

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

In the Matter of)	
)	
Promoting Fair and Open Competitive)	WC Docket No. 21-455
Bidding in the E-Rate Program)	
)	
)	
)	

**INITIAL COMMENTS OF
THE STATE OF NEBRASKA DEPARTMENT OF ADMINISTRATIVE
SERVICES, OFFICE OF THE CIO, BEN 225870**

I. Introduction and Summary

The State of Nebraska Department of Administrative Services, Office of the CIO (OCIO)¹ submits these initial comments in opposition to the Federal Communications Commission (FCC or Commission) Notice of Proposed Rulemaking (NPRM) “Promoting Fair and Open Competitive Bidding in the E-Rate Program.”² After conducting over 20 large-scale Requests for Proposal (RFPs) over a 16-year period, it is the opinion of the E-rate support staff of the State of Nebraska that the proposed bidding portal is unnecessary for statewide procurement operations and will not thwart bidding improprieties nor facilitate better compliance by such entities.

The OCIO works in cooperation with the State of Nebraska Division of Materiel—State

¹ The State of Nebraska Department of Administrative Services, Office of the CIO (OCIO), is the statewide consortium applicant for the eligible E-rate entities belonging to *Network Nebraska*, with approximately 293 member entities and over 900 school buildings.

² NPRM Promoting Fair and Open Competitive Bidding in the E-Rate Program, Rel. December 16, 2021, WC Docket No. 21-455

Purchasing Bureau (SPB) to conduct the competitive procurement process, which includes the FCC Form 470 and an accompanying RFP. Over these 16 years and bidding thousands of Ethernet transport circuits, the State Purchasing Bureau has never received a single protest or complaint of unfair procurement practices, nor has it been accused of waste, fraud, or abuse by any service provider or any oversight entity. The State Purchasing Bureau conducts exemplary competitive procurements that are fair, open, and transparent to all interested parties and does not need a national bidding portal in order to achieve compliance with the FCC's or Universal Service Administrative Corporation's (USAC) rules and policies concerning the E-rate program.

II. The National Mandatory E-rate Bidding Portal Will Conflict and Preempt State Procurement Requirements.

The Commission requests comment on inherent conflicts with public procurement law and local procurement regulation.³ There are several areas where Nebraska state procurement procedures are irreconcilable with a national E-rate bidding portal.

First, the Nebraska State Purchasing Bureau requires a two-part bid response to telecommunications RFPs:

A. E-mail submission of the State's Master Agreement⁴ Acceptance Page

SUBMISSION OF PROPOSALS

Bidders should submit one completed Master Agreement Revision #3 Acceptance Page for High Speed Transport Service for Network Nebraska RFP's 2020-2023 and email to as.materielpurchasing@nebraska.gov. The Acceptance Page may be manually signed in an indelible manner or by DocuSign. Please note that the email subject line should appear as specified in Section I B. The RFP number should be included in all correspondence. It is the bidder's responsibility to ensure the completed Master Agreement Revision #3 Acceptance Page is electronically received by SPB with enough time for SPB to provide the bidder with instructions on how to electronically submit the related RFP proposal.

³ NPRM at 20Error! Reference source not found.

⁴ State of Nebraska Master Agreement for telecommunications procurements found at <https://das.nebraska.gov/materiel/purchasing/6616/6206-6616%20Z1%20Master%20Agreement%20Revision%20%233.pdf>

B. Digital submission of the RFP bid response⁵ to the state bid portal.

SUBMISSION OF PROPOSALS

It is also the bidder's responsibility to submit the related RFP proposal by the date and time indicated in the related RFP Schedule of Events. Electronic sealed proposals must be received by the State Purchasing Bureau by the date and time of the proposal opening per the RFP Schedule of Events. No late proposals will be accepted. It is the responsibility of the bidder to check the website for all information relevant to the related Request for Proposal to include addenda and/or amendments issued prior to the opening date. Website address is as follows: <http://das.nebraska.gov/materiel/purchasing.html>.

The NPRM would seem to preclude the use of the Nebraska state portal or the multi-step bid eligibility and require the exclusive use of the national E-rate portal.

Second, the State Purchasing Bureau conducts a public bid opening either in person or through Zoom videoconferencing. This too would appear to be precluded by the bidding portal.

PROPOSAL OPENING

The opening of proposals will be public and the bidders will be announced via Zoom. Proposals **WILL NOT** be available for viewing by those present at the proposal opening. Proposals will be posted to the State Purchasing Bureau website once an Intent to Award has been posted to the website. Information identified as proprietary by the submitting bidder, in accordance with the RFP and state statute, will not be posted. If the State determines submitted information should not be withheld, in accordance with the [Public Records Act](#), or if ordered to release any withheld information, said information may then be released. The submitting bidder will be notified of the release and it shall be the obligation of the submitting bidder to take further action if it believes the information should not be released. Once proposals are opened, they become the property of the State of Nebraska and will not be returned.

Third, the State Purchasing Bureau includes a prospective bidder question-and-answer process and bidder communications that are highly regulated within the open bid period to ensure that all bidders are treated equally. It is unclear how this state requirement would be permitted since the NPRM prescribes that all communications must be uploaded to the bidding portal.

⁵ State of Nebraska RFP 6616 Sample Document found at <https://das.nebraska.gov/materiel/purchasing/6616/6616%20Z1%20RFP.pdf>

State Purchasing Bureau Master Agreement requirements concerning bidder

communications:

PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF

From the date each RFP is issued until the Intent to Award is issued, communication from the Bidder is limited to the Point of Contact (POC) listed above. After the Intent to Award is issued, the Bidder may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State. No member of the State Government, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding the RFP. The POC will issue any answers, clarifications or amendments regarding this RFP in writing. Only the State Purchasing Bureau can award a contract. Bidders shall not have any communication with or attempt to communicate or influence any evaluator involved in the RFP.

Here is a summary list of the best practices used by the Nebraska State Purchasing Bureau to prevent waste, fraud and abuse and ensure that an open, fair and competitive procurement process is administered for E-rate eligible bids:

- A. All Nebraska registered middle-mile and last-mile carriers are alerted to the RFP opportunity
- B. All RFP materials are publicly posted for viewing with no requirement to register or pay for access (e.g. <https://das.nebraska.gov/materiel/purchasing/6616/6616.html>)
- C. The publicly posted RFP response period is 29 days or longer, and no bids are opened until the public opening date and time
- D. A formal question-and-answer period occurs within the RFP response period and the resulting document is publicly posted and any clarifications are considered part of the RFP documentation
- E. Eligibility for RFP response requires total acceptance of the State's Master Agreement (i.e. legal terms and conditions) so that all bidders are treated equally
- F. Eligibility for Cost Proposal evaluation requires total acceptance of the State's RFP Technical Requirements (e.g. "Bidder has read and agrees to comply") so that all bidders are treated equally
- G. Evaluation of the RFP Cost Proposal is a mathematical formula to determine lowest cost and each circuit is awarded individually and without condition so that all bidders are treated equally
- H. No interaction or communication can occur with any bidders until after the State's Intent to Award Letter is posted
- I. Bid evaluation results are open for public viewing with no requirement to register or pay for access
- J. The RFP and all ancillary documents are persistently archived within the RFP's own website (e.g. <https://das.nebraska.gov/materiel/purchasing/6616/6616.html>)

The State of Nebraska is also concerned that a nationwide bid portal or repository would increase the problem of “spam” or unsolicited bids. An increasing number of vendors respond to every Form 470 posted with identical encyclopedic bids that do not address applicant needs or State requirements. Using a bid repository, Program Integrity Assurance (PIA) reviewers may insist such bids be evaluated along with legitimate bids or deny funding when spam bids are not considered. While denials may be overturned on appeal this just adds to the complexity and inefficiency of the program.

If the goal is to prevent fraud and abuse through increased transparency, a possible compromise could involve a requirement that all bid responses and evaluation documents be uploaded to a national repository AFTER local bid submission and local bid evaluation had taken place. This repository could replicate the success of the *Manage Contracts* Module within the E-rate Productivity Center (EPC).

III. Unsolicited Suggestion to Strengthen Program Integrity and Decrease the Risk of Waste and Abuse

¶3. Taking into account these recommendations, we propose a change to the E-Rate program targeted at several goals: streamlining program requirements for applicants and service providers, **strengthening program integrity**, preventing improper payments, and **decreasing the risk of fraud, waste, and abuse**.

One area that the FCC has seemingly not explored is the waste and abuse of federal E-rate funding caused by the predatory and/or highly variable pricing practices exercised by some telecommunications companies in service areas that are unchallenged by competition. One of the primary determiners of pricing is competition or the lack thereof. Where only one telecommunications company is known to exist, the monthly recurring costs of fiber Ethernet transport services are dramatically higher than in areas where two or more bidders are competing. Neither the Universal Service Fund nor the Lowest Corresponding Price

requirements have made any substantial progress in rural areas after almost three decades of state E-rate bidding, as evidenced by the bid excerpts below from State of Nebraska RFP 6206 (2020).

Entity	E-rate		Bandwidth (Mbps)	Monthly Cost	Cost per Mbps	Vendor	Number of Bidders
	Discount	Relative Location					
School A	70%	Northeast Nebraska	500	\$ 2,528.00	\$ 5.06	Vendor X	1
School B	70%	Northeast Nebraska	500	\$ 600.00	\$ 1.20	Vendor Y	3
School C	80%	Central Nebraska	500	\$ 2,932.78	\$ 5.87	Vendor X	1
School D	70%	Central Nebraska	500	\$ 150.00	\$ 0.30	Vendox Z	3
School E	70%	Western Nebraska	500	\$ 1,795.90	\$ 3.59	Vendox X	1
School F	70%	Western Nebraska	500	\$ 534.75	\$ 1.07	Vendor X	4

While not illegal under Individual Case Basis pricing conventions, this pattern of highly variable and inequitable pricing may merit further research or investigation by the FCC, and Nebraska is probably no exception to other rural states.

IV. Conclusion and Recommendations

The State of Nebraska Department of Administrative Services, Office of the CIO (OCIO) opposes the development and implementation of a national bid portal for E-rate applicants. The exemplary procurement procedures used by the Nebraska State Purchasing Bureau (cited above) may lead one to put stock in the rural colloquialism, “if it ain’t broke, don’t fix it”. At the very least, the FCC should consider conditional applicability of a bid portal to smaller and less equipped applicants, and to allow a participation waiver for regional and state consortium applicants and those larger school district and library applicants that employ full-time purchasing or procurement teams. And as an alternative, rather than opting for a bid portal to replace local and state procurement processes, the FCC may consider a repository for submission of bid data and evaluation results after the local evaluations have taken place.

Lastly, the State of Nebraska Department of Administrative Services, Office of the CIO (OCIO) thanks the FCC for its long-standing support of the E-rate program. The E-rate program

and the rules and requirements for participants have brought about many positive changes in telecommunications pricing and affordability for schools and libraries. As a state consortium applicant, we join the FCC and USAC in encouraging optimal compliance from all of our E-rate eligible members.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Toner', with a long horizontal flourish extending to the right.

Ed Toner

Chief Information Officer

Office of the CIO

State of Nebraska

Ed.toner@nebraska.gov

402-471-3717