

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

In the Matter of)	
)	
Request for Reconsideration of a)	
Decision by the)	
Federal Communications Commission)	
)	
Henrico County School District)	DA 13-999
Henrico, VA)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Petition for Reconsideration by Henrico County Schools

Henrico County Public Schools, Henrico, VA (Henrico) respectfully requests reconsideration of a decision by the Wireline Competition Bureau (Commission) in accordance with 47 C.F.R § 1.106(b)(1) and/or (b)(2). Specifically, this Petition for Reconsideration relies on facts or arguments unknown to Henrico since the last opportunity to present them. Unknown to Henrico at the time of filing was the particularity of factors the Commission considered when granting a waiver of Commission dictated procurement violations for the E-Rate program. Unknown to Henrico at the time of its initial request with the Commission were circumstances in which a waiver could be granted when price was not the primary consideration when evaluating bid responses.¹ Henrico filed its appeal with the Commission on March 12, 2009, more than two years before the Allendale decision.

¹ Allendale County School District, DA 11-723, Rel. April 21, 2011 at 10: We agree with USAC's determination that the petitioners did not comply with the Commission's rule to assign the highest weight to price when evaluating bids. Nevertheless, the record shows that for seven petitioners, the winning vendor's cost proposal was lower than the competing bids and therefore the applicants selected the least expensive service offering.

With this Petition, Henrico maintains and asserts the procurement for the services here under appeal absolutely complied with all state and local procurement laws, regulations and policies. The sole issue at hand is price being the primary consideration when evaluating bid responses, which is a violation of E-Rate regulations. Henrico acknowledges price was not the primary consideration in the evaluation; however, in light of decisions since Henrico's last opportunity to present facts, waiver of a program rule violation is warranted in this case.

Alternatively, and in the public interest, Henrico asks the Commission to waive applicable rules and/or policies in this instance and restore funding to Henrico. This appeal is timely filed within 30 days of the Commission decision.

Form 471 Application Number: 607894
FRN: 1700625 and 1700654
Billed Entity Number: 126514
FCC Registration Number: 0011680741

Discussion

Henrico issued an RFP, posted a Form 470, evaluated responses, and awarded a contract for High Speed Internet Access. Henrico applied for E-Rate discounts within the Form 471 filing window and submitted Item 21 attachments for each FRN.

During application review the Program Integrity Assurance (PIA) reviewer requested all documentation related to vendor selection. Henrico provided a copy of the RFP, bid responses, and evaluations. The reviewer noted that price was not the primary consideration in the bid evaluation criteria. Henrico acknowledged that price of services offered did not have the highest weight. Because of this fact, these FRN were denied. Unknown to Henrico at the time of filing its appeal with the Commission was the rationale used to grant the limited waiver cited in

Allendale as the Allendale decision was released three years after Henrico filed its appeal with the Commission. Had Henrico known the criteria for waiver, Henrico would have emphasized a fact plainly clear on the evaluation sheets – that the Sprint response was non-responsive and should have been excluded from consideration.

On appeal, Henrico provided all bid evaluation sheets and showed the Commission that Verizon would have been selected as the winning vendor if price was the primary criteria. The Commission was not persuaded that Henrico would dispassionately re-score the bids. The Commission noted that limited waivers of competitive bidding violations could be granted if applicants could show that the lowest cost provider was ultimately selected, based on precedent in Allendale.² Henrico now asks the Commission to agree that the Sprint response was non-responsive and Verizon was the second lowest bidder in the initial RFP response. Henrico provides a breakdown of scoring and prices below:

Committee Member	Sprint	Verizon	Telcove	Christopher Comm.
April	200	780	765	680
Lloyd	195	830	745	585
Michael	325	820	725	710
Paul	120	780	800	455
Total	840	3210	3035	2430
Price per month	\$11,135	\$18,944	\$22,537	\$19,358.64

While the Sprint response was the lowest price by far, the technical response was non-responsive. The Sprint response was labeled “proprietary” and could not be included in this

² Henrico Decision at 4.

Petition; however, it appeared to be boiler-plate and did not address Henrico's needs or requirements at all.

Henrico established a set of evaluation criteria that included Functional Requirements, Implementation Services, Experience and Qualifications of Firm, Experience and Qualifications of Proposed Staff, Price, Quality of proposal submission/oral presentations. With the exception of the Sprint proposal, all other bid responses addressed technical requirements of the RFP to some extent. Consequently, the technical categories listed on the evaluation sheets, Sprint scored a Zero in 17 of 20 items. Every Henrico reviewer scored a Zero for Functional Requirements, Experience and Qualifications of Proposed Staff, and Quality of Proposal for the Sprint proposal. Within the Functional Requirements evaluation category, sub categories included Compliance with the RFP's technical requirements and extent to which the proposal meets the RFP's functional requirements. All four reviewers independently concluded Sprint was non-responsive in three critical RFP requirements. Based on the overall score for Sprint – at about one third the points of the next vendor, it was clear that the reviewers did not feel the Sprint proposal met minimum qualifications to serve Henrico students – at *any* price.

When a vendor responds to a bid with an unusually low price and virtually no evidence the vendor is able to perform the work, it is the prerogative of the contracting entity to deem a bid unresponsive. Based on the exceptionally low score for Sprint, Henrico feels that a review of the score sheets, any reasonable person would conclude the Sprint bid was non-responsive and should not have been considered. The scoring sheets are included here as Attachment 1.

When Sprint bid is considered non-responsive, the second lowest bidder by price was Verizon. Verizon was awarded the contract at \$18,944 per month.

Conclusion

In light of the facts and clarifications presented here, Henrico asks the Commission to reconsider its previous order and waive competitive bidding violations for these FRN in accordance with precedent in the Allendale decision. In the alternative and in the public interest, Henrico asks the Commission to waive any minor program rule violation and grant this appeal.

Respectfully submitted this third day of June, 2013,

//ss//

Peter Taylor

Henrico County Schools
555 Trampton Road
Sandston, VA 23150