

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Promoting Fair and Open Competitive Bidding) WC Docket No. 21-455
in the E-Rate Program)
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COMMENTS OF THE COUNCIL OF THE GREAT CITY SCHOOLS

The Council of the Great City Schools is pleased to submit comments in response to the Commission’s Notice of Proposed Rulemaking published on December 16, 2021 (WC Docket No. 21-455; DA 22-284) regarding Promoting Fair and Open Competitive Bidding in the E-Rate Program. The Council acknowledges the need to protect against waste, fraud, and abuse in the competitive bidding process but urges the Commission not to implement a “Bidding Portal” that would create new, duplicative, and burdensome processes for school districts to access E-Rate benefits.

Introduction

The Council of the Great City Schools, a coalition of the nation’s largest urban school districts, has supported strengthening the E-Rate program by establishing efficiencies and reasonable processes to protect the financial integrity of the program. Our school districts understand and accept that we are the most audited and reviewed applicants in the program because of the size of our requests and the needs of the students we serve. The Council has a vested interest in ensuring that the E-Rate program protects against fraud, waste, and abuse to ensure that our districts can continue to rely on this important source of funding to extend necessary connectivity resources to millions of students in need.

In fact, the Council’s member districts are already doing their part to safeguard federal, state, and local funds. Urban school districts commonly have their own Inspector General to safeguard taxpayer funds, enhance public confidence, and ensure that misconduct and mismanagement do not occur. Through state and local procurement regulations, urban applicants comply with rigorous competitive bidding requirements, ensuring that school districts select service providers who offer cost-effective solutions that meet our technology needs. School districts also currently use electronic bidding portals in accordance with state and local competitive bidding requirements to allow for a range of interactions with service providers that include soliciting proposals, answering questions, and submitting confidential bidding documents.

Creating a new E-Rate-only Bidding Portal, as the Commission proposes, would create a duplicative competitive bidding process for school districts and service providers. Not only would this require service providers and school districts to manage two separate bidding portals but would also create conflicts between federal, state and local requirements. Adding complexity and administrative burden could also

have the unintended effect of deterring service providers from submitting bids and weakening the competition that results in cost savings. As a result, the Council recommends that the Commission not move forward with implementing an E-Rate Bidding Portal.

Complicating and Weakening Competitive Bidding for E-Rate Services

Creating dual procurement processes would add confusion and administrative burden to school districts and service providers. Council districts already must meet state and local competitive bidding requirements – both for E-Rate and other purchases – to solicit proposals from service providers. These processes are typically managed through existing online bidding portals that allow districts to interact with service providers and review confidential bidding documents. Developing a new portal solely for E-Rate reimbursements would create a duplicative process for a subset of a school district’s procurement contracts, adding paperwork and administrative burden for both districts and service providers.

Requiring the use of a separate E-Rate Bidding Portal will also create conflicts between federal, state, and local competitive requirements. The design of any new federal E-Rate Bidding Portal raises concern given the wide range of differing local and state procurement regulations and practices the Bidding Portal should accommodate. The portal should include customized scenarios to deal with these differences and school districts would need a range of permissions to ensure compliance with all levels of requirements. But an E-Rate Bidding Portal would be developed based on federal requirements, and the state and local rules that school districts must also comply with would be a secondary consideration, at best, and more likely not included in the development at all.

In California, for example, federal bidding regulations banning communication outside of the Bidding Portal would run afoul of state advertising requirements. This would put districts such as the Los Angeles Unified School District (LAUSD) in violation of state procurement regulations. As LAUSD notes in their comments, “A Federal third-party portal would effectively result in Federal law preempting State law. With this conflict in requirements, there will be confusion for applicants and service providers and ultimately less participation in the program.” LAUSD also notes that conflicts between federal and state bidding requirements raise the possibility that any service provider not awarded a contract, “may also refer to violations of State procurement laws and cause contracts to be voided.”

Adding complexity to the E-Rate program would also extend the application time as a result of navigating dual procurement processes. Applicants believe the program’s application process is complicated enough, and most large urban districts in the Council need outside consultants to assist with their reimbursement requests. Creating additional complexity by requiring another level of compliance upfront will only slow and confuse the applicants’ and service providers’ roles in this program. Even in states whose bidding requirements closely mirror federal bidding requirements, managing multiple procurement processes will only serve to increase the administrative burden on school districts. School districts will still be held to the local and state procurement standards that already cover the Commission’s suggested changes, and the federal portal will merely add more work to overburdened and understaffed school systems.

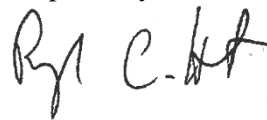
The Council understands that protecting against fraud, waste, and abuse must be a priority for the Commission but also cautions against doing so at the cost of deterring service providers from submitting bids and affecting school districts’ ability to deliver cost-efficient services to students. Council districts are concerned that establishing an E-Rate Bidding Portal that complicates the procurement process will reduce

the number of service providers submitting bids – particularly the smaller, and in many instances minority-owned businesses without the staff to navigate the growing burdens of the E-Rate programs. Creating a more complex and multi-step bidding process disadvantages smaller service providers who don't have the same staff and dedicated E-Rate teams as larger service providers, and the additional risk for those providers will result in less participation. School boards are actively trying to recruit more local, minority and female-owned businesses, many of which are smaller companies, and complicating the procurement process does not help with those efforts.

Conclusion

The Council appreciates the focus on protecting the integrity of the E-Rate program by addressing waste, fraud, and abuse. However, implementing a new E-Rate Bidding Portal would only serve to complicate current procurement processes and have the likely effect of reducing the number and diversity of service providers submitting competing bids for district solicitations. Moreover, it remains unclear how a Bidding Portal would decrease fraud risk by duplicating existing efforts and creating additional program confusion. The Council urges the Commission to seek other methods of oversight that minimizes administrative burden and unintended effects on school districts and the service providers we rely on. The Council asks the Commission to pursue solutions that balance fiscal oversight, program effectiveness, and the practical needs of school districts.

Respectfully Submitted,



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Member districts: Albuquerque, Anchorage, Arlington (Texas), Atlanta, Aurora (Colorado), Austin, Baltimore, Birmingham, Boston, Bridgeport, Broward County (Ft. Lauderdale), Buffalo, Charleston, Charlotte-Mecklenburg, Chicago, Cincinnati, Clark County (Las Vegas), Cleveland, Columbus, Dallas, Dayton, Denver, Des Moines, Detroit, Duval County (Jacksonville), El Paso, Fayette County, Fort Worth, Fresno, Guilford County (Greensboro, N.C.), Hawaii, Hillsborough County (Tampa), Houston, Indianapolis, Jackson, Jefferson County (Louisville), Kansas City, Long Beach, Los Angeles, Memphis - Shelby County, Miami-Dade County, Milwaukee, Minneapolis, Nashville, New Orleans, New York City, Newark, Norfolk, Oakland, Oklahoma City, Omaha, Orange County (Orlando), Palm Beach County, Philadelphia, Phoenix Union High School District, Pinellas County, Pittsburgh, Portland, Providence, Puerto Rico, Richmond, Rochester, Sacramento, San Antonio, San Diego, San Francisco, Santa Ana, Seattle, St. Louis, St. Paul, Toledo, Toronto, Tulsa, Washington, D.C., Washoe County (Reno), and Wichita.