price responses from all vendors to the RFP. In an email dated July 30, 2009 Mark Stoops responded: “I reviewed my report from February and identified that I had made a few errors in the scoring matrix.” The email continued: “I have corrected the scoring matrix and the summary matrices in the attached report. My apologies for any inconvenience this oversight may have caused.”

On August 10, 2009 Puyallup submitted a 225 page document to Ms. Squire with the entirety of information requested under the Item 25 review (Attachment 4), including the revised bid calculation report. Puyallup received no further communication from Ms. Squire. It should be noted that the 225 page document contained the rescored spreadsheet created on February 10, 2009. The spreadsheet was corrected to account for EMAN’s clarification and increased cost for armored fiber cable and Unite addition error from page 7 of the Original Stoops report (Attachment 4, page 77).

On December 1, 2009, Selective Review Manager Pina Portanova notified Puyallup that Ms. Squire would no longer be working on Selective Reviews and the Puyallup review would be reassigned to Ms. Jane Giancamillo. Ms. Giancamillo made a request for additional information regarding three FRN unrelated to the FRN here under appeal. Puyallup responded on December 7, 2009. There was no further correspondence with Ms. Giancamillo.

On January 19, 2010 Puyallup received a Funding Commitment Decision Letter denying the funding request for Unite because: “The winning vendor was not selected in accordance with the process listed in the original vendor selection documentation provided during the review.”

Discussion

Puyallup is at an utter loss to understand how the Administrator could possibly conclude a bidding violation occurred with procurement of services under this contract. All local and state procurement regulations were assiduously adhered to. E-Rate policies and regulations were researched and followed meticulously. Puyallup has an outstanding record of compliance with state and local laws and followed those laws and regulations with this procurement. The only possible rationale for denial, although unclear by Administrator documentation, would be the initial Stoops report containing a blatant mathematical error in scoring.

The Administrator's reason for denial in the January 19 Funding Commitment Decision Letter is vague and does not clearly identify the reason for denial. The stated reason for denial - The winning vendor was not selected in accordance with the process listed in the *original* vendor selection documentation provided during review. - is factually incorrect (emphasis added). Puyallup issued an RFP, evaluated the bid responses and selected a vendor with the most cost effective response to the RFP, with price being the primary consideration. The January 19 Commitment Decision Letter and the June 27 correspondence from Ms. Squire that the funding request "...will be denied because the winning vendor was not selected in accordance with the process listed in the vendor selection documentation provided during the review." differs only with the addition of the word "original."

Puyallup can only conclude that the Administrator refused to consider clarifying information provided subsequent to the June 27 correspondence. Puyallup believes the Administrator erred by not considering the corrected evaluation report. Any knowledgeable person reviewing the bid responses and the "original" evaluation report would conclude a mathematical error had been made in the Stoops report.

On initial review and review on appeal the Administrator appears to erroneously conclude that Puyallup selected the winning vendor based entirely on the Stoops report. Puyallup engaged the services of Stoops Consulting to independently score the RFP responses and provide Puyallup with a reference from which to select a vendor. Stoops Consulting cannot select or award a contract for Puyallup. According to the RFP Section 2.28.2, Evaluation Criteria: "...the District intends to award the contract to the vendor providing the greatest price to performance value for all services and equipment." Further 2.28.3, Award of Project states: "The District will select and award the project to the vendor felt best meeting the evaluation criteria." In accordance with the RFP, price was the primary consideration accounting for 40 percent. Using the Stoops report and correcting for mathematical errors on a spreadsheet dated February 10, 2009 (Attachment 2), Puyallup employees evaluated the responses and concluded that Unite was the vendor providing the greatest price to performance value for services. As noted on the spreadsheet, the annual cost for Qwest was "WAY too high."⁶

The Original and Revised Stoops Reports recommended that Unite Private Networks be given the opportunity for final negotiations because the cost benefit over the Qwest proposal is "significant" belies the evaluation score given Unite in the evaluation matrix. Upon review of each proposal, it is easily apparent that the overall price for Unite was approximately 30 percent *below* that of the Qwest proposal – approximately \$4 million below after the mathematical error correction. Because the Administrator received copies of all bids, the reviewer should have discerned from a simple reading of the proposals that a mathematical error was made on the evaluation sheet. Rather than accept the Corrected Stoops Report, the Administrator chose to deny the entire funding request simply because it received conflicting information during a Selective Review.

⁶ Attachment 2 Qwest Notes.

The Administrator denial on appeal was equally mystifying. According to the denial letter on appeal: “USAC has determined that the revised evaluation sheet (that was submitted during Selective Review) contradicts the originally submitted documentation and it was submitted after the denial template was issued.” Puyallup agrees the revised evaluation sheet contradicts the originally submitted documentation because the original sheet contained a *mathematical error*. The Selective Reviewer did not detect the mathematical error. Rather, she simply noted that the overall score favored Qwest over Unite. On appeal Puyallup emphasized that there was a mathematical error and the revised documentation corrected the mathematical error. The timing of the revised evaluation sheet has nothing to do with the fact that the original evaluation sheet contained a mathematical error. The mathematical error was evident on its face and the “revised evaluation sheet” *corrected* the error as opposed to providing any new information.

PIA Review and Selective Review

The Administrator conducts several types of reviews during the course of a funding request. Prior to funding commitment the two most common reviews are Program Integrity Assurance (PIA) and Selective Review. The two reviews have distinctly different standards. During PIA review, applicants are given the opportunity to provide additional information, clarify unclear or contradictory information or provide new information not previously submitted to the reviewer. These standards have been set by a series of Commission Orders throughout the life of the E-Rate program.⁷ Specifically, in Fayette, applicants may provide clarifying information to substantiate unclear information and the Administrator must continue to request

⁷ Naperville, FCC 01-73, Rel. 2/227/2001; Fayette County, DA 05-2176, Rel. 7/26/2005; Shawano-Gresham, 04-308, Rel. 2/6/2004.

information where an ambiguity exists. The first opportunity Puyallup had to provide bidding evaluation information was during the Selective Review. There were absolutely no questions regarding bidding, evaluation or bid scoring during initial PIA Review. In accordance with Selective Review instructions, Puyallup provided all documents as they had been received from vendors and the Original Stoops Report. When Ms. Squire discovered the blatant mathematical error, she should have asked Puyallup for clarification, in accordance with the Fayette decision.

A Selective Review however is a much more comprehensive audit-like review of the entire application from RFP to vendor selection. A Selective Review also evaluates the applicants' ability to make effective use of E-Rate funded services by determining if the applicant has sufficient staff development, technical support, infrastructure support, and budgeted funds to support the non-discounted portion and other related services. The Commission has issued a number of Orders concerning Selective Reviews, also known as "Item 22" or "Item 25" Reviews depending on the version of the Form 471 used.⁸ Apparently, based on Commission Orders, during Selective Review the Administrator is much more reticent to accept new or clarifying information or changes to an application.

For example, if an applicant requested \$5 million for Internal Connections but lacked the ability to make effective use of the equipment due to a weak infrastructure, the applicant could cancel some or all funding request during PIA review without penalty. However, once notified of a Selective Review, the applicant must demonstrate an ability to support the entire funding request and cannot then request portions of the funding request be removed. The consequence of failing a Selective Review can be as severe as total funding denial of all funding requests except basic telephone service.

⁸ Laurel Hall School, DA 01-853, Rel. 4/6/2001

Using the commonly accepted standards of a “regular” PIA review, the reviewer would question the obvious discrepancy between bids and evaluation matrix and allow Puyallup to provide additional information to clarify. Puyallup would have pointed out the Stoops report error, adjusted the evaluation matrix and funding would have been forthcoming in a timely manner. However, the error was not discovered by the Administrator until a Selective Review had been initiated and it appears new, clarifying information, although quite apparent, was disallowed by the reviewer. Puyallup believes new information was not admitted because of internal Administrator policies governing the handling of applicants subject to Selective Reviews. While Selective Reviews must be more stringently administered than initial reviews and certain items cannot be corrected, such as removing funding requests that are not supported, clarifications must be allowed under Fayette. Puyallup must point out the Commission has granted limited authority to the Administrator regarding Selective Reviews. Commission Orders subsequent to Laurel Hall appear to supersede current practice.

Administrator policies regarding acceptance of new information during PIA verses Selective Review appear to be the catalyst for funding denial and denial on appeal. Puyallup has shown that the original evaluation matrix contained a mathematical error. Regardless of where the application was in the Administrator process (PIA or Selective Review), correction of an obvious calculation error could be detected and corrected by the Administrator at any time without need for “new” information from Puyallup.

The Administrator is charged under Commission regulation to administer the E-Rate program in accordance with Commission regulation and Orders. The Administrator “...may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of

Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.”⁹

Program rules generally require eligible services to be competitively bid through an electronic notice maintained by the Administrator. The electronic notice shall be in addition to any applicable state or local competitive bid requirements but not preempt state or local requirements.¹⁰

Puyallup has a stellar record of sound fiscal management and adherence to state and federal regulation. In August 2009 Puyallup received its seventh consecutive perfect state audit report. Puyallup is similarly fastidious with procurement.

Lost Documentation

While Puyallup may speculate clarifying information was disallowed because of conflicting Administrator policies between PIA reviews and Selective Reviews, it is possible the answer is simply that the clarifying response was lost in the Administrator’s system with reviewer transition from Ms. Squire to Ms. Giancamillo. It is commonly known that applicants are routinely asked to provide identical documentation to reviewers when reviewers are replaced or on extended leave. One of the final communications from the first Selective Reviewer, Ms. Squire, was on July 27, 2009 when she informed Puyallup that the Unite funding request would be denied. Puyallup, seeing its largest single FRN for almost \$7 million on the verge of denial, immediately contacted Stoops to officially correct the obvious mathematical error in its report for submission to the Administrator. The last documented communication from Ms. Squire was on August 4, 2009 confirming Puyallup had been granted an extension of time to provide a

⁹ 47 U.S.C. §54.702(c)

¹⁰ 47 U.S.C. §54.504 (a)

response to the July 27 request for information. On August 10, 2009 Puyallup submitted a comprehensive 225 page response to Ms. Squire. Ms. Squire did not respond at all to the August 10 response. It is entirely possible the entire clarifying response was misplaced by the Administrator, as Puyallup did not receive any correspondence from the Administrator until December 1, 2009 with notification that Ms. Squire had been replaced. At that point, the denial train appears to have left the station and the new reviewer had simple follow-up questions for other unrelated FRN.

Whether the denial resulted from an Administrator misinterpretation of Selective Review regulations or simply lost documentation, the effect was to improperly deny Puyallup E-Rate funding that absolutely should have been authorized for the 49 percent discount the Puyallup community was entitled to. It should be noted too that at some point between July 27 and January 19, 2010 the Administrator recognized that the \$6,451,013 Non-recurring charge erroneously included with the first year of the funding request should have been amortized over three years. The Funding Commitment Decision Letter reduced the non-recurring charges to \$2,150,337.66 to reflect a three-year amortization schedule with absolutely no communication with Puyallup.

Administrator Audits

As part of its fiduciary duty to ensure E-Rate funds are disbursed in accordance with program rules, the Administrator frequently conducts audits of applicants. Typically, auditors will select several funding commitments and thoroughly review the process from technology plan development, RFP and Form 470 filing, bid evaluation, discount calculation, eligible services, invoice review, and document retention.

If a potential rule violation is discovered during the course of an audit, the auditor will ask follow-up questions giving the applicant an opportunity to explain any discrepancy. The final audit report will contain any potential rule violations, the auditor's conclusion, applicant response and comment from the Administrator. The audit report then goes to the Administrator Board of Directors for approval and finalization. If a rule violation is discovered that would require repayment of funds, the Board of Directors instructs the Administrator to issue a Commitment Adjustment Letter (COMAD) to either the applicant or vendor depending on which entity was responsible for the rule violation.

Based on the facts presented here, if Puyallup had selected Qwest using scoring from the Original Stoops Report, an auditor would without doubt question the price scoring component as the Qwest quote was 30 percent higher than the other two. The auditor would also discover the mathematical error in the Original Stoops Report and likely determine the most cost effective vendor was not selected - a violation of program rules - and recommend a COMAD of the entire funding commitment. The Administrator Board of Directors would most likely agree with the audit conclusion and demand Puyallup return all funds associated with the Qwest contract.

Conclusion

Puyallup School District Number 3 commissioned studies for the feasibility of a Metropolitan Area Network. Puyallup reviewed the studies and planned for many years. Puyallup issued bonds and received state matching funds for several capital construction projects, including the MAN, with the support of the community. For E-Rate, Puyallup complied with all Universal Service program rules for bidding and selection of a qualified vendor.

Puyallup provided the Administrator with proof of ability to make effective use of discounted services. Puyallup timely and properly filed all forms.

The Administrator erroneously concluded that vendor selection would be based solely on the report of a third party contractor rather than the evaluation by Puyallup employees. Puyallup selected the winning vendor in accordance with local policies and in accordance with evaluation criteria set out in the RFP.

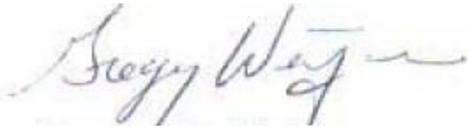
The Administrator failed to recognize the Qwest price response was 30 percent higher than Unite and would not deserve the highest price evaluation and chose instead to rely on a flawed evaluation matrix to deny funding.

Had the mathematical error in the Original Stoops Report been discovered by PIA during the initial review, the error correction would have been accepted. However, because the error was not brought to the attention of Puyallup until the application was the subject of a Selective Review, the Administrator classified the recalculation as clarifying or “new” information and disallowed it.

Had Puyallup selected Qwest as indicated by the Original Stoops Report, an audit would have found the mathematical error with the Stoops evaluation. The auditor would determine the award should have been made to Unite and the Qwest selection violated program rules and any disbursed funds would be subject of a COMAD.

Puyallup was denied funding for a single funding request that constituted the vast majority of our E-Rate application, we ask the Commission to overturn the Administrator’s decision and remand this FRN for processing and funding in accordance with the Telecommunications Act of 1996.

Respectfully Submitted this Sixth day of July, 2010,

A handwritten signature in cursive script, appearing to read "Greg Weisiger". The signature is written in dark ink on a light-colored background.

Greg Weisiger

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