Enclosure A

FCC Order DA 13-1422

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of a	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Midlothian School District 143	)	File No. SLD- 861813
Midlothian, IL	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

ORDER

Adopted: June 21, 2013 **Released: June 21, 2013**

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Consistent with precedent,[1] we grant a request from Midlothian School District 143 (Midlothian)[2] seeking review of a decision made by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program).[3] In its decision, USAC determined that Midlothian violated the Commission's competitive bidding rules because its vendor selection documentation did not clearly establish that price was the primary factor in its vendor selection process.[4]

2. Upon review of the record, we agree with USAC's determination that Midlothian's vendor selection documentation did not clearly demonstrate that price was given the highest weight or value

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[1] *See Request for Review of the Decision of the Universal Service Administrator by Allendale County School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6109, 6115-17, paras. 10-12 (Wireline Comp. Bur. 2011) (*Allendale County Order*) (finding that, among other things, a waiver of the Commission's rules, which require applicants to use price as the primary factor in the vendor selection process, is in the public interest when the applicant ultimately selected the least expensive bid); *Requests for Review of the Decisions of the Universal Service Administrator by Euclid City School District and Shannon County School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 14169, 14170-71, para. 2 (Wireline Comp. Bur. 2012) (finding that a waiver of the Commission's rules, which require applicants to use price as the primary factor in the vendor selection process, is in the public interest when the applicant ultimately selected the least expensive bid).

[2] *See* Letter from Angela Crotty, Midlothian School District 143, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 7, 2013) (Request for Review) (regarding funding year 2012 FCC Form 471 application number 861813 (funding request number (FRN) 2347179)).

[3] Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

[4] *See* E-mail from USAC, Schools and Libraries Division, to Angela Crotty, Midlothian School District 143 (dated Feb. 11, 2013) (regarding funding year 2012 FCC Form 471 application number 861813 (FRN 2347179)); *see also* 47 C.F.R. §§ 54.503, 54.511 (requiring applicants to use price as the primary factor in the vendor selection process).

during the bid evaluation process.[5] However, the record shows that Midlothian selected the lowest priced bid for the funding request at issue.[6] Given that Midlothian ultimately selected the least expensive service offering, despite the ambiguity as to whether it assigned the highest weight or value to price in its vendor evaluation process, we find that the outcome of Midlothian's vendor selection process was consistent with the policy goals underlying the Commission's competitive bidding rules.[7] Therefore, we find that it is in the public interest to waive sections 54.503 and 54.511 of the Commission's rules,[8] which require applicants to use price as the primary factor in the vendor selection process, with respect to the funding request identified herein.[9] This finding is consistent with precedent finding good cause for waivers in comparable circumstances.[10] Further, at this time, there is no evidence of waste, fraud and abuse in the record.

3. We therefore remand the underlying application to USAC for further action consistent with this order. To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the application and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order. In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the underlying application.

4. Lastly, on our own motion, we waive section 54.507(d) of the Commission's rules and applicable USAC procedural deadlines, such as the invoicing deadline, that are necessary to effectuate our ruling.[11] We find good cause to waive section 54.507(d) and applicable USAC procedural deadlines because filing an appeal is likely to cause the petitioner to miss the program's subsequent procedural deadlines in that funding year.

5. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections

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[5] Midlothian prepared two vendor evaluation matrices for the funding request at issue. *See* Request for Review. According to the first evaluation matrix, "total cost" was weighted at 100 percent, while the remaining two evaluation factors, "number of units" and "pooled minutes," were each given a weight of zero. *Id.* The second evaluation matrix shows that two of the four evaluation factors considered, "39 minute units" and "1200 pooled minutes," were each assigned a point value of 15 points, and the remaining factors, "walkie-talkie capability" and "price," were each assigned a point value of 35 points. *Id.*

[6] *See id.*

[7] *See* 47 C.F.R. §§ 54.503, 54.511; *Allendale County Order*, 26 FCC Rcd at 6115, para. 10 (finding that the applicant satisfied the policy goals underlying the Commission's competitive bidding rules when it selected the least expensive responsive bid, even though it did not assign the highest weight to the price category in the bid evaluation process).

[8] *See* 47 C.F.R. §§ 54.503, 54.511. Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

[9] *See* 47 C.F.R. §§ 54.503, 54.511.

[10] *See supra* n.1.

[11] 47 C.F.R. § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Request for Review filed by Midlothian School District 143 IS GRANTED and the underlying application IS REMANDED to USAC for further consideration in accordance with the terms of this Order.

6. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that sections 54.503, 54.507(d) and 54.511 of the Commission's rules, 47 C.F.R. §§ 54.503, 54.507(d) and 54.511, ARE WAIVED for Midlothian School District 143 to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly A. Scardino
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

Enclosure B

Funding Commitment Report

FUNDING COMMITMENT REPORT
Billed Entity Name: WEST OSO INDEP SCHOOL DISTRICT
BEN: 141629
Funding Year: 2012

Comment on RAL corrections: RAL change implemented on your FCC Form 471, block 4 modified entity # 16070627 as a NIF is in accordance with your RAL request.

Form 471 Application Number: 858082
Funding Request Number: 2334699
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 666900000794332
SPIN: 143028010
Service Provider Name: Foundation for Educational Services, Inc.
Contract Number: SOCS_WH_12-13
Billing Account Number: 361-855-3221
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2012
Service End Date: N/A
Contract Award Date: 02/02/2010
Contract Expiration Date: 06/30/2013
Shared Worksheet Number: 1462702
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: $5,905.92
Annual Pre-discount Amount for Eligible Non-recurring Charges: $.00
Pre-discount Amount: $5,905.92
Discount Percentage Approved by the USAC: 90%
Funding Commitment Decision: $0.00 - Selective - Bidding Violation
Funding Commitment Decision Explanation: Documentation provided demonstrates that the price of the eligible products or services was not the primary bid evaluation factor in selecting the winning bidder. Program rules require that applicants select the most cost-effective provider, with price being the primary evaluation factor. Since you did not meet this requirement, this FRN must be denied.

FCDL Date: 04/30/2013
Wave Number: 041
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2014
Consultant Name: Rhonda Scholwinski
Consultant Number (CRN): 16062048
Consultant Employer: ESC Region 12 E-Rate Consulting