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E-Rate: FCC Issues Orders on RFP Portion of Competitive Bidding Rules

In a recent Order, the Commission further clarified its requirements when requests for proposals (“RFPs”) are issued. The Commission waived the requirements of the competitive bidding rules for two school districts that had failed to follow the required RFP process. In the first case, a school district posted its Form 470 for the entire 28-day period required by the rules, but on its RFP required service providers to submit a proposal three days prior to expiration of the 28-day deadline. Consistent with its finding in the *Aberdeen Order*, the Commission found that missing the deadline by one to three days still provided vendors with a sufficient amount of time to prepare and submit bids. In the second case, the Commission found that even though a school district had failed to provide notice that an RFP was available, the school had still properly posted its Form 470 and the Form 470 contained sufficient information for service providers to bid on the services sought. In contrast, the Commission denied the waiver request of a school district that had similarly failed to provide notice that an RFP was available, but posted a Form 470 that was significantly less detailed than its RFP. The Commission found that this placed service providers relying solely on the Form 470 at a disadvantage. Moreover, the school had only provided the RFP to service providers that had requested it.

The Commission also waived its rules for a school district that posted its Form 470 for the entire 28-day period, but posted an RFP four days after the 28-day deadline had closed in order to comply with state procurement laws. The Commission found that even though the Form 470 did not indicate that an RFP would be posted, the school had notified all providers that had contacted them regarding the Form 470 of the availability of the RFP and had provided them with copies. Accordingly, the Commission found that the school’s actions had not harmed the competitive bidding process.

The Commission granted the appeals of two school districts that properly posted their Form 470s and then responded to questions from service providers regarding the services that the schools were seeking. USAC determined that because the schools responded to questions from the service providers, the schools had, in effect, issued RFPs and denied funding because the schools failed to provide notice of the RFPs in their Form 470. The Commission disagreed with USAC’s determination and found that the communications had not constituted an RFP, but had merely provided guidance on the service sought.

Lastly, the Commission denied the appeals of five school districts that required service providers to submit their RFPs more than a few business days prior to the end of the 28-day waiting period. Even though the schools had posted their RFP for 28-days, they had effectively ended the competitive bidding process significantly prior to the deadline.

If you have any questions, contact [Mark Palchick](#), [Rebecca Jacobs](#) or any member of the firm’s [Communications Law Group](#).

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