

LOS ANGELES UNIFIED SCHOOL DISTRICT
Office of the Deputy Superintendent, Business Services and Operations

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Federal Communications Commission
Washington DC

RE: Los Angeles Unified Comments on the FCC's Notice of Proposed Rulemaking (WC Docket No. 21-455)

Dear Commissioners:

Los Angeles Unified School District (District) is submitting this letter in response to the FCC's Notice of Proposed Rulemaking (NPRM) - WC Docket No. 21-455 for proposed changes to the competitive bidding process for the E-rate Program.

Summary

The FCC seeks comments on a proposal to implement a bidding portal through which service providers would be required to submit their bids or proposals to the Universal Service Administrative Company (USAC) instead of directly to the E-rate applicant. There would be a proposed waiting period of up to 28 days before the applicant can access bids or proposals submitted in response to their FCC Form 470 and related Request for Proposal (RFP). The FCC is proposing to implement this bidding portal to protect against waste, fraud, and abuse.

The District believes that its stringent procurement policies already protect against waste, fraud, and abuse. The implementation of the new bidding portal would only add complications to the District's established and effective procurement process. The establishment and use of the new portal would create additional administrative burdens on the District. It must be further stated that California also has bidding requirements for public schools, and the new portal would conflict with certain California procurement regulations. The new bidding portal would discourage service providers' willingness to submit bids and proposals. Service providers would be hesitant to participate in solicitations due to risks of non-compliance with California's procurement requirements and the inability to submit confidential documents as part of their bids or proposals. The District summarizes the potential issues with the new bidding portal below in greater detail.

District's Established Procurement Process

The District has stringent procurement policies that are based on State and local procurement requirements to protect against waste, fraud, and abuse. The solicitations are overseen by the Procurement Services Division (PSD) which is a completely separate functional unit from the divisions that seek bids for goods and services. The PSD assigns impartial staff to review and conduct the solicitation process and ensure compliance with the District's procurement policy manual

that incorporates State and local procurement requirements. The PSD administers: the advertisement and issuance of the solicitations via the District's own portal available to vendors, the timely collection of proposals or bids, and the evaluation of proposals or bids received in a fair manner. The PSD ensures that staff that evaluate proposals or bids adhere to contract integrity certifications that require confirmation from staff that they have no economic interest with the result of the evaluation process. The District also provides due process for vendors that allows for solicitation and contract award protests as a safeguard to fair and open competitive bidding. To force the District into using a separate, E-rate only, bidding portal would be duplicative of existing efforts with issuing solicitations and communicating with vendors, time-consuming and therefore wasteful of public resources, and would likely generate confusion among potential bidders. Any delay in the procurement process ultimately impacts the District's ability to provide essential services to students who are most in need.

In addition to the policies and procedures of the PSD, the District takes other measures to protect against waste, fraud, and abuse. The District has its Office of the Inspector General (OIG) that reports directly to the Board of Education. The OIG is required to audit contracts valued at over \$5 million to ensure that District policies are followed with solicitations and that there is no waste of public funds. The District also has an Ethics Office that oversees the confirmation and certification from staff that they have no economic interest in the solicitations. The Ethics Office also requests confirmation and certification from vendors that participate in the solicitations that they do not compensate or try to influence District staff involved with the contract award.

Conflict with State Procurement Requirements

California has existing procurement laws for competitive bidding to protect against waste, fraud, and abuse. Contract solicitations that do not comply with the State's competitive bidding statutes are void and no payments may be made by the public entity under a contract that is in violation of the State's competitive bidding laws. For public school districts, if payments are made to a contractor under a contract that is in violation of the State's competitive bidding laws and the school district official that authorized the payments is found to have committed malfeasance, the school district official is personally liable for any funds paid as a result of the malfeasance. (Cal. Ed. Code, § 17606.)

For solicitations made with an Invitation for Bid (IFB) at amounts over the State bid limit (currently \$99,100), California law requires public advertisement in a newspaper of general circulation, for the submission of bids with required bidders' security, the public opening of the bids, and the award of contracts to the lowest responsive and responsible bidder (See, Cal. Pub. Contract Code, §§20111, 20112).

The new E-rate bidding portal would not allow the District to follow State procurement requirements. The E-rate Program has the current, long-standing rule that schools must effectively comply with Federal, State, and local competitive bidding requirements. 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 perhaps ultimately less participation in the program.

The new E-rate bidding portal, as proposed by the FCC, would prevent California school districts from complying with California Public Contract Code because it appears to contravene multiple State bidding requirements. The proposed prohibition of communications outside of the portal conflicts with State advertising requirements. Required bidders' security, in the form of cash, a cashier's check made payable to the school district, a certified check made payable to the school district, or a bidder's bond executed by an admitted surety insurer made payable to the school district, may not be transmissible through a third-party portal. Furthermore, the public opening of bids does not appear to be allowed due to the FCC's proposed prohibition of communications. Unless there is clarification and confirmation that Federal law

preempts State law with regard to the solicitation of E-rate services, the District may not ignore the State requirements in favor of the proposed Federal requirements as this would lead to void contracts under State law.

Negative Effects on Service Provider Participation

California service providers who are aware of the State's competitive bidding statutes would be discouraged from submitting responses to the solicitations due to the risk of non-compliance with State requirements. Unless Federal law preempts State law with regard to the E-rate Program, there is the possibility that the contract can be voided. Service providers that are not awarded a contract may also refer to violations of State procurement laws and cause contracts to be voided. The submittal of bids/proposals and communication via the proposed E-Rate bidding portal would also compromise the confidentiality of sensitive documents such as resumes and company financial statements. Such issues would limit the service options of the District and may also prevent the selection of cost-effective services because of the limited options.

Another negative effect is that the District may receive "spam bids" as a result of the new bidding portal. Unqualified vendors may use the bidding portal to submit multiple responses that do not meet requirements, but the District would still be required to review and evaluate these responses. These tasks would lengthen the evaluation process and add more administrative burden to District staff.

Conclusion

The FCC should not proceed with the implementation of the bidding portal where service providers would be required to submit their bids and proposals to USAC instead of to E-rate applicants. The District requests for the FCC to withdraw the proposals outlined in the NPRM in consideration of the already stringent procurement policies required for public school districts in California.

Sincerely,



Megan K. Reilly
Deputy Superintendent