

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Promoting Fair and Open
Competitive Bidding in the
E-rate Program

WC Docket No. 21-455

**COMMENTS REGARDING ESTABLISHING A NATIONAL BIDDING PORTAL AND
CENTRAL DOCUMENT REPOSITORY FOR THE E-RATE PROGRAM**

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EXECUTIVE SUMMARY

For over twenty-five years, the schools and libraries universal service support program (“E-rate”) has provided invaluable funding to connect students, educators, and other school staff to affordable school-based internet. Since the E-rate’s inception, the Federal Communications Commission (“Commission”) has relied heavily on state and local competitive bidding requirements to maximize the program’s effectiveness, impact, and integrity. The Commission’s E-rate regulations require schools and other entities participating in the program to “conduct a fair and open competitive bidding process”... and make clear that the Commission’s “requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.”¹ This regulatory approach - grounded in well developed and understood state and local procurement rules - has served the program well.

CoSN and SETDA share the Commission’s desire to find ways to improve E-rate, including identifying strategies for addressing the concerns identified by the Government Accountability Office and the FCC’s Inspector General and cited in this proceeding. Our members strongly support measures that may prevent these rare, but serious, instances of waste, fraud, and abuse. New protections, however, should use the program’s existing tools and not be so complex that they discourage schools’ participation. Given the low risk that E-rate applicants will alter or ignore qualified bids and for other reasons stated herein, we urge the Commission to continue relying on the effective protections provided by state and local procurement. Rather than creating a national bidding portal, the Commission should develop better program guidance, expand technical assistance, and identify lower-burden ways for applicants to share vital information as part of the program’s existing application processes.

¹ 47 CFR § 54.503 (a) and (b).

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COMMENTS REGARDING ESTABLISHING A CENTRAL DOCUMENT REPOSITORY FOR THE E-RATE PROGRAM

The Consortium of School Networking (“CoSN”) and the State Educational Technology Directors Association (“SETDA”) respectfully submit these comments in response to the Commission’s proposal to expand regulation of the E-rate program’s competitive bidding process, including establishing a central national document repository. Our members are the school district and state education agency professionals responsible for equipping students and staff with the technology and broadband connectivity required for digital teaching and learning. Our members routinely apply for and use E-rate funding to connect schools and on-campus learning spaces to secure, high-capacity broadband. Given this role, they are keenly interested in ensuring that the E-rate application process is appropriately rigorous to prevent waste, fraud, and abuse, but not so complicated and costly that it discourages the submission of applications or outweighs the program’s many benefits for schools and libraries.

Based on: (1) the low risk that E-rate applicants will alter or ignore qualified bids; (2) the widely-used and effective protections provided by state and local procurement requirements, (3) the program’s existing transparency and competition requirements; (4) the potential high additional transaction costs associated with a new national portal and related technologies and requirements; and (5) potential conflicts between the proposed new federal requirements and existing state and local procurement systems, we respectfully urge the Commission to consider other strategies for ensuring fidelity to the program’s vitally important record retention requirements. Improved guidance, additional training, ongoing and expanded technical assistance, submitting bids as part of the Form 471 process (description of services ordered and certification form), improving the current E-Rate Productivity Center’s functionality (EPC), and

selectively using the program's existing audit system would provide similar waste, fraud, and abuse protections with lower application and administration burden on applicants, the Universal Service Administrative Company (USAC), and the Commission.

THE RISK THAT E-RATE APPLICANTS MAY ALTER OR IGNORE QUALIFIED BIDS TO AFFECT THE BIDDING PROCESS IS LOW

School and other E-rate applicants take their financial, fiduciary, and ethical obligations very seriously. Applicants carefully work to abide by the federal, state, and local laws, regulations, and ethical norms applicable to their professional positions and duties. Applicants also have powerful financial incentives to acquire the highest quality E-rate supported services at the lowest possible prices. Applicants' annual technology and broadband budgets are limited, and their connectivity requirements are often significant and costly to address. Seeking and acquiring the best product at the best price is essential to meet their schools' broadband connectivity needs. It is also already required by the E-rate's regulations which demand that applicants certify that "[a]ll bids submitted for eligible products and services will be carefully considered, with price being the primary factor, and the bid selected will be for the most cost-effective service."²

The E-rate only subsidizes a portion of an applicant's connectivity costs based on local needs as measured by the served population's qualifications for the National School Lunch Program. Even the highest need school districts must contribute meaningful non-federal funding (at least 10%) for E-rate discounted services.³ Altering bids to preference services from a more costly solution, or ignoring low-cost bids, would necessarily require mustering scarce additional local education funding which is subject – like other public funding - to strict oversight and allocations decisions by other local officials and boards. Thus, applicants have little or no

² 47 CFR §54.503 (c)(2)(ii)(B)

³ 47 CFR §54.505

incentive to break the program’s rules and the additional scrutiny provided by other local stakeholders and elected leaders in the system makes it harder for rare bad actors that try to defraud the program.

E-RATE’S RELIANCE ON STATE AND LOCAL PROCUREMENT IS SUFFICIENT TO ENSURE THE INTEGRITY OF COMPETITIVE BIDDING

America’s public education system spends billions of dollars in state, local, and federal funding each year using effective and long-standing state and local procurement requirements. The United States has 13,452 public school districts and 98,755 public schools.⁴ Each school year, public elementary and secondary schools spend \$762 billion to support their operations.⁵ This spending includes salaries, employee benefits, purchased services, supplies, and other expenditures. The federal government contributed only \$57.9 billion (7.7%) of this total spending.⁶ The E-rate represents an even smaller fraction of total education spending. In 2021 E-rate applicants received \$2.52 billion, which is only 0.3% of overall education spending.⁷ The strong state and local protections applied to the vast majority of other education spending are still sufficient and the best way to ensure the E-rate’s integrity. State and local rules’ broad – almost universal – application to other education funding means they are also the most administratively efficient to administer.

⁴ U.S. Department of Education, National Center for Education Statistics, “Digest of Education Statistics, 2020.”

⁵ U.S. Department of Education, National Center for Education Statistics. (2021). *The Condition of Education 2021* (NCES 2021-144), [Public School Expenditures](#).

⁶ U.S. Census Bureau, Annual Survey of School System Finances (2019), 2019 Public Elementary-Secondary Education Finance Data.

⁷ USAC 2021 Annual Report, p.10. Available online at https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2021/2021_USAC_Annual_Report.pdf

Every state has robust procurement statutes, regulations, and policies.⁸ School districts, like other local government units, are subject to these provisions and often additional local rules, including requirements designed to ensure that bidding processes are predictable, competitive, fair, transparent, and minimize transaction costs. Since the E-rate's inception, the Commission rightly relied on these state and local procurement requirements to ensure the program's integrity, including supporting effective administration of the program's vitally important competitive bidding process.⁹

The Government Accountability Office (GAO) report, cited by the Commission as one basis for this proceeding, identifies serious concerns but fails to explain why state and local procurement requirements are no longer sufficient to protect the program. The GAO report used Commission findings and estimates to highlight improper program payments but did not demonstrate systemic waste, fraud, and abuse. The report featured only a single fraud case where seven individuals stole \$2.6 million in program funding. Determined thieves, like these bad actors, are unlikely to be deterred by creating a national bidding portal and other new procedural requirements. Furthermore, this theft from schools, while terrible, only amounted to one-tenth of one percent of total 2019 E-rate funding.

The GAO report noted that the Commission "...estimated improper payments increased from approximately \$85 million to approximately \$140 million total from fiscal years 2014

⁸ Guide to State Procurement: A 50-state primer on purchasing laws, processes and procedures
Copeland, Melissa J. editor.; American Bar Association. Section of Public Contract Law, issuing body.
2016

⁹ 47 CFR §54.503

through 2019.”¹⁰ This estimated increase is troubling, but the GAO makes clear that this amount refers to payments labeled “improper” because documentation was not sufficient to demonstrate compliance, not because the funds were proven to be misused for non-program purposes or were subject to fraud. Thus, the Commission should proceed cautiously when identifying the best possible solutions for addressing this challenge in order to avoid possible regulatory overreach.

While this problem is very concerning, it does not appear to rise to the level of calling for fundamental changes to the E-rate application process, when less onerous and less costly steps may be available to improve the program’s protections against waste, fraud, and abuse. Improper payments that are due to documentation issues suggest that better E-rate application training or ongoing technical assistance may be a more suitable alternative to creating a new portal that may create increased confusion among applicants or cause program delays. One of the Commission’s most recent E-rate modernization goals was to simplify the program’s application process without sacrificing essential protections. Adding this new central national document repository and related rules would complicate, not simplify, the application process and add additional costs to the process. Modifying the current process or using existing tools better is more likely to improve bidding document retention and other results without further complicating what can be a daunting process for some applicants, particularly smaller and low-resourced school districts.

For example, the Commission could consider simply requiring bidding documentation to be submitted with Form 471 or another existing application process or tool to address the GAO’s concerns. This step could be accomplished through an update of the current E-Rate Productivity

¹⁰ FCC Should Take Action to Better Manage Persistent Fraud Risks in the Schools and Libraries Program United States Government Accountability Office,”p. 2, (2020). <https://www.gao.gov/assets/gao-20-606.pdf>.

Center (“EPC”) portal instead of creating a new platform and related rules only focused on bid management. It should be noted that while the EPC’s performance and reliability have improved, there are still applicant concerns with the system’s functionality. Updating the EPC, or otherwise using another existing process, would be a better alternative than creating a new national bidding portal that may displace or overlay state and local protections, complicate the application process, and increase program costs.

Creating a national portal housing all bids could lead to conflict with state and local laws and practices designed to protect the program’s integrity. For example, in a state requiring formal public opening of bids, a national portal, and related rules may not align with the timing and procedures for the public opening. It is also possible Congress would need to pass legislation preempting state laws so that the portal could substitute for current state and local practices, which are already designed to prevent waste, fraud, and abuse.

The Commission should review, as solutions for improving the bidding process are evaluated, the 2000 American Bar Association’s (“ABA”) Model Procurement Code for States and Local Governments (“Model Code”). The ABA Section of Public Contract Law and Section of State and Local Government Law originated the Model Code, which has been adopted in full or part by multiple states and local jurisdictions. Recommendations found in the provisions of the Model Code could provide helpful information to the Commission as to how the portal may impact state and local procurement.¹¹

Provisions contained in the Model Code include definitions and recommendations on the bidding process about what constitutes public notice. The Model Code also provides the

¹¹ 2000 ABA Model Procurement Code, ABA Section of Public Contract Law and Section of State and Local Government Law *American Bar Association (ABA) 2000*, Accessed April 24, 2022. https://www.americanbar.org/content/dam/aba/administrative/public_contract_law/pcl-model-03-2000-model-procurement-regulations.pdf

following comments about the definitions and provisions to clarify their meaning. According to the Model Code:

Public Notice means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and web site(s) designated by the [State] and maintained for that purpose¹².

The comment following the Public Notice definition notes that even under the Model Code, there are important differences between individual states and localities. The Model Code reflects and acknowledges those state and local differences through the flexibility contained in its provisions.

MODEL CODE COMMENTARY: This is a new definition. Because the adequacy of notice will, as a practical matter, vary from locality to locality and procurement to procurement, no attempt is made to define statutorily either a prescribed method of public notice or the duration of its publication. However, the implementing regulations should provide criteria and general guidelines for the method and duration of public notice. Electronic dissemination of notice is specifically contemplated by the new definition.¹³

CoSN and SETDA urge the Commission to reflect on the complexities and differences that exist from state to state and locality to locality. Our members have noted that the proposed new national bidding portal may require changes in state laws and policies for E-rate applicants to follow new federal regulations if the portal is adopted and implemented.

The Model Code also addresses items that could impact applicants' use of a new portal such as the use of electronic signatures noting the differences that may exist among states. When

¹² Ibid at §3-202(3).

¹³ Model Procurement Code at §3-202.

defining electronic signature, the Model Code comment notes that “[t]he purpose of this definition is to permit the acceptance of an electronic signature that is consistent with the [State’s] [Electronic or Digital Signature Act] or [current legislation regarding the use of such technology].”¹⁴ The model notes that it was important to define signature “to protect the integrity of the procurement process and to ensure that the transmission and receipt of information concerning public solicitations is accurate and reliable.”¹⁵ The use of digital signatures in bidding is another issue that could negatively impact schools and libraries forced to use a national bidding portal that may not acknowledge the use of a digital or written signature consistent with state and local laws and policies.

The National Association of State Procurement Officers (NASPO) is a non-profit association representing the leaders of state procurement leaders in all 50 states, the District of Columbia, and the U.S. territories¹⁶. NASPO’s resources may provide the Commission with greater clarity about how the proposed bidding portal may interact with complex state and local requirements.. NASPO conducted a survey in 2020 that 39 states replied to in whole or part concerning some key procurement information. The survey findings “reflect statutes, laws and regulations, policies and agency practices as of August 2020, the period of the data collection.”¹⁷

One of the NASPO survey questions focused on adoption of the Model Code. The results reinforce the diversity and complexity of state and local systems. The survey shows that while there is some consistency across the nation in procurement oversight, there are also many differences. The survey found that 63 percent of the responding states have at least partially adopted portions of the Model Code with only 3 percent of them fully adopting it. The survey

¹⁴ Ibid at §1-301, (23).

¹⁵ Ibid

¹⁶ National Association of State Procurement Officers (NASPO). See <https://www.naspo.org/about/our-history/>

¹⁷ 2020 Survey of State Procurement Practices, Executive Summary, *National Association of State Procurement Officers (NASPO)*. Accessed April 24, 2022. See https://www.naspo.org/wp-content/uploads/2021/02/Final_2020_State_Practices_Survey_Report-1.pdf

also explored responsibility for procurement of technology goods and services. 58 percent of the reporting states indicated that authority and oversight over technology goods was vested in a central procurement office. In terms of overseeing purchasing of technology services, 53 percent of the responding states reported the central purchasing office had responsibility with 25 percent sharing the authority with another agency. In 19 percent of the reporting states, both technology goods and services were overseen by a different state agency.

The survey also found that 33 states that responded to the survey at least in part, use some type of an “electronic procurement (eProcurement) or Enterprise Resource Planning system.”¹⁸ According to the survey, the most common systems include PeopleSoft, Oracle, CGI, SAP, and Jaggaer.¹⁹ It is important to understand these portals, in whatever form, may already be utilized in some states to support E-rate procurement and are providing the transparency to prevent waste, fraud, and abuse the Commission is trying to address.

While this survey provides the most recent information, the numbers for all these results are likely higher since the 2020 survey occurred in the middle of the pandemic. This may have led to the smaller number of state responses compared to previous years. For example, in the 2018 NASPO survey, 48 states and the District of Columbia responded to the survey with 60 percent of the respondents indicating they adopted in part or full the Model Code. That survey also found that only one state that responded did not use eProcurement or an ERP system.²⁰ This demonstrates that electronic systems or portals already exist across the nation. The Commission must consider the potential impact of moving to a national portal just for the E-rate program could have in complicating a procurement process that is already challenging for some applicants. The real question for the Commission then becomes would a new national portal

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

discourage applicants from applying for E-rate and interfere with state procedures already offering the public important transparency and other protections against waste, fraud, and abuse.

The Los Angeles Unified School District (LAUSD) noted in its comments in this proceeding the difficult challenges that could be created by a new bidding portal. In its filing, LAUSD notes that the district has a procurement system that addresses waste, fraud, and abuse. Solicitations for LAUSD are overseen by the Procurement Services Division (PSD). The PSD uses its own vendor portal for E-rate bids. A new national portal would duplicate current practices at LAUSD.

LAUSD's filing also highlights the challenges associated with compliance with state laws. Complying with all federal, state, and local laws and rules related to bidding has always been a hallmark of applying for E-rate. The creation of a new national portal may preempt state laws as they currently exist in many places, including California. LAUSD said "The new E-rate bidding portal would not allow the District to follow State procurement requirements."²¹ LAUSD is the second largest school district in the nation and has the capacity to deal with many challenges that many other smaller districts may lack. If LAUSD has such concerns, it suggests many small applicants with few resources could suffer a severe impact from this proposed new requirement.

Other California stakeholders have also noted possible conflicts between the proposed national bidding portal and state procurement laws and policies. The California K-12 High Speed Network ("K12HSN") expressed grave concerns. K12HSN's filing focuses on several issues including the impact on the bidding process. Similar to LAUSD's comments, K12HSN said the

²¹ Los Angeles Unified Comments on the FCC's Notice of Proposed Rulemaking (WC Docket No. 21-455). Accessed April 24, 2022. https://www.fcc.gov/ecfs/file/download/DOC-5fec9f59ae000000-A.pdf?file_name=LAUSD%20Comment-Federal%20Communications%20Commission_3-23-22.pdf
K-12 High Speed Network Comments the FCC's Notice of Proposed Rulemaking (WC Docket No. 21-455). Accessed April 24, 2022.

new portal would make it difficult to follow state rules, including the state’s competitive bidding process.

*Under California law, the competitive bidding process involves public advertisement for the submission of sealed bids, the public opening of bids, and the award of contracts to the lowest responsible bidder that is responsive to the solicitation for bids. This process is almost exclusively governed by statute under the California Public Contract Code, which applies in one respect or another to virtually all public entities in California.*²²

Parties in other states have expressed similar concerns. In Utah, E-rate procurement is conducted by the Utah Education and Telehealth Network (UETN). Under state law, UETN is considered a statewide purchasing consortium for E-rate Category I applications and files for all schools in the state. According to UETN’s letter filed with the Commission,

*“UETN’s participation in the proposed bidding portal would be a direct violation of Utah state law and University of Utah’s procurement Policy.”*²³

UTEN is also governed by University of Utah policy and states in its letter that submitting information to an outside bidding portal, like the one proposed by the Commission, would violate that university policy. While the national portal’s intent is clearly meant to be positive, it may severely hinder the program’s primary goal to help as many schools and libraries as possible apply for and benefit from E-rate’s connectivity subsidies.

²² K-12 High Speed Network Letter (December 2021) Available online at: https://www.fcc.gov/ecfs/file/download/DOC-5f649580dac00000-A.pdf?file_name=Ex%20Parte%20Filing%20-%20FCC%20WC%2021-455.pdf

²³ Utah Education and Telehealth Network (UETN) Comments on the FCC’s Notice of Proposed Rulemaking (WC Docket No. 21-455). Accessed April 24, 2022. [https://www.fcc.gov/ecfs/file/download/DOC-5f609c8727800000-A.pdf?file_name=UETN%20FCC%20Competitive%20Bidding%20NPRM%20120321\[1\].pdf](https://www.fcc.gov/ecfs/file/download/DOC-5f609c8727800000-A.pdf?file_name=UETN%20FCC%20Competitive%20Bidding%20NPRM%20120321[1].pdf)

A NATIONAL BIDDING PORTAL IS NOT NECESSARY TO PROMOTE FAIR AND OPEN COMPETITIVE BIDDING AND REDUCE FRAUD

Existing E-rate bidding and competition rules already make altering or ignoring bids unlawful. Under the program’s regulations, bidding must be open and fair, which requires careful compliance and a level of public transparency that shines light on abnormal acquisitions or transactions. Furthermore, altering E-rate bids is strictly prohibited not only by the E-rate’s regulations, but also state and local procurement laws and regulations. Violating these existing rules and procedures risks severe professional harm or worse consequences such as civil, criminal, or other official sanctions, such as three year debarment from the E-rate and other universal service programs.

Among other sanctions, an entity can be subjected to civil penalties and be debarred from participating in the E-rate for violating the Program Fraud Civil Remedies Act (31 U.S.C. 3801–12), which generally provides that any person who knowingly submits a false claim or statement to the Federal Government may be liable for an administrative civil penalty for each false claim or statement, and, in certain cases, to an assessment equal to double the amount falsely claimed.²⁴ Virginia offers one state level example of a criminal sanction for failing to comply with procurement requirements. Virginia law states that “[a]ny person convicted of a willful violation of any provision of this article [Ethics in Public Contracting] shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.”²⁵

²⁴ 47 CFR §55.8 (a)(2)

²⁵ Chapter 43. Virginia Public Procurement Act, Article 6. Ethics in Public Contracting § 2.2-4377. Penalty for violation.

Coupled with state and local procurement, the E-rate's record keeping requirements for bidding and other elements of the funding process are comprehensive and sufficient. Applicants and service providers must retain receipt and delivery records relating to pre-bidding, bidding, contracts, the application process, invoices, provision of services, and "other matters relating to the administration of universal service for a period of at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request."²⁶ These requirements create program and process transparency for a long time period.²⁷

Existing state E-rate portals accomplish many of the goals proposed in this proceeding and may be displaced by a national bidding portal. For example, Nebraska's State Office of the Chief Information Officer (state network consortium) currently purchases and files over 140 Forms 471 from contracts established by the Materiel Division of the Department of Administrative Services, including: school district and public library WAN circuits (as requested); Statewide backbone; and Statewide Internet. Some Nebraska school districts purchase off of these same state contracts, but file their own E-rate application. Some school districts and public libraries procure their own circuits, and also file their own E-rate application.²⁸ A new national portal may diminish if not make such state portals redundant.

Additionally, recent research by the national E-rate consultant Funds for Learning (FFL) shows that the E-rate competition is robust as demonstrated by program participation and falling prices. Strong competition means that existing rules are working. The FFL analysis shows that the number of proposals submitted per contract has increased 26% and that on average,

²⁶ USAC Document Retention webpage, <https://www.usac.org/e-rate/resources/document-retention/>

²⁷ 47 CFR §54.504(a)(1)(viii).

²⁸ Nebraska Revised Statute 81-1118

applicants received 3.23 proposals. Perhaps most importantly, the price per megabyte dropped 71% from 2017 to 2021 and wireless access point costs dropped 49%.²⁹

THE TRANSACTION COSTS ASSOCIATED WITH APPLICANT'S AND USAC'S USE AND ADMINISTRATION OF THE PORTAL AND REGULATIONS MAY OUTWEIGH THE PROPOSED PORTAL'S BENEFITS

The transaction costs for applicants, USAC, and other stakeholders associated with administering the proposed E-rate bidding portal and the range of associated procedures and requirements that would guide the portal's use may outweigh the system's benefits. Taking submitted bids out of the E-rate applicant's chain of custody may help to address the minority of instances when bid records are misplaced or improperly maintained at the local level, but the Commission should not underestimate the potential higher transaction costs (e.g., delays caused by technology failures consistent with past and ongoing EPC problems, increased required human interactions between USAC and applicants, and completion of new administrative steps) and potential conflicts and interference with state and local requirements and practices (addressed later in these comments) that a new national portal and related rules may inadvertently impose on the already complex application process.

When the Commissioner modernized the E-rate program, one of the agency's goals was to simplify the application process to encourage more applications and for applicants to have to rely less on sometimes expensive outside consultants to assist them in the application process. While there has been some success in simplifying applications, applying for E-rate funds can still be a burdensome process. The Commission's proposed bidding changes may add to this burden.

²⁹ Funds for Learning, Impact of Modernization on the E-rate Competitive Bidding Process: Funding Years 2017 to 2021 (March 2022). Available online at <https://www.fundsforlearning.com/wp-content/uploads/2022/04/E-rate-Competitive-Bidding-2017-to-2021-2022-03-30.pdf>

The application process may be considerably longer under the Commission's proposed bidding changes. For example, under the Commission's proposal, the system would require an additional 14-day period to review bids. Such a delay will burden applicants and create additional disincentives for applying for E-rate. Thus, while the intent is to protect important funding for the program, many potential applicants may not apply due to the overhead costs and associated delays under the proposal. There is also a concern that when applicants are seeking funding, smaller providers who often have the lowest bids will be discouraged from submitting them due to the increased complexity of the process. This change could drive up prices and give larger providers an advantage over their smaller competitors.

The E-rate program has had relatively few problems considering its size, longevity, and positive impact on school connectivity rates. Focusing on refining the current application process and improving the EPC could be productive ways to prevent waste, fraud, and abuse without adding a new layer of process that discourages applicants who are sometimes overwhelmed by an already complex application.

NEW FEDERAL REQUIREMENTS MAY CONFLICT WITH COMPLEX STATE AND LOCAL PROCUREMENT LAWS AND SYSTEMS

As noted above, E-rate has always relied on state and local laws and practices to protect the program's integrity. Creating a national portal housing all bids may lead to conflict with some of those laws. Given potential conflicts, Congress may need to pass legislation preempting state laws so that the proposed bidding portal could substitute for current state and local practices, which are already designed to prevent waste, fraud, and abuse. Furthermore, some vendors may refrain from submitting bids due to concern over noncompliance with state laws that could

impact their business in other more lucrative areas, which could diminish competition and lead to higher prices and lower quality services.

The following examples highlight a few potential federal-state-local conflicts. Some state procurement law require:

- publicly opening bids. Virginia specifies that competitive sealed bidding shall include public opening and announcement of all bids received. Bidders responding to an ITB must submit the bids in sealed envelopes, and the ITB must specify a date, time, and location at which all bids received will be publicly opened and announced.³⁰
- advertising state bids when they are over a certain amount. In California, there is a state bid limit of \$99,100 that requires publishing notice in a newspaper, which may be prevented by the proposed bid holding period.
- bidders to submit security payments directly to the applicant. California law does not permit submitting such payments through a third-party portal.

In addition, preventing all communication with bidders during the 28-day bidding window is not realistic. There are often reasons to communicate with prospective bidders to correct information or request additional information. Under the current rules, an applicant contacted by a vendor about a specific service listed on a Form 470, must provide relevant information to prospective vendors so they may submit solid proposals for consideration. The use of this portal would make it difficult if not impossible to ensure applicants have all the necessary information from bidders.

³⁰ Virginia Public Procurement Act § 2.2-4302.1.

CONCLUSION

For the aforementioned reasons, CoSN and SETDA urge the Commission to continue relying on the effective protections provided by state and local procurement and to consider other strategies for strengthening the program's vitally important protections against waste, fraud, and abuse. Rather than creating a national bidding portal and related rules that might further complicate the E-rate application process and thus discourage program participation, we encourage the Commission to develop better program record retention guidance, expand technical assistance, and identify lower-burden ways for applicants to share key information as part of the program's existing Form 471 submissions (describing services ordered) or other existing application processes.

Respectfully submitted,

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