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UPDATE ON THE FCC'S E-RATE PROGRAM

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Agenda

- **E-Rate Program**
 - Overview
 - USAC's Review
- **Focus Topics**
 - Eligible Services
 - Competitive Bidding Process
- **Avoiding Pitfalls**

E-RATE PROGRAM: Overview

- The E-Rate Program makes funding available annually to eligible **schools, libraries** and **consortia** of eligible schools and libraries for telecommunications, Internet access, and internal connections
- The program budget is annually indexed for inflation with **over \$4.4 billion** available for Funding Year 2022
- Discounts range from **20 - 90% of the actual cost** of eligible services
- Eligible Use: Services must be used **primarily for educational purposes**, i.e. activities that are **integral, immediate, and proximate to** the education of students or the provision of library services

E-RATE PROGRAM: USAC's Review

- The FCC has designated specific **program forms** Applicants and/or their service providers must submit at each step in the funding process
- Applicants and/or service providers may also be required to submit **supporting documentation** to allow the Universal Service Administrative Company (USAC) to validate information submitted & verify compliance with program rules
- If the requires additional information and/or documentation for its review, it will issue an **information request** to the Applicant, its service provider, or both
- Applicants and service providers are subject to **document retention and production** requirements



E-RATE PROGRAM: Eligible Services

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ELIGIBLE SERVICES: Mixed Eligibility

- **Cost-Allocation:** Applicants generally must cost-allocate expenses if the service:
 - Contains both eligible and ineligible components,
 - Is used for both eligible and ineligible uses, or
 - Is delivered to both eligible and ineligible locations
- **Ancillary Use:** Cost-allocation is not required if an ineligible component is “ancillary,” including:
 - Price for the ineligible component cannot be determined
 - Product or service is the most cost-effective means of obtaining the eligible functionality without regard to the value of the ineligible functionality

ELIGIBLE SERVICES: Cybersecurity

- **Firewalls**

- *Category One:* Basic firewall eligible if (1) integrated with Internet Access and (2) not priced out separately
- *Category Two:* Basic firewall protection is considered a Category Two internal connections component if either of the factors above does not apply

- **FY 2023 Eligible Services List:** Commenters voiced strong interest in funding for advanced cybersecurity functionalities, including Next-Gen Firewall

E-RATE PROGRAM: Competitive Bidding

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REQUESTS FOR SERVICES

- **FCC Form 470 (Description of Services Requested & Certification Form)**
- **Requests for Proposal (RFPs)** – Required if required by state or local procurement law, or Applicant is requesting:
 - Leased Dark Fiber and Leased Lit Fiber
 - Self-Provisioned Network and Services Provided Over Third-Party Networks
 - Network Equipment
 - Maintenance & Operations
 - Cellular Data Plan/Air Card Service
 - Other
- **28-day rule** – Applicants must wait at least 28 days before selecting a service provider

REQUESTS FOR SERVICES: Exemption

- Applicants may be exempt from submitting an FCC Form 470 for Internet Access services that
 - Are ***commercially available***;
 - Are ***low cost***;
 - Are ***high-speed*** (at least 100 Mbps down and 10 Mbps up); and
 - Provide ***basic conduit access*** to the Internet at required speeds.

LOWEST CORRESPONDING PRICE

- **Lowest Corresponding Price (LCP)** – The lowest price that a service provider charges similarly situated, non-residential customers for similar services provided under contract or tariff
- **LCP Requirement**
 - Service provider *bids* may not offer pricing above the LCP
 - Service providers may not *actually charge* the Applicant above the LCP
- **Exceptions:**
 - The Commission finds the LCP for interstate services is not compensatory, or
 - The state commission finds the LCP for intrastate services is not compensatory

COMPETITIVE BIDDING: Fair & Open Process

- **“Fair and open” requirement** – “The competitive bidding process must be fair and open and must not have been compromised because of improper conduct by the applicant, service provider, or both parties.”
- Prohibits, e.g.:
 - Service provider involvement in request for services or service provider selection
 - Conflict of interest (or the appearance of a conflict)
 - Applicant employee with role in service provider selection has an ownership or other financial interest in a bidding service provider
 - Applicant’s request for services does not describe the supported service with sufficient specificity

COMPETITIVE BIDDING: Prohibited Gifts

- **Gift Rule**

- Applicants “may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in” the program,
- Service providers may not offer or provide gifts,
- A “gift” is any item, benefit, or service provided for free or at a discount

- **Exceptions:**

- Modest refreshments not offered as part of a meal,
- Items with little intrinsic value intended solely for presentation,
- Items worth \$20 or less

COMPETITIVE BIDDING: No Free Services

- **Promotional or Fringe Benefit Value** – The value of all price reductions, promotional offers, and “free” products or services must be deducted from the pre-discount cost of services indicated in funding requests
- **Cost-Shifting** – Costs, trade-in allowances, and discounts must be fairly and appropriately derived

COMPETITIVE BIDDING: Fiber

- Specific requirements for:
 - **Leased Dark Fiber:** Applicants seeking bids for leased dark fiber must also seek bids for the needed connectivity via leased lit fiber
 - **Self-Provisioned Networks:** Applicants seeking bids for self-provisioned networks must also seek bids for services provided over third-party networks
- Applicants seeking bids for leased dark fiber/self-provisioned networks must separately seek bids and request funding for Internet Access service

COMPETITIVE BIDDING: Broadband Labeling

- FCC announced new broadband labeling requirements
 - Rules apply to mass-market retail broadband as well as E-Rate and Rural Health Care program funded broadband services
- E-Rate providers must include broadband labels with competitive bids
 - If no bid service, label must be included with first invoice
- Required six months after Federal Register publication
 - Providers with less than 100,000 subscribers may wait one year to implement

SERVICE PROVIDER SELECTION

- **Cost-Effectiveness** – Applicants must consider all bids received and select the most cost-effective service offering.
- **Price as Primary Factor** – In determining which service offering is the most cost-effective, price must be the primary factor considered.
- **SPIN** – Going forward, all Service Provider Identification Number registrations will require a SAM.gov registration
- Also, remember LCP!



AVOIDING PITFALLS

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COMPLIANCE IS CRITICAL!

- **Competitive bidding** must be fair & open, in accordance with program rules
 - **Conflicts of interest**, or the appearance of conflicts must be avoided
- **Consultants** should be thoroughly vetted
- **Cost-allocation** is required for ineligible expenses, components, or sites
- **Contracts** should account for any desired modifications or extensions
- **Certifications** are taken seriously! Applicants must certify that they considered all bids and selected the most cost-effective service, with price being the primary factor considered

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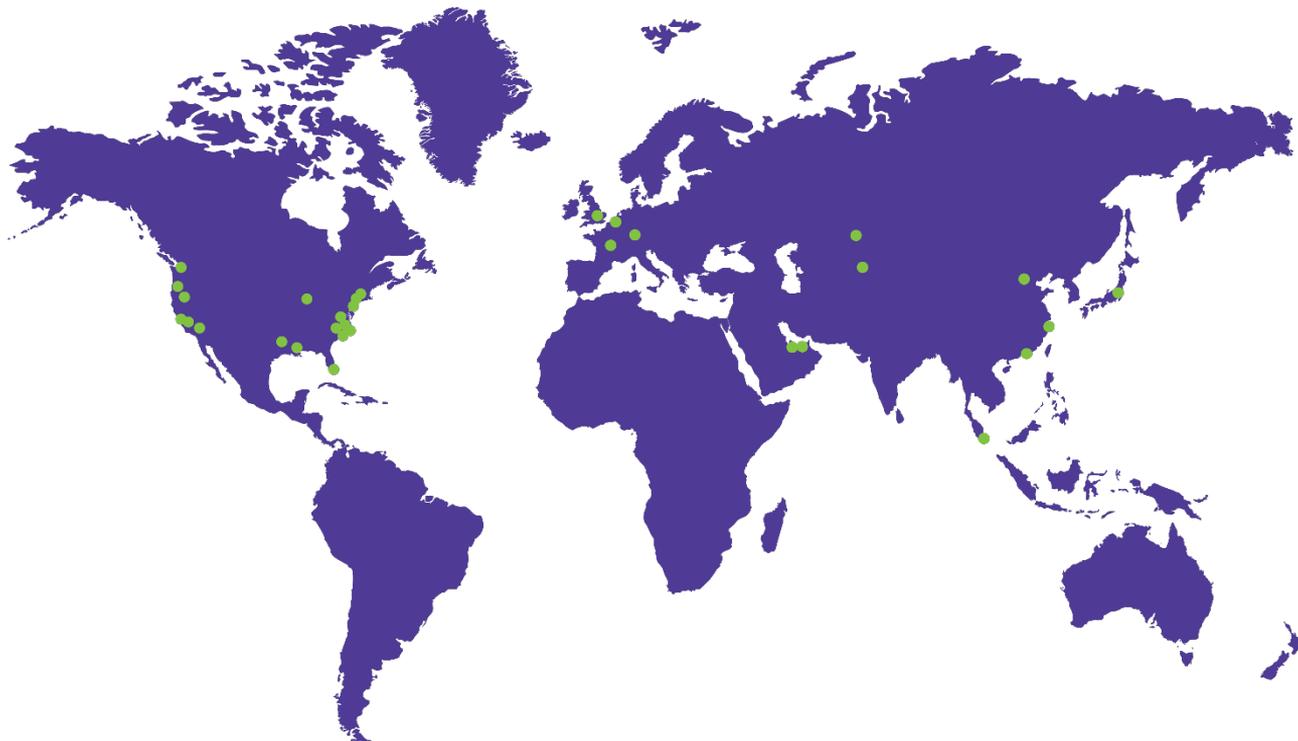


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