USAC
Universal Service Administrative Company
Helping Keep Americans Connected

Program Compliance

Helping You Succeed
Schools and Libraries Division

Washington, DC • Newark • Atlanta • Chicago • Orlando • Los Angeles • Portland • Houston
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Notes

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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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Notes

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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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Notes

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

Notes

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

Notes

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

Notes

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…

Notes

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

Notes

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

Notes

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.

Notes

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

Notes

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).

Notes

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

Notes

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

Notes

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 Step 4: Construct An Evaluation for weighting samples

Notes

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 cost-effective
  - 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.

Notes

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.

Notes

Free Services

- 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
- A proportionate cost allocation is required between eligible and ineligible components.

Notes

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

Notes

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.

Notes

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

Notes

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.

Notes

Heightened Scrutiny

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

Notes

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?

Notes

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

Notes

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

Notes

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

Notes

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

Notes

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

Notes

Feed Your Files

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

Notes

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

Notes

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

Notes

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

Notes

Small Hurdles

Step	Description	Delays
Action	Item 21 provides only generic product and service description (e.g. “servers” or “turnkey Internet Access”)	
Reaction	Reviewer must reach out for detailed description including make and model and specific use of the server	> 15 days for applicant + 1 week for PIA
Result	Delays the issuance of the FCDL (and by extension, your	> thereafte

Notes

Small Hurdles

Step	Description	Delays
Action	Documents provided during PIA review is inconsistent with the information on Form 471	
Reaction	Reviewer must reach out and resolve the discrepancy	> 20 days + 1 week for PIA
Result	Delays the issuance of the FCDL (and by extension, your ability to invoice).	> + 1 week
Avoid this by	1. Work with your applicant to review the information that	

Notes

Medium Hurdles

Step	Description	Delays
Action	Applicant triggers criteria for Selective Review	
Reaction	Applicant get a Selective Review	> 60 days
Result	1. Applicant must submit significantly more information, which takes time to gather and review. PIA may ask follow up questions. 2. Review must go through multi-level review process	> 90 days +

Notes

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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	1. Applicant must gather support for why widget/ maintenance was selected, and explain why such an expensive product or service is necessary	> 45 days

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Medium Hurdles

Step	Description	Delays
Action	Telecom Provider fails to file FCC Form 499	Delay total: function of your time to file Form 499
Reaction	Provider loses their "Y" and is ineligible to provide telecommunications service	
Result	1. Provider loses business as applicants are given the	

Notes

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Large Hurdles

Step	Description	Delays
Action	USAC Beneficiary audit discovers delivery of ineligible equipment to eligible and ineligible locations after the payment of an invoice.	1 year for audit process to complete
Reaction	USAC initiates audit response process and possibly COMAD/RIDF.	> 30 days
Result	1. Applicant must gather and submit additional information.	> 120 days +

Notes

Large Hurdles

Step	Description	Delays
Action	As a result of the audit, applicant must return funds to USAC and fails to pay on time	
Reaction	Applicant's Red Light is turned on	> 30 days
Result	1. After no payments within 30 days from the Notice of Dismissal Letter, all pending funding requests are denied. 2. Service provider cannot invoice for the services that	> 45 days

Notes

Large Hurdles

Step	Description	Delays
Action	As a result of the audit, service provider must return funds to USAC and fails to pay on time	
Reaction	Provider's Red Light is turned on	> 30 days
Result	1. All invoices are held. 2. Payments are not forthcoming for pending invoices.	Until payment is made.
Avoid	1. Read all correspondence	

Notes

Large Hurdles

Step	Description	Delays
Action	As a result of the audit, applicant and/or SP is deemed a non-compliant auditee.	
Reaction	USAC initiates non-compliant auditee process.	> 30 days
Result	1. Applicant must update their processes and procedures that lead to the audit finding and then demonstrate to USAC that additional controls have been put in	> 6 months

Notes

Large Hurdles

Step	Description	Delays
Avoid this by	1. Read all correspondence from USAC. 2. Avoid the problem that resulted in the COMAD. 3. Comply with program rules, state and local regulations and laws. 4. Keep complete records. 5. Maintain a robust set of internal controls and provide training to your employees	

Notes

Large Hurdles

Step	Description	Delays
Action	1. Service Provider acts as the Applicant's Consultant 2. Whistleblower call comes into USAC	
Reaction	Application undergoes heightened scrutiny by various review teams	> 90 days +
Result	1. Applicant has to gather and submit additional documentation. 2. Review teams conduct special analysis	> 90 day +

Notes

Large Hurdles

Step	Description	Delays
Avoid this by	1. Comply with program rules, state and local regulations and laws. 2. Keep complete records. 3. Do not act as the applicant's consult, or take actions that may give the APPEARANCE of doing so. This includes providing any assistance for any competitive bidding item including the Form 470 and/	

Notes

Large Hurdles

Step	Description	Delays
Action	1. Service provider and/or applicant engages in fraud or anti-competitive conduct, including conflict-of-interest, market allocation, collusion, bid-rigging, etc. 2. Whistleblower call come in to USAC	
Reaction	Application undergoes heightened scrutiny by a variety of review teams.	> 180 days
Result	1. Pending commitments are	

Notes

Large Hurdles

Step	Description	Delays
Result	7. Law enforcement agencies launch own investigations, possibly resulting in civil or criminal actions, including trials, which can result in fines and/or prison.	**> 1 year +**
Avoid this by	1. Comply with program rules, state and local regulations and laws. 2. Keep complete records. 3. Do not engage in illegal	

Notes

Questions?

Notes