



April 27, 2022

The Honorable Marlene Dortch, Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Promoting Fair and Open Competitive Bidding in the E-Rate Program
WC Docket No. 21-455
Initial Comments of the School District of Lancaster, Lancaster, Pennsylvania

Dear Secretary Dortch:

The School District of Lancaster serves 11,000 students in a richly diverse community located in Central Pennsylvania. Our students come from about 70 different countries and speak 38 different languages. One out of five students are learning English as a second language. Nine out of 10 students are economically disadvantaged. The District is continuously seeking ways to reduce expenses in order to minimize the structural deficit it has experienced historically.¹ We are conscientious in our efforts to be responsible stewards of public funds. We follow stringent procurement policies that include our E-rate procurements.

We are concerned that the proposed national mandatory portal for E-rate procurements will be at odds with our existing procedures, will add administrative costs and increase E-rate program complexity. We do not see a positive benefit to the portal. We do not believe the portal will uncover fraudulent conduct committed by ill-intentioned people. People commit frauds and crimes, and a bidders' portal unfortunately will not prevent this conduct. There already are stringent E-rate bidding competitive bidding oversight in place that has historically detected and prosecuted instances of competitive bidding fraud.

School Board Policy 610 states, "It is the policy of the Board to obtain competitive bids and price quotations for products and services where such bids or quotations are required by law *or may result in monetary savings* to the school district." (Emphasis added).² The District has strict protocols in place governing competitive bidding that provide important checks and balances to ensure that the bidding process is open and fair and complies with all E-rate bidding requirements.

- All bids must be approved and issued by the CFO. Technical requirements are developed by subject matter experts but the overall document is subject to the approval of the CFO. The CFO is responsible for all district financial

¹ See, e.g., <https://5share.com/public/home.html?c=4184e3bcdb1a4bb280369ed982f26fb0>.

² All board policies are publicly available online at <https://boarddocs.com/pa/lanc/Board.nsf/goto?open&id=9V5JRB4E6B6F#.go>.

- operations and is well versed in competitive bidding best practices.
- When required under state law or by the District's procurement best practices, RFPs are required for all purchases of technology in an amount of \$21,300 or higher and for services exceeding \$150,000.
 - The District also utilizes E-rate qualified cooperative purchase agreements as an option for category two purchases, and follows an E-rate compliant mini-bid process to invite all contract holders that sell a particular type of product to submit bids.
 - Upon receipt of bids, the Director of Technology, the person designated by the CFO for E-rate procurements, must record all bids and identify any bids that are disqualified and the reasons for disqualification. Before any disqualifications are finalized, both the director of technology and the assistant director of business must both agree and concur with the reasons for disqualification. All other bids are reviewed and scored.
 - Bid evaluation is conducted in accordance with E-rate requirements where price of E-rate eligible services is the most heavily weighted factor in the evaluation. The bid evaluation requires the concurrence of all committee members.
 - School Board Policy # 827 "affirms standards of conduct established to ensure that Board members and employees avoid potential and actual conflicts of interest, as well as the perception of a conflict of interest." This also contributes to the integrity of the District's procurement policies.
 - The District is subject to two different annual audits: one by the District's accountants and one by the State Auditor General. Both audits are publicly available pursuant to School Board Policy # 619. The District believes that this transparency is another safeguard to invite public scrutiny and review, to ensure that its procurement practices follow state and federal (E-rate) requirements to conduct a fair and open competitive bidding process.
 - The District complies with the E-rate 10 year document retention requirement and retains copies of all bid and procurement documents from 10 years from the last date of service associated with each procurement.
 - School Board Policy # 801 provides for open records requests to be accepted and processed in accordance with the State Right to Know Law. All bidding documents including proposals are subject to disclosure upon award of a contract.
 - Disappointed bidders who believe there is a competitive bidding infraction may submit a protest to the District; may file a lawsuit in common pleas court and/or may submit a confidential whistleblower complaint to USAC alleging there is a competitive bidding impropriety.

These extensive policies and procedures were adopted by our District to comply

with state law requirements and other pertinent regulatory requirements governing the District's receipt of state and federal funding. It is our understanding that all public school districts are subject to the same requirements and have adopted their own version of these policies.

In light of the existing procedures, safeguards and controls in place, we have strong objections to the proposed E-rate competitive bidding portal for the following reasons.

- 1) The portal is unnecessary.** The FCC stated that the portal is needed to ensure that all competitive bidding documentation is retained by applicants and available for review when needed, and that post-commitment audits and payment quality assurance reviews sometimes result in adverse findings due to lack of documentation. But this requirement already exists. All competitive bidding documents are already required to be retained by our district for 10 years from the last date of service for the particular service or equipment being purchased. We already are required to provide all of this information and records to USAC, the FCC or other agencies upon request, as a condition of receiving E-rate funding. We also are required to retain these records under the State Right-to-Know Law and to provide non-exempt bidding materials upon request. There already are sufficient incentives in effect to encourage applicants' compliance with the document retention requirements. If applicants are not complying with this requirement, more education and outreach is needed – not the development of a one size fits all mandatory bidding portal.
- 2) Many competitive bidding documents already are provided by the District during PIA reviews and post-commitment reviews.**

The FCC's NPRM relies on the September 2020 GAO report finding that reliance on self-certifications as an overarching key fraud risk in the program, and that applicants could misrepresent the competitive bidding self-certification without the violation being detected by USAC or the FCC.

It is inaccurate and incomplete to state that competitive bidding compliance is a self-certification. This statement ignores the detailed information requests that our District receives when a new contract is awarded, either during a PIA review, a post-commitment review (audits and PQAs) or both, in which we are required to provide all documentation to verify our compliance with the fair and open competitive bidding

requirement and selection of the most cost-effective bidder. While the form 471 certification is *initially* a self-certification, the PIA and audit procedures have explored in depth whether we are complying.

Requiring the district to upload all these documents into the bidding portal is duplicative and onerous. And, before the FCC may conclude that the PIA procedures could just be revised to omit the requirement to upload competitive bidding documents, we question whether in fact this would happen. Already we have to upload all the competitive bidding documents multiple times during a pre-funding review (PIA) and post-commitment review (audit or PQA). When we have told the USAC staff that we have already provided the documentation we have been informed that the documentation is not available to all staff and must be provided again. This also regularly happens during PIA reviews. Although the district routinely uploads its vendor contracts in EPC, we are often asked to provide another electronic copy in response to PIA inquiries. We also wonder whether OIG and GAO are aware of the availability of many of the competitive bidding documents from applicants prior to OIG announcing the portal is necessary and GAO then joining in.

3) The portal will conflict with state law governing competitive bidding for our District.

As explained above our District is mandated by state law to use competitive sealed proposals that are open in public, announced and recorded by the CFO or designee. We do not know how we could be able to comply with this requirement if the proposals are not required to be received directly by the District's CFO. The CFO is currently not an EPC user and has no interest or reason to register to use EPC. Would he/she need to become registered and fluent in how the portal operates? Would the District have to print out the electronic copies of the proposals – yet another burden to us – instead of being able to require both paper and electronic proposals which is our current practice?

Our District also uses the Best and Final Offer (BAFO) process to obtain the most competitive and cost effective services and equipment. Utilizing the multi-tiered bidding process where price is considered the primary factor at each stage – a practice that has been approved by the FCC in appeal decisions – the BAFO invitation may be sent to a subset of the bidders that scored highest in the initial round of bid evaluations. This would occur as part of the existing Form 470, and does not start a new procurement or require the posting of a new form 470. We do not

understand how this would be accommodated by the bidding portal.

The E-rate regulations specifically state that the competitive bidding requirements “apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.” 47 C.F.R. §54.503 (b). Yet this is the precise consequence that would occur if the FCC moved forward with a mandatory bidding portal for E-rate.

We also do not currently post a form 470 when utilizing an E-rate qualified master contract for category two procurements. We do not know or understand how the portal would handle mini-bids. There is no requirement that mini-bids must be open for 28 days since the underlying contracts had been let using the form 470 process. This seems like more complexity and burden to applicants without having any underlying regulatory requirements to back it up.

4) Micro-managing the District’s E-rate competitive bidding procurements is completely contrary to how the District handles federal funds that are subject to the Uniform Guidance Regulations.

The District already has competitive bidding procedures in place to govern the receipt of federal funds subject to federal uniform guidance. These procedures are implemented and administered without the need of a nationalized bidding portal. There are financial thresholds that trigger competitive bidding. This is all overseen by the CFO. Somehow, some way, the District has ably managed these procurements without the use of a nationalized competitive bidding portal. Likewise, we have managed our E-rate procurements in a similar fashion for the last 25 years. We just do not understand why we are now going to be subjected to even more onerous administrative requirements and obligations in order to obtain E-rate funding.

5) The FCC and USAC Have No Special Expertise or Qualifications to Evaluate The District’s Compliance with State and Local Bidding Requirements.

The District is concerned that the bidding portal will become an opportunity for USAC and the FCC to now delve into whether the District met state and local bidding requirements in addition to ensuring our compliance with the E-rate bidding regulations. Yet, as noted above, bidders and other concerned parties such as taxpayers and losing



bidders, have recourse if they believe the District committed a bidding infraction under state or local rules. We do not believe it is appropriate to have PIA reviewers and other staff who are not familiar with state and local rules to pursue this new line of investigation. Our district has a solicitor and E-rate special counsel who are charged with ensuring we are compliant with all bidding requirements. It is hard for us to fathom that the E-rate program should be expanding its scope of review to consider state and local bidding requirements.

For all of these reasons, the School District of Lancaster respectfully requests the FCC to refrain from proceeding to mandate the establishment of a national E-rate bidding portal. There are sufficient measures in place to safeguard against waste, fraud and abuse without creating this additional administrative burden and layer of complexity to the program.

Sincerely,

Matthew Przywara
Chief of Finance & Operations
School District of Lancaster