



Universal Service  
Administrative Co.

## E-rate Program

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# Program Compliance

September – November 2016

## Overview

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

## Applicants

- Register in the E-rate Productivity Center (EPC)
- File FCC Form 470 and attach RFP documents
- Evaluate bids and select the winning service provider, using price of the eligible products and services as the primary factor in your selection process.
- File FCC Form 471 during the application window
- Respond to inquiries from PIA
- File FCC Form 486
- File FCC Form 498 and file FCC Form 472 (BEAR) if applicable
- Document your compliance with FCC rules on an on-going basis.
- Retain documentation for at least ten years from last date of service delivery.

## Service Providers

- Register in the E-rate Productivity Center (EPC)
- Respond to FCC Forms 470 and RFPs.
- May assist applicants with preparing their funding request information.
- May provide technical answers to questions regarding specific goods and services requested but NOT on competitive bidding questions.
- Must file FCC Form 473, Service Provider Annual Certification Form.
- Must file FCC Form 474, Service Provider Invoice, if applicable.
- Should document your compliance with FCC rules on an on-going basis.
- Must retain documentation for at least ten years from last date of service delivery.

## Consultants

- Register in the E-rate Productivity Center (EPC)
- 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 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 ten years from last date of service delivery.

## 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.
- [6<sup>th</sup> Report and Order](#) provides further clarifications and examples of rule violations.

## FCC Form 470

- Indicates the services and categories of service which entities are seeking.
- Must be posted for at least 28 days.
- Must include RFP and RFP documents if issued (FCC Form 470 requires an RFP if you are requesting dark fiber or self-provisioned fiber).
- Must indicate “or equivalent” when specifying a manufacturer
- Indicates any special requirements and/or disqualification factors (Listed on FCC Form 470 narrative and/or RFP).
- Indicates who will be receiving the services.
- Exemption from FCC Form 470 filing for Low Cost High Speed Internet Access, when applicable

## 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 and certify FCC Form 470.
- Negotiate with prospective bidders.
- Run the competitive bidding process.



## 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.
- Violate state and/or local procurement rules



# Fair and Open Competition

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## 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.



# 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 require RFPs. 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**
  - If you issue an RFP, the RFP and all other supporting documents must be attached to the FCC Form 470 in EPC. EPC will require an RFP to be uploaded when you are requesting support for leased dark fiber or self-provisioned fiber.

## FCC Form 470 and RFP Issues

Applicants must:

- Ensure that they post for the correct service type, Category One vs. Category Two
- Provide 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.

## Imposing Restrictions

- 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”
- Applicants may set some eligible service 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.

## Bid Evaluation

- Retain all vendor selection documentation for at least **ten** 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.



# Fair and Open Competition

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## 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.



# Fair and Open Competition

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## Cost-Effectiveness

- *Ysleta Order*, para. 54: Example: 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.





# Fair and Open Competition

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## Cost-Effectiveness cont'd

- Applicants must be able to demonstrate why a solution with higher than average pricing is cost-effective.
- Applicants will need to CERTIFY on FCC Form 471 that all bids submitted were carefully considered, the most cost-effective bid was selected with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology goals.

## Cost-Effectiveness

- Service providers may work with applicants to help them understand the technical needs for this expensive solution.
- When placing bids to offer E-rate supported services, service providers must offer E-rate applicants their lowest corresponding, and must charge E-rate applicants their lowest corresponding price.
- *E-rate Modernization Order* –Effective FY2015 and later, funding for individual data plans and air cards are generally not cost-effective unless applicants can demonstrate that the purchase of such services is the most cost-effective way to connect students and library patrons to the Internet.

## Contracts

- Applicants must have a signed contract or ***other legally binding agreement*** in place prior to submitting their FCC Forms 471 to USAC.
- Applicant must not sign a contract before the Allowable Contract Award Date (ACD).
- Signed contracts constitute the best evidence that a legally binding agreement exists.
- A verbal offer and/or acceptance will not be considered evidence of the existence of a legally binding agreement.

## Contracts

- During an FCC Form 471 review, when state and/or local contract law doesn't require signature and/or date, the applicant will be given the opportunity to complete a certification statement that affirms that the applicant is compliant with its state and/or local contract law.
- Tariffed or Month-to-Month service purchased under contract is contracted service.
- Purchase orders will not be considered valid unless they are considered a contract or legally binding agreement in the state in which you reside.
- Voluntary contract extensions are allowable only when the option is stated in the original provisions of the contract.
- Applicant must rebid the services (i.e., file a new Form 470) if contract extensions are not stated in the contract or RFP
- Applicants must create a contract record in their EPC profile for each contract and can upload a copy of the contract.

## 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 always require vendor selection justification and applicants must conduct a mini-bid to award contract.

## 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 can receive and evaluate competing bids based on the lowest corresponding price available from vendors and are not charged more than similarly situated non-residential customers for the same services because of their E-rate 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).

## Free Services

- Can't use E-rate to get free stuff (ineligible or eligible)
- Must deduct the value of the “free stuff”, discounts, trade-in etc, from the pre-discount amount in order get equal comparison between offerings
- Cost of eligible goods and services cannot be inflated to cover the “free” ineligible stuff

## 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 E-rate.
- Gift prohibitions are always applicable, not just during the competitive bidding process.
- Must always follow FCC rules and any applicable state/local rules.



## 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 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.
- Counted per funding year.

## Necessary Resources

- CERTIFICATION states: The entities listed on the FCC Form 471 application have secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make effective use of the services purchased. The entities listed on the FCC Form 471 will pay the discounted charges for eligible services from funds to which access has been secured in the current funding year or, for entities that will make installment payments, they will ensure that they are able to make all required installment payments. The billed entity will pay the non-discount portion of the cost of the goods and services to the service provider(s).

## Necessary Resources

- Does the applicant's E-rate-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 funds to maintain all of the equipment?

## Paying Non-Discount Share

- All E-rate 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.

## Document Retention Timeframes

- 10 years from last date to receive service.
  - FY 2016: this is at least **June 30, 2027**
- Any document from a prior year that supports current year must be kept until 10 years from last date to receive service as well.
  - E.g., Contract from 2010 for recurring services, used to support FY 2016 FRNs, must be kept until at least **June 30, 2027**
- Documents may be retained in electronic format or paper and must be disclosed upon request.

## Examples of 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.
- Documents that support cost allocation of funds for eligible services.



# Questions?



## With questions, please contact us!

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