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July 8, 2010

CC Docket No. 02-6
Request for Review

FCC
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Billed Entity: Gila Bend Unified School District 24
Billed Entity Number (BEN): 142993
FCC Registration Number: 0012365326
Form 471 Application Number: 505646
FRN: 1389610
Funding Year: 2006-2007
Administrator's Decision on Appeal Date: June 15, 2010

Background:

During the course of an audit it was determined that the price of eligible products and services was not the primary factor in the vendor selection process. The applicant did not retain sufficient documentation regarding the number of bids, associated prices, and bid evaluation, so the cost-effectiveness, with price being the primary factor, of the bid could not be determined. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds.

The applicant appealed the above audit point. The applicant selected the service provider using a State Master Contract. By Arizona State Procurement Regulations, this action negates the requirement to obtain a minimum of three bids and the associated bid evaluation process. When using this contract, the only documentation required is the applicant's purchase order. Also, for the Funding Year 2005, it was not yet clear by FCC Rules or the guidance provided by USAC that a "mini-bid" process is required when selecting service providers using a State Master Contract. This guidance was not provided until the 2007 Funding Year. The applicant in good faith was confident that both Arizona State Procurement Regulation and FCC Rules regarding competitive bidding process had been satisfied and had no reason to believe otherwise.

USAC Basis for Denial of Appeal:

"On appeal you state that the District selected Verizon Business Global LLC (MCI Communications Corporation) as a service provider for Telecommunication Services using a State Master Contract. The record shows that on Block 5, Items 15a, the District indicated that the services (within the above FRN) were delivered on a Month-to-Month basis. The record also shows that on Block 5, Item 12, the District indicated that the establishing Form 470 Application Number: 604990000561119. The record further shows that this form was filed by the District. Program rules and procedures dictate that if an applicant files a Form 470 and considers a state master contract as one of the bids, the applicant must follow a competitive bidding process pursuant to FCC requirements and state and local procurement law. Price must be the primary factor that is it must be weighted more heavily than any other factor. If the

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applicant selects the state master contract as the most cost-effective alternative, the applicant is required to follow the applicable provisions of the state master contact, state contract law, and state and local procurement laws. On appeal you have not provided any persuasive information to refute USAC findings that this funding request is not in compliance with this support mechanism competitive bidding rules.

Basis of Request for Review:

The applicant does not dispute the facts stated above concerning how the application was filed and the qualifying Form 470. The applicant selected the service provider using a State Master Contract. By Arizona State Procurement Regulations, this action negates the requirement to obtain a minimum of three bids and the associated bid evaluation process. When using this contract, the only documentation required is the applicant's purchase order. Thus, state and local procurement laws were adhered to.

The basis for this Request for Review is that the applicant cannot be held responsible for rules that become effective in the future. The application was filed for Funding Year 2006 under the rules as they were understood at that time. The audit is measuring compliance with rules that went into effect or were clarified after that funding year. For the Funding Year 2006, it was not yet clear by FCC Rules or the guidance provided by USAC that a "mini-bid" process is required when selecting service providers using a State Master Contract. This ruling and subsequent guidance was not available until July 2007. The applicant was following the FCC rules as specified by the Fifth Report and Order, paragraph 21, Competitive Bidding Requirements. The applicant in good faith was confident that both Arizona State Procurement Regulation and FCC Rules regarding competitive bidding process had been satisfied and had no reason to believe otherwise.

Supporting Documentation:

The Fifth Report and Order (referenced by the auditor in this case), paragraph 21, *Competitive Bidding Requirements*, footnote 41 states that "We note that our rules do not require applicants to affirmatively seek out price quotes from multiple sources if no service provider responds to a Form 470 posting." Further, "our rules require applicants to seek competitive bids; they do not require an applicant to have competing bidders where none appear."

FCC Rule 54.504 does not state that a mini-bid process is required when using a State Master Contract. Guidance on this matter was not offered by USAC prior to July, 5, 2007; and was published at that time via a Schools and Libraries Tip Sheet.

Corrective Measure:

The Original Funding Commitment of $5,116.12 should be restored and the applicant should not be required to remit the $1,183.35 disbursed to date.

Thank you,

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