

August 12, 2011

## RECENT COMPETITIVE BIDDING ORDERS

### Maintaining Level Playing Field Key to Overlooking RFP Issue

The Commission recently granted the appeal of two schools that had been denied funding by USAC because of competitive bidding issues. In each instance, the Form 470s filed by the schools indicated that no RFPs would be issued even though an RFP was, in fact, released. The Commission found that despite the discrepancy, the Form 470s prepared by the schools had contained enough information regarding requested services that service providers unaware of the existence of the RFPs would not have been at a disadvantage in the bidding process. The Commission remanded the schools' funding requests to USAC for further processing in light of the decision.<sup>1</sup>

### USAC Misinterprets State Master Contract Procurement Provision

The Commission granted the appeal of a school that it found had properly followed both the Commission's competitive bidding requirements and state and local procurement requirements. At issue was a provision of a competitively-bid state master contract that stated that schools choosing vendors from the master contract should prepare their own evaluation to support their selection. The Commission determined that the provision did not require the schools to complete their own competitive bidding process prior to selecting a vendor from the master contract; rather the schools were simply encouraged to do so. The Commission stressed that the school was only required to comply with the state bidding requirements, because the master contract itself had already been competitively bid in accordance with the Commission's rules. Accordingly, the Commission found that the school had not violated the state and local procurement provisions when it selected a single vendor from the master contract list without evaluating other vendors from the list.<sup>2</sup>

### Commission Order Establishes Guidance for Multi-Tiered Bidding Processes

A recent Commission Order provides that applicants involved in the competitive bidding process may use a multi-tiered vendor selection process to evaluate bids, so long as price remains the primary factor in selecting a vendor. Consistent with state and local procurement requirements, applicants must provide notice in either their Form 470 or RFP regarding the criteria to be used to evaluate each tier, the scoring of the criteria, any criteria that are to be disqualifying and the circumstances under which bidders will be disqualified from the entire

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<sup>1</sup> *In the Matter of Request for Review of a Decision of the Universal Service Administrator by Riverdale Unified School District, Riverdale, CA, Cherokee County School District, Murphy, NC, DA 11-1370 (2011).*

<sup>2</sup> *In the Matter of Request for Review of a Decision of the Universal Service Administrator by Coahoma County School District Clarksdale, MS, DA 11-1369 (2011).*

process. In using a multi-tiered bidding process, applicants may use the first tier to ensure that a proposal meets the applicant's minimum technical requirements. The first tier may be scored as either pass/fail or may require a minimum numerical score in order to advance to the second tier of evaluation. Yet price must remain the primary factor in selecting a bid. Accordingly, if numerical values are assigned to criteria in either tier, the numerical scoring value of price must rank higher than all others. Following this guidance, the Commission granted the appeals of two schools that had used a multi-tier vendor selection process.<sup>3</sup>

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

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<sup>3</sup> *In the Matter of Requests for Review of a Decision of the Universal Service Administrator by Baltimore City School District, Baltimore, MD, Cobb County School District, Marietta, GA*, DA 11-1368 (2011).