

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

)	
Request for Review of a decision)	
by the Schools and Libraries Division)	Administrator Correspondence Dated
for Durant Public Schools, Durant)	March 28, 2013
Mississippi)	
)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Request for Review or Waiver

Requestor: Durant Public Schools
Billed Entity Number: 128614
FCC Registration Number 0012446472
Funding Request Numbers: 1488538, 1488561, 1488511
Form 471 Number: 537591

In accordance with sections 54.719 through 54.721 of the Commission's rules, Durant Public Schools (Durant) requests Federal Communications Commission (Commission) review of a decision of the Schools and Libraries Division of the Universal Service Administrative Company (Administrator). This appeal is timely submitted within 60 days of the Administrator decision dated March 28, 2013.

Durant did not violate Mississippi or Commission procurement regulations. The services under this contract were covered under a competitively bid state master contract and were procured in accordance with provisions of Mississippi procurement law specifically for state master contracts.

Durant Public Schools

Durant Public Schools are located in an impoverished rural section of Mississippi. Durant has a single school serving approximately 550 students with over 95 percent of the student population minority and almost 100 percent qualify for free or reduced price lunch programs. Durant's E-Rate discount has been 90 percent throughout the history of the program. The annual school district budget is modest and insufficient to provide teachers and students with state-of-the-art technology found in more affluent school systems.

Background

The FRN here under appeal were the subject of an audit conducted by an audit firm Grant Thornton. This audit was one of approximately 1000 comprehensive audits of E-Rate applicants the Administrator conducted at the behest of the Commission's Office of Inspector General (OIG). The Administrator contracted with several audit firms to assess compliance with all aspects of E-Rate regulation and policy. Numerous audit findings resulted in Commitment Adjustments (COMADs) of millions of dollars and appeals to the Administrator and Commission which continue to work through the system today.

After reviewing the audit and follow-up, the Administrator concluded Durant had violated Mississippi procurement regulations and sought recovery of all disbursed funds:

Upon review of the appeal letter and relevant documentation submitted, it has been determined that this funding commitment must be rescinded in full. On the FY 2006 FCC Form 470, you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During an audit, it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements based on the inability to show that the invitation for bids was posted once per week for two weeks in newspapers, that the bids received were opened publicly at a designated location on the eight day after the last notice and the award was done via

written notice. FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services ordered, and by submitting a complete description of services requested so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to comply with local and state procurement laws, you violated the competitive bidding process. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant. Therefore, your appeal is denied.

Grant Thorton was contracted by the Administrator to conduct the audit but withdrew before the audit was complete. The Commission's OIG directed the Administrator's Internal Audit Division (IAD) to complete the audit.¹ The IAD concluded that Grant Thorton had "substantially completed" the audit and the IAD had sufficient information to continue the audit.²

Based substantially on the paperwork provided by Grant Thorton, the IAD concluded that Durant had violated Mississippi procurement law in the initial audit report, rejecting Durant's contention that the contractor and services were covered under a state master contract because the master contract was not brought to the auditor's attention until after the audit was concluded.³

The Administrator agreed that beneficiaries must follow state and local competitive bidding requirements and E-Rate regulations. Based on the conflict, the Administrator would conduct a final assessment with Durant and determine if recovery is warranted.⁴

In correspondence dated April 24, 2012 the Administrator requested additional information from Durant regarding the competitive bid for the services here under appeal. Durant stated that the RFP responses were from EPL qualified vendors. As such, the contract was competitively bid by the state of Mississippi and exempt from state procurement requirements. Durant stated the timing of the

¹ Independent Auditor's Report on Durant Public Schools, SL2008BE095, Page 2, attachment 1.

² Independent Auditor's Report, Page 1.

³ Independent Auditor's Report Page 9 "USAC IAD Response"

⁴ Independent Auditor's Report Page 9 "USAC Management Response"

EPL revelation to the auditor or Administrator had no bearing on the fact that the vendor, the contract and the services were procured in accordance with state and local law.⁵

Discussion

The audits performed by independent audit firms during this period under contract with the Administrator resulted in thousands of “findings” and millions of dollars in COMADs. The audits were known as “attestation” audits and potentially covered every rule, regulation, or policy of the local school/library, state procurement, and the myriad of E-Rate regulations and policies. The independent audit firms frequently cited bidding violations of one extent or another when recommending full recovery of previously disbursed funding. As appeals have worked through the system, most of the COMADs for apparent competitive bidding violations have been overturned by the Commission.⁶ The Commission generally found that applicants either conducted fair and open competitive bidding, made ministerial or clerical errors that do not warrant complete rejection, or the technical violation of the Commission’s rules did not compromise the bidding process.⁷

Another audit of a Mississippi school district from audit firm KPMG resulted in a COMAD for services provided through the Mississippi EPL. The audit finding cited competitive bidding violations by Coahoma County Schools. Coahoma had cited the Mississippi EPL as the basis for securing services and appealed the COMAD to the Commission denying any competitive bidding violation. The Commission agreed and overturned the COMAD.⁸ In the Coahoma decision, the Commission recognized that a bidding violation did not occur because the services were procured from a state master contract that had been competitively bid.⁹

⁵ SLD COMAD Review Letter Response Page 1 “Finding 1” attachment 2

⁶ Aberdeen School District, Aberdeen, Washington, et al. DA 12-248, Rel. February 22, 2012,

⁷ Aberdeen at 1.

⁸ Coahoma County School District, DA 11-1369, Rel. August 8, 2011.

⁹ Coahoma at 8.

On February 3, 2005 the Mississippi Department of Information Technology Services posted Form 470 Number 152420000540143 on behalf of all schools and libraries in Mississippi. The Form 470 posting and bid evaluations resulted in a State Master Contract with CameraWatch. As a State Master Contract that complied with the Commission's competitive bidding requirements, the contract itself is eligible for E-Rate discounts without the need for applicants to duplicate the Commission's competitive bidding requirements.¹⁰ Durant utilized this contract for its services.

For Fund Year 2006, ten Mississippi school districts had 20 funding requests for CameraWatch equipment and maintenance totaling \$1,836,128.31.¹¹ With Durant and Coffeeville being the only exceptions, all other school districts cited the state Form 470 on their 2006 Form 471 applications.

Based on review of documents submitted during the audit, Durant personnel mistakenly cited its local Form 470 for FRN 1488538. The mistake was not discovered during application review, application funding, invoicing or the initial audit response. It was not until the audit follow-up was conducted that the mistake was discovered. This fact was not brought to the attention of the auditors at the time of the audit because the technology coordinator and business manager for Durant at the time of the Form 471 application submission were no longer employed by the district. The business manager had no official further contact with the district. The technology coordinator was re-hired during the second phase of the audit and provided additional documentation not available during the first audit. District employees working with the auditors were not familiar with the procurement and initial stages of the CameraWatch project and provided auditors with documents from files without the benefit of first hand recollections of the principle parties.

¹⁰ 47 C.F.R. § 54.500(g)

¹¹ E-RateCentral Funding Report for CameraWatch 2006: http://www.e-ratecentral.com/us/reports/fundingHistoryDetail_ben.asp?typ=spin&ky=143025728&ste=MS&fy=2006

For FRN 1488538 there was no local contract held by Durant and CameraWatch. Rather, these FRN were ordered pursuant to the EPL state master contract and in accordance with program rules, no local contract was necessary. Purchase Requisitions and Purchase Orders were issued for delivery and payment. The CameraWatch quote dated February 15, 2006 clearly listed the state of Mississippi ITS EPL master contract numbers with each item, as did the Durant purchase requisition and Purchase Orders, included here as Attachment 1. CameraWatch provided the equipment and installation and billed Durant the non-discounted portion and the Administrator the discounted amount. For this FRN Durant should have utilized the state master contract Form 470, Number 152420000540143. The local Form 470 for 2006 was put on the Form 471 by mistake.

For FRN 1488561, there were two responses for network wiring and equipment. Durant determined that CameraWatch would supply patch panels and data drops. The unit cost for patch panels from CameraWatch was over 50 percent lower than Synergetics and the overall cost for data drops was lower. Durant selected CameraWatch to provide the patch panels and data drops at a total cost of \$47,385.31, which was significantly lower than the Synergetics bid of \$55,975.63. Durant issued a Purchase Requisition and Purchase Order and secured services at discounted prices. Documentation is provided here as Attachment 2.

Contrary to the finding and decision for FRN 1488511, there were two responses for wireless access points. The per unit cost from Synergetics, quoting CISCO products was \$1,748 per access point, of which 10 were quoted verses the CameraWatch quote of \$1,438.46 per complete access point, of which 16 were quoted. Durant determined that the quote from CameraWatch better suited its needs and clearly the per unit cost was less than the Synergetics bid. A contract was not provided to the auditors for this FRN. Durant ordered this equipment pursuant to a Purchase Requisition and Purchase Order. Durant is at a loss to understand how the Administrator determined a contract was

signed prior to the 28 day posting period. Based on the original Commitment Adjustment Letters, it appears the Administrator mistakenly listed 1488511 as the FRN in violation of the 28 day posting requirement. Durant believes the FRN the Administrator intended to cite was 1488740 (Maintenance) as indicated in the audit report and included this FRN in its initial appeal to the Administrator. The Durant consultant preparing the Administrator appeal did not correct the initial error. Durant paid the non-discounted portion and CameraWatch billed the Administrator the discounted amount. Documentation is provided here as Attachment 3.

The Commission held in Aberdeen that ministerial, clerical or minor technical violations that did not compromise the bidding process do not warrant full recovery of funds.¹² In this case it is abundantly clear that the intent of Durant was to cite the state master contract and the state Form 470 for FRN 1488538, as the vast majority of Mississippi applicants had done for these services. The prices paid for the services were in accordance with the state master contract and similar to the other nine Mississippi applicants.

For FRN 1488561 and 1488511 there were two bid responses and the lowest cost vendor was chosen. Consistent with Aberdeen and Allendale¹³ Durant asks the Commission to waive any minor violations of program rules. The services were approved by the local board and audited by local auditors who found no violations. The outside auditor hired by the Administrator found a minor technical violation of state procurement, which would not have changed the outcome of the procurement in any way. There was absolutely no attempt to waste or abuse program resources or defraud the program.

¹² Aberdeen at 1.

¹³ Allendale County School District, DA11-723, Rel. April 21, 2011

Conclusion

Based on the facts presented here and precedent in Aberdeen, Allendale, Coahoma and others, Durant asks the Commission to overturn this COMAD and restore full funding for the FRN here under appeal.

In the alternative and in the public interest, Durant asks the Commission to waive any minor rule or policy violations in the procurement of these services and overturn the Administrator COMADs. Durant entered into service agreements in good faith, paid the non-discounted portion and received education-related services and equipment. Durant demonstrated it attempted to comply with all aspects of every nuance of the exceptionally complicated array of rules and policies governing the E-Rate program. Durant is economically disadvantaged and only had the means to pay the non-discounted share for these FRN. Durant simply does not have the resources to repay the 90 percent authorized through the E-Rate discount program.

Respectfully Submitted this 27th day of May, 2013,

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Louise Sanders-Tate

Superintendent

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CC: Schools and Libraries Division, Universal Service Administrative Company