



## E-rate Program

# Ensuring Program Compliance

Fall 2013 Applicant Trainings

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## Overview

### Overview

- Know Your Role
- Technology Plans
- Fair and Open Competition
- Document Retention

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## Know Your Role

### Applicants

- Write, and seek and receive approval of the technology plan (Priority 2 service only).
- File FCC Form 470 and indicate whether there is, or will be, an RFP.
- Evaluate bids and select the winning service provider.
- File the FCC Form 471 and Item 21 attachments during the application window.
- Respond to inquires from PIA.
- File FCC Form 486 after ensuring that the technology plan was approved (if applicable), you are CIPA compliant (if applicable), and services have started.
- Select the invoice method and file FCC Form 472 (BEAR), if applicable.
- Document your compliance with FCC rules on an on-going basis.
- Retain documentation for at least five years from the last date of service delivery.

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## Know Your Role

### Service Providers

- Respond to FCC Forms 470 and RFPs, once they have been issued.
- Assist applicants with preparing their FCC Form 471 Item 21 attachments.
- Provide technical answers on questions regarding specific goods and services requested but NOT on competitive bidding questions.
- File FCC Form 473, the Service Provider Annual Certification Form.
- File FCC Form 474, the Service Provider Invoice, if applicable.
- Document your compliance with FCC rules on an on-going basis.
- Retain documentation for at least five years from the last date of service delivery.

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## Know Your Role

### Consultants

- Obtain a Consultant Registration Number to be included on all FCC forms where you have provided assistance to schools and libraries with their E-rate Program applications for a fee.
- Follow the role of your client – either applicant or service provider.
- Avoid conflicts of interest.
- Document your compliance with FCC rules on an on-going basis.
- Retain documentation for at least five years from the last date of service delivery.

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## Technology Plans

### Technology Plan Requirements for Priority 2 Services

- Created by schools or libraries ONLY (no service provider involvement)
- Contains sufficient detail to support and validate the services requested and covers the funding year
- Must follow FCC rules **and** state or local technology plan requirements
- Four Required Elements:
  - Goals and Strategies; Professional Development; Needs Assessment; and Evaluation
- Plans must be approved prior to start of service or filing of FCC Form 486, whichever is earlier

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## Fair and Open Competition

### The Competitive Bidding Process

- Must be a **fair and open** process
- Avoid conflicts of interest
  - Applicant consultant ↔ Service Provider
  - Applicant ↔ Service Provider
- Open competition and bid evaluation
- Follow all rules – FCC and state/local
- Read the FCC Form 470/RFP responses and contract fine print
- [6th Report and Order](#) provides further clarifications and examples of rule violations

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## Fair and Open Competition

### FCC Form 470

- Indicates the services and categories of service which entities are seeking
- Must be based on tech plan for Priority 2 services
- Must be posted for at least 28 days
- Indicates if they are planning/have issued RFP or other documents regarding the procurement
- Indicates any special requirements and/or disqualification factors
- Indicates who will be receiving the services

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## Fair and Open Competition

### Only applicants can:

- Determine the types of service you will seek on an FCC Form 470.
- Prepare and fill out the FCC Form 470.
- Sign, certify, and/or submit FCC Form 470.
- Negotiate with prospective bidders.
- Run the competitive bidding process.

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## Fair and Open Competition

### Applicants cannot:

- Have a relationship with service providers that would **unfairly influence** the outcome of the competition.
- Furnish service providers with inside competitive information.
- Have ownership interest in a service provider's company competing for services.
- Violate applicant's own ethical regulations policy.
- Fail to describe the desired products and services with sufficient specificity to enable interested parties to bid.
- Receive gifts or donations from service providers that violate FCC rules or seek to circumvent FCC rules.

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## Fair and Open Competition

### Applicants and service providers can:

- Have pre-bidding discussions.
  - Discuss new product offerings.
  - Teach applicants about new technologies.
  - Present product demonstrations.
- Provide or receive *de minimis* items.
  - Modest refreshments, not offered as a part of a meal
  - Items with little intrinsic value such as certificates and plaques

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## Fair and Open Competition

### Requests for Proposal

- FCC rules refer to RFPs generically but they may have a variety of names (Request for Quotes, Scope of Work, Summary of Projects, Instructions to Bidders, etc).
- FCC rules do not require RFPs but state and local procurement rules may.
- Must be based on entities' tech plan (if applicable)
- Must be available to bidders for at least 28 days
  - Applicants must count 28 calendar days from whichever (FCC Form 470 or RFP) was posted or available last.
    - **Example:** RFP posted on December 1, FCC Form 470 posted on December 15; **December 15 starts the 28-day count**

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## Fair and Open Competition

### FCC Form 470 and RFP Issues

- Applicants must ensure they post for the correct category of service
  - New FCC Form 470 combines Telecom and Internet Access
- Sufficient detail in FCC Form 470 to enable service providers to formulate bids
  - Cannot provide **generic descriptions** (e.g., all eligible telecom services, Digital Transmission Services)
  - Cannot provide **laundry lists** of products and services

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## Fair and Open Competition

### Imposing Restrictions

- Applicants may set some eligible services requirements
  - Applicants may require service providers to provide services that are compatible with one kind of system over another (e.g. Brand X compatible)
- Bidder disqualification criteria must be spelled out in FCC Form 470 and/or RFP and be available to all
- Cannot list specific make and model of services sought without also allowing equivalent products and/or services to be bid
  - “XYZ manufacturer’s router model 345J or equivalent”

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## Fair and Open Competition

### Bid Evaluation

- Retain all vendor selection documentation for at least 5 years from the last date to receive service
  - Winning and losing bids, correspondences, memos, bid evaluation documents, etc.
- Price of the eligible goods and services must be the primary factor or the most heavily weighted overall in any tier
  - [USAC sample evaluation matrix](#) available
- Evaluation begins after 28-day waiting period
- Service providers may not pay for applicant’s termination charges incurred in breaking a contract

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## Fair and Open Competition

### Most Cost-Effective

- Selecting the winning bidder
  - Price of the **ELIGIBLE** goods and services must be the primary factor in the bid evaluation
  - Other factors, including other price factors, can be considered as well but they cannot be weighted equally or higher than cost of the eligible goods and services
  - See [Construct An Evaluation](#) for weighting samples

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## Fair and Open Competition

### Cost-Effectiveness

- *Ysleta Order*, para. 54: Routers priced at two or three times greater than the prices available from commercial vendors would not be cost-effective, absent extenuating circumstances.
- Receiving only one bid does not automatically make it cost-effective.
- Applicants must be able to demonstrate why a solution with higher than average pricing is cost-effective.
- Service providers may work with applicants to help them understand the technical needs for this expensive solution.
- Service providers must provide the lowest corresponding price to applicants.

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## Fair and Open Competition

### Contracts

- A contract must be signed and dated by the applicant after the Allowable Contract Date and prior to the FCC Form 471 certification postmark date
- Tariffed or month-to-month service purchased under contract is contracted service
- A purchase order may be considered a contract **ONLY** if the state considers it a contract
- Voluntary contract extensions are allowable only when the option is stated in the original provisions of the contract

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## Fair and Open Competition

### State Master Contracts

- A state master contract (SMC) is competitively bid and put in place by a state government for use by multiple entities in that state.
- **Single winner:** Single vendor wins the bid
- **Multiple winners:** State awards contract to several bidders
- **Multiple Award Schedule (MAS):** State awards contract for same goods and services to multiple vendors that can serve the same population
  - Multiple winners require vendor selection justification – applicants must conduct mini-bid to award contract

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## Fair and Open Competition

### Lowest Corresponding Price

- Service providers are required to offer applicants their services at the lowest corresponding prices charged to other similarly situated customers throughout their geographic service area.
- Ensures schools and libraries in the E-rate Program are not charged more for the same services because of their participation.
- Exceptions can be made if the provider can show that they face significantly higher costs to serve this customer due to volume, mileage from facility, and/or length of contract.
- Applies to all service providers and for all service arrangements (tariff, month-to-month and contracted services).

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## Fair and Open Competition

### Gifts

- Receipt or solicitation of gifts by applicants from service providers (and vice versa) and potential service providers is a competitive bidding violation
- Service providers may not offer or provide any gifts or thing of value to applicant personnel involved in the E-rate Program.
- Gift prohibitions are always applicable, not just during the competitive bidding process
- Everyone must always follow FCC rules, and may also have to follow state/local rules
- Counted per funding year

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## Fair and Open Competition

### Gift Rule Exceptions and more

- Items worth \$20 or less, including meals, if the value of these items received by any individual does not exceed \$50 from one service provider per funding year
- Gifts to family and friends when those gifts are made using personal funds of the donor and not related to a business transaction or relationship
- Charitable donations not directly or indirectly related to an E-rate Program procurement, and not intended to circumvent any other FCC rule
- Cure violations by promptly returning any item or paying the donor its market value
- Prizes at conferences are subject to the \$20/\$50 rule

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## Fair and Open Competition

### Necessary Resources

- Does the applicant's E-rate Program-supported purchase of internal connections (i.e., number of drops) match the number/capacity of the computers it owns or has budgeted to purchase, e.g., within 2 years?
- Does it have (or has it budgeted to purchase) the software needed to utilize its computers?
- Is the applicant's staff trained to use its technology or have funds been budgeted to provide such training?
- Is there sufficient electrical capacity or a budget to secure it?
- Has the applicant budgeted enough to maintain all of the equipment?

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## Fair and Open Competition

### Paying Non-Discount Share

- All E-rate Program applicants must pay their non-discount share.
- Service providers cannot give the money (directly or indirectly) to pay for the non-discount share.
  - Cannot be a charitable donation from the provider or an entity with which the selected service provider has a relationship
  - Funds cannot come from the service provider or an entity controlled by the service provider
  - Service provider bills can't be ignored or waived
  - If applicant can't show proof of payment during invoice review, invoice may be denied

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## Document Retention

### Document Retention Timeframes

- 5 years from last date to receive service
  - FY 2014: this is at least **June 30, 2020**
- Any document from a prior year that supports current year must be kept until 5 years from last date to receive service as well
  - E.g., Contract from 2010 for recurring services, used to support FY 2014 FRNs, must be kept until at least **June 30, 2020**
- Documents may be retained in electronic format or paper and must be disclosed upon request

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## Document Retention

### Documentation to retain

- Copies of bids
- Contracts signed with service providers
- Correspondence with service providers regarding bidding process
- Copies of bid matrix or decision process for selecting winning bid
- Proof of delivery of the service
- Documentation of any service down time
- Logs of maintenance performed

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# SCENARIO

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## Questions?

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