

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

In the Matter of:

)	
Request for Review or Waiver of a Decision)		
of the Schools and Libraries Division)		Administrator Letter Dated February 10, 2011
from Culpeper County Public Schools)		and Letter Dated February 16, 2011
)	
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 Culpeper County Public Schools, Virginia (Culpeper) before the Federal Communications Commission (Commission) requesting review or waiver of a Commitment Adjustment (COMAD) by the Universal Service Administrative Company (Administrator). This request comes before the Commission in a timely manner from the Administrator letters dated February 10, 2011 and February 16, 2011.

Applicant Name: Culpeper County Public Schools
Billed Entity Number: 126463
FCC RN: 0013755293

Service Provider: ATT Corp
SPIN: 143001192
Fund Year 2006
Form 471 Application Number: 523427
Funding Request Numbers: 1441368
Commitment Adjustment: \$11,676.67

Reason for Commitment Adjustment:

On your FY 2006 FCC Form 470 You certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During the course of an audit it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements. The review has shown that the applicant failed to obtain quotes from potential contractors and no written determination or justification was supplied with regards to sole source providers.

Service Provider: ATT Corp
SPIN: 143001192
Fund Year 2006
Form 471 Application Number: 523427
Funding Request Numbers: 1441308
Commitment Adjustment: \$13,564.80

Reason for Commitment Adjustment:

On your FY 2006 FCC Form 470 You certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During the course of an audit it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements. The review has shown that the applicant failed to obtain quotes from potential contractors and no written determination or justification was supplied with regards to sole source providers.

Service Provider: Verizon Virginia
SPIN: 143001422
Fund Year 2006
Form 471 Application Number: 523427
Funding Request Number: 1441388
Commitment Adjustment: \$14,365.44

Reason for Commitment Adjustment:

During the course of an audit it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements. The review has shown that the applicant failed to obtain quotes from potential contractors and no written determination or justification was supplied with regards to sole source providers.

Background

Culpeper applied for E-Rate discounted funding for Internet and telecommunications services provided to the school division during E-Rate Fund Year 2006. Culpeper complied with both the letter and spirit of all federal, state and local procurement laws and regulations when securing these services. Culpeper will show that it went beyond the minimum required for compliance with the funding requests here under appeal.

In January 2009, Kenneth A. Tarr, CPA from the accounting firm Dembo, Jones, Healy, Pennington and Marshall, P.C. contacted Culpeper indicating they were conducting an audit on behalf of the Administrator for E-Rate Fund Year 2006. According to the correspondence, the audit team would be on site beginning January 21, 2009 for approximately one week. The actual visit lasted upwards of three weeks as some audit team members became ill and one member was replaced. Auditors had numerous follow-up questions and ongoing correspondence during the ensuing months.

On March 29, 2009 the accounting firm Thompson, Cobb, Bazilio, and Associates, P.C. submitted Independent Accountant's Report SL-2008-328 to the Administrator. The audit report cited violations of local procurement regulations indicating the services fell between \$3,000 and \$30,000 and required the solicitation in writing of at least three quotations. The auditor also cited Culpeper for improper documentation of the sole source determination for which Culpeper ultimately secured services.

On January 6, 2010 the Administrator considered the audit findings and determined it would contact Culpeper to determine if procurement rules had been violated and seek recovery

of disbursed funds if it felt services were secured in violation of local procurement regulations. The audit report and Administrator determination are included here as Attachment A.

During the late summer and fall 2010 Culpeper was in communication with Mr. Ken Stibitz, Administrator reviewer who had a number of questions regarding the procurement of the services under audit. Culpeper answered all questions. The Administrator issued the Commitment Adjustment letters requesting all disbursed funds be returned on February 10, and 16, 2010 – Two years after the initial audit visit.

Discussion

Culpeper is at a complete loss to understand how the Administrator could possibly conclude local procurement violations occurred for these services. Culpeper complied with all local procurement regulations and all E-Rate regulations with the possible exception of indicating an RFP would be made available on the Form 470.

For Fund Year 2006, Culpeper filed Form 470, Number 456960000552540 providing detailed information for potential vendors of the specific needs for Culpeper. The Form 470 was posted on November 18, 2005 with an allowable contract award date of December 16, 2005. The Form 470 did not indicate an RFP was available.

On December 16, 2005 Culpeper posted an RFP document on the Culpeper Web site with the following language:

Request for Proposal for Telecommunication Services

In compliance with state and federal requirements regarding the continuance of telecommunication services to the Division, service providers are requested to visit the Form 470 postings on the USAC website, and to send the Division detailed proposals listing services, to wit, T3 managed Internet Services with Internet Protocol addresses Class C, 6 mb Internet access at six elementary schools, POTS service

with state, local and long distance rates, point to point T J s connecting buildings to the data network, inbound PRJ DiD calling (1 TJ), and outbound state and long distance calling on two PRJs.

The RFP document remained available on the Culpeper Web site for approximately two months. Culpeper received absolutely no response from vendors for the services requested on the Form 470 or the RFP. Having no response from either the Form 470 or the RFP, Culpeper elected to continue services with incumbent providers at either tariff or existing rates for the 2006 Fund Year. In a report to the Culpeper school board for weekly review from the week of February 13, 2006, the decision to continue services under “sole source” was reported to the board. The report is included here as Attachment B.

The initial audit report indicated Culpeper violated local procurement rules because three potential vendors were not solicited in writing and the sole source justification was not properly configured. In response to the initial audit findings, Culpeper pointed to the RFP that was made available to prospective vendors.¹

The auditors cited a violation of Culpeper Purchasing Policies DJ-R1 for solicitation of vendors.² At the time of solicitation, Culpeper did not know the value of prospective services. Consequently a Form 470 was posted and followed up with an RFP. Under local procurement regulations, an RFP is required for purchases that are anticipated to exceed \$30,000. Regulations governing such purchases supersede regulations governing small purchases and three solicitations are not required in such cases.

Auditors then cited a lack of written documentation for the sole source justification.³ Culpeper is completely mystified by this conclusion. A “sole source” justification is by definition

¹ Attachment A, page 8

² Attachment A, page 4

³ Attachment A, page 4

done in lieu of a competitive bid.⁴ Culpeper did conduct a competitive bid with the posting of a Form 470 and issuance of an RFP. After receiving no response from the bid documents Culpeper concluded that the services should be continued on a sole source basis and reported as such to the board. Culpeper believes the auditor confused the use of the phrase “sole source” in the board report to mean no competitive bid had been conducted, even though the report clearly stated “There were no bids for services.”⁵ Had Culpeper secured services as “sole source” in accordance with procurement policies, such services could not receive E-Rate discounts as no competitive bid would be initiated – a violation of program rules. This was clearly not the case here.

Considering the state of telecommunications competition during the period under audit, it was not unusual that there would be no response to a service solicitation. The Virginia Corporation Commission, the agency responsible for regulation of utilities and telecommunications companies, granted Verizon approval for partial deregulation of telecommunications services in December 2007.⁶ Prior to this ruling, the presumption was that there was generally a lack of adequate competition in the telecommunications marketplace in Virginia.

Culpeper does note that the Form 470 cited for the services here under appeal failed to check the box indicating an RFP would be made available. The Commission ruled in Green Bay Area Public School District that failure to check the RFP box on a Form 470 would not necessarily violate section 54.504(a) of the Commission’s rules so long as the Form 470 included

⁴ Attachment A, page 4 “Upon determination in writing that there is only one source practicably available...a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation.”

⁵ Attachment B, Page 2

⁶ http://www.scc.virginia.gov/puc/comp/v_exch/c_verdereg_07.aspx

enough detail for service providers to formulate bids.⁷ The Form 470 posted by Culpeper included detailed descriptions of the services requested and mimicked the RFP. Both the Form 470 and the RFP were available for a minimum of 28 days before a decision was made to continue services with incumbent carriers on a tariff or Month-to-Month basis.

Conclusion

Culpeper County Public schools complied with all local, state and federal procurement and E-Rate regulations when requesting and securing services for Fund Year 2006. The auditor erred when citing the incorrect procurement regulations in its finding and misinterpreting use of the phrase “sole source” in the board report.

Culpeper requested services that were necessary for the efficient operation of the school division, did not request excessive services and did not waste or abuse program resources.

Culpeper asks the Commission to overturn these Commitment Adjustments. Alternatively, and in the public interest Culpeper asks the Commission to waive any relevant regulation or policy in this instance.

Respectfully Submitted this Eighth day of April, 2011,

Greg Weisiger

E-Rate Central

Consultant to Culpeper County Schools

804-302-4406

⁷ Green Bay Area Public School District, DA 10-2305, Rel. December 6, 2010