

Program Compliance

Helping You Succeed Schools and Libraries Division

Washington, DC • Newark • Atlanta • Chicago • Orlando • Los Angeles • Portland • Houston September/October 2009

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Overview

- Roles for All
- Technology Plans
- Forms 470 and RFPs
- Competitive Bidding
- Vendor Selection Process
- Heightened Scrutiny
- Hurdles to Success

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Know Your Role

- Applicants
 - Write tech plan, file Form 470 and write RFP, evaluate bids, select provider, document the process, file Form 471, get tech plan approved, file Form 486, select invoice method, file BEARs
- Service Providers
 - Respond to 470/RFPs, assist with preparing Item 21 attachments, provide technical answers on questions regarding specific goods and services requested, but NOT on competitive bidding; file SPIs and/or approve BEARs; file SPAC
- Consultants
 - Follow the role of their client either applicant or service provider

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Pre-bidding Discussions

- Applicants may:
 - Discuss their product offering with SPs
 - Learn about new technologies from SPs
- Applicants may NOT accept/use the following from service providers:
 - Vendor-specific language for RFP or the 470
 - Template RFPs or Forms 470
 - Assistance with tech plan
 - Assistance with RFP

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Tech Plan Requirements

- Created by schools and libraries
- Creation must precede Form 470/RFP
 - Month and year that the plan is "written"
- Five elements
 - Goals/strategy for using technology
 - Professional development strategy
 - Needs assessment
 - Sufficient budget
 - Evaluation process

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Tech Plan Requirements

- Not just "speeds and feeds"
- Sufficient detail to support and validate the services requested
- Cover all 12 months of the funding year
- Be approved by a USAC-certified Technology Plan Approver (TPA) before Form 486 is filed or services start, whichever is sooner
- In general, cover not more than 3 years

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Competitive Bidding

- Fair and open competitive bidding process
- Avoid conflicts of interest
 - Independent consultant ⇔Service Provider
 - Applicant ⇔ Service Provider
- Open competition and bid evaluation
- Follow all rules FCC and state/local
- Read the contract fine print
- Retain your documentation
 - Retain, retain, lessen your pain...

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Forms 470

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

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Requests for Proposal

- FCC rules do not require RFP but state and local procurement rules may
- Must be based on entities' tech plan
- Must be available to bidders for at least 28 days
 - Count 28 days from the later of the two posted (470 and RFP)
 - RFP cannot close before 28 days for 470 is up
- FCC rules refer to RFPs generically but they may have a variety of names

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Form 470 and RFP Issues

- Applicants must ensure that they post for the correct category of service
 - PIA can switch the category of services if applicants make a mistake on their Form 471
- Sufficient detail in Form 470
 - Applicants cannot just provide generic descriptions or laundry lists of products and services
- Applicants must indicate multi-year contracts or voluntary contract extensions if desired; failure to do so may result in funding denials.

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Vendor Involvement

- Service providers cannot:
 - Determine the types of service the applicant will seek on a Form 470
 - Assist applicants with the filling out of the FCC Form 470 which requires an applicant's certification
 - Negotiate with prospective bidders
 - Run the competitive bidding process for the applicant
 - Be privy to information about the bid not shared with other potential bidders

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Imposing Restrictions

- Applicants can set some requirements for bidders.
 - For example, applicants may require service providers to provide services that are compatible with one kind of system over another (e.g. Apple vs. Windows).

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Disqualifying Bidders

- Qualifications/disqualification factors must be spelled out to all interested parties
- Available to all in Form 470 and/or RFP
- Disqualification factors are binary (eg yes/no) and cannot be scored on a range
 - Otherwise, this is multi-round evaluation and price must be primary in every round
- Retain documentation of notice and review

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Vendor Selection

- Applicants must retain all vendor selection documentation
 - This includes winning and losing bids
- Price of the eligible goods and services must be the primary factor in all rounds
- Applicants determine remaining vendor selection criteria and relative weighting
- USAC sample evaluation matrix available

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Most Cost Effective

- Selecting the winning bidder
 - Price of the ELIGIBLE goods and services must be the primary factor.
 - 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 <u>Step 4: Construct An Evaluation for</u> weighting samples

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Cost-Effectiveness

- Solution must be cost-effective (not just the most cost-effective)
 - 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 costeffective
 - Applicants must be able to explain why a solution with higher than average pricing is cost-effective.
 - Provide as specific an answer with as much objective information as possible.
 - Service Providers may work with the applicant to help them understand the technical needs for this expensive solution.

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Free Services

- Applicants and service providers are prohibited from using Schools and Libraries support to subsidize the procurement of ineligible or unrequested products and services or from participating in arrangements that have the effect of providing a discount level to applicants greater than that to which applicants are entitled.
- Can't use E-rate to get free stuff (ineligible or eligible). You must back out the value of that stuff in your vendor selection process.

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Free Services

- Must deduct the value of the "free stuff", discounts, trade-in etc, from the prediscount amount in order get equal comparison between offerings
- Cost of eligible goods and services cannot be inflated to cover the "free" ineligible stuff
- A proportionate cost allocation is required between eligible and ineligible components.

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Free Services Example

- Discount rebate
 - Cost for product = \$100 pre-discount
 - Rebate of 20% is available
 - Can only apply for \$80 (\$100*80%) pre-discount
- "Free products" included in a bid
 - Vendor A: \$10,000 including \$1,000 of free products
 - Vendor B: \$8,000 for products no free products
 - Must compare:
 - Vendor A: \$9,000 (\$10,000 \$1,000) to Vendor B: \$8,000

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Paying Non-Discount Share

- There is still no free lunch
- Applicants will always have to pay at least 10% or more depending on their discount
- Service providers cannot give the money (directly or indirectly) to pay for the non-discounted share
 - Funds cannot come from the service provider or an entity controlled by the service provider where funding is contingent upon selecting that 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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Budget Review

- Purpose is for applicant to show us they can fund their share
- Operating budget (or draft) has dates that cover the funding year (July – June)
- Budget documentation should clearly identify applicant's share (e.g., expense line item)
- Can provide letter for reasonable expectation that funds secured by 7/1

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Payment Plans

- Applicants are required to pay their share at the same time that USAC pays the discount amount.
 - Service Provider certifies that the invoices they submit are for services that "have been billed to service provider's customers."
 - Therefore, deferred payment plans that allow the applicant to pay after USAC has paid will jeopardize a funding request.
 - FCC Rules include a presumption that the non-discount share will be paid within 90 days.

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Heightened Scrutiny

- May include review of:
 - Budget
 - Necessary Resources
 - Competitive Bidding and Contracts
 - Pattern Analysis
 - Targeted questions based on potential violations
- <u>Selective Review Information Request</u> (SRIR) contains some of the questions we may ask
- These reviews will take additional time and will hold up commitments until they are completed

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Necessary Resources

- Check applicant's certification that they have them.
 - Are there end user computers?
 - Must have reasonable plans to fully utilize all internal connections for which you are requesting discounts (e.g., 2-year plan to get computers for all network drops)
 - Do they have software to run on the computers?
 - Staff trained on how to use the technology?
 - Electrical capacity?
 - Can they maintain the eligible and ineligible equipment?

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Certifications

- · Applicants certify that:
 - Have secured access to necessary resources
 - Have complied with all FCC, state and local competitive bidding and procurement regs
 - Non-discount portion of the costs for eligible services will not be paid by the service provider
 - No kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture
 - Failure to comply with program rules could result in civil or criminal prosecution
 - Persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the program are subject to suspension and debarment from the program

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Certifications

- Service Providers certify that:
 - For SPIs, services have been billed to customers on behalf of eligible entities and for eligible services, and exclude charges already invoiced
 - SPs, if asked, must provide detailed cost breakouts of services to applicants
 - They may be audited
 - Prices were arrived at independently, without communicating with other bidders regarding pricing, intent to bid and how you determined your pricing
 - Their prices won't be disclosed to another bidder before the bid opening

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Service Delivery

- Service providers and applicants should work together to facilitate delivery of service
- Monitoring receipt of service
 - Both parties (SP and applicant) should monitor delivery of service
 - Don't rely on the other party's records
 - Keep documentation of service delivery and any service interruptions
 - Applicants get Quarterly Disbursement Report
 - Applicants may request Invoice Check

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Review of Invoices

- SP/App must review BEAR/SPI to ensure:
 - Only eligible services are being billed
 - Only services that were approved on the application are being billed
 - Services were delivered consistent with the FCDL and any agreements
 - Any service interruptions are accounted for
- Credits or discounts are apportioned to both USAC and the applicant

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Document Retention

- Document retention timeframes:
 - 5 years from last date to receive service
 - FY 2010 this is at least June 30, 2016
 - Any document from a *prior year* that supports current year must be kept until 5 years from last date to receive service as well
 - Eg. Contract from 2004, used to support FY 2010 FRNs, must be kept until at least June 30, 2016

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Feed Your Files

- Applicants must retain all precommitment documents that show compliance with all FCC rules
- See complete lists:
 - <u>Documentation Retention Requirements</u>
 - Documentation Checklist
 - E-Rate Binder Table of Contents

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Retain, retain, retain

- Retain documents to show your compliance:
 - Letters of Agency and any agreements with all consultants
 - Technology Plan (both draft and final approved version) and CTPA Plan Approval letter
 - RFP, including evidence of publication date and any solicitation you did
 - Any and all bids (winning and losing)
 - Email to yourself if you get no or one bid

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Retain, retain, retain

- Applicants retain documents to show compliance:
 - Documents describing bid evaluation criteria and weighting
 - Any correspondence with potential bidders
 - Documents related to the selection of the service provider(s)
 - Signed and dated copies of contracts
 - Also, see further list on USAC website
- Keep for 5 years after last date to receive service
- for FY 2010 at least June 30, 2016

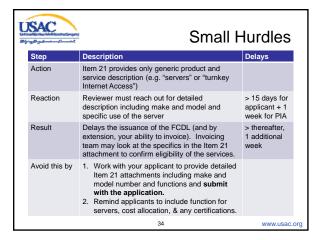
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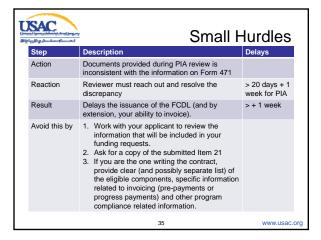


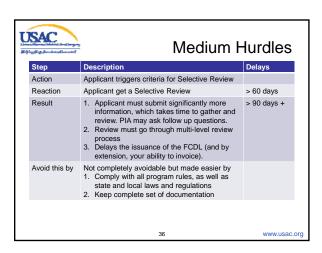
🕏 Retain, retain, retain for SPs

- Service Providers must retain:
- Copies of your bids
- Contracts signed with applicants
- Correspondence with applicants regarding bidding process
- Proof of delivery of the service
- Documentation of any service down time
- Logs of maintenance performed

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USAC	Medium Hurdles	
Step	Description	Delays
Action	Applicants requests funding for very expensive widget and/or very expensive maintenance	
Reaction	Applicant undergoes Cost Effectiveness Review	> 30 days
Result	Applicant must gather support for why widget/maintenance was selected, and explain why such an expensive product or service is necessary Review must go through multi-level review process Delays the issuance of the FCDL (and by extension, your ability to invoice).	> 45 days
Avoid this by	Ensure that the services that you are proposing are "right sized". If circumstances dictate an expensive solution, be prepared to explain why that solution is necessary and cost-effective.	
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