

# ARKANSAS



**Beginners Training November 12-13, 2013**  
**Some Contract Issues**



# Ensuring Program Compliance

- Know Your Role
- Technology Plans
- Fair and Open Competition
- Document Retention



# Contract Process

- Form 470 and RFP
- Competitive Bidding
- Vendor Selection Process
- Heightened Scrutiny
- Hurdles to Success



# Know Your Role

- Write, and seek and receive approval of the technology plan
- File FCC Form 470 and indicate whether there is, or will be, an RFP
- Evaluate bids and select the winning service provider.
- File the FCC Form 471 and Item 21 attachments during the application window
- Respond to inquires from PIA.



# Know Your Role

- File FCC Form 486 after ensuring that the technology plan was approved
- You are CIPA compliant and services have started
- Select the invoice method and file FCC Form 472 (BEAR), if applicable.
- Document your compliance with FCC rules on an on-going basis.
- Retain documentation for at least five years from the last date of service delivery.



# Technology Plan Requirements

Created by schools or libraries **ONLY**

(no service provider involvement)

- Contains sufficient detail to support and validate the services requested and covers the funding year
- Must follow FCC rules **and** state or local technology plan Requirements
- Four Required Elements:
  - Goals and Strategies; Professional Development; Needs Assessment; and Evaluation
- Plans must be approved prior to start of service or filing of FCC Form 486, whichever is earlier



# Fair and Open Competition

## The Competitive Bidding Process

- Must be a fair and open process
- Avoid conflicts of interest
  - Applicant consultant - Service Provider
  - Applicant - Service Provider
- Open competition and bid evaluation
- Follow all rules – FCC and state/local
- Read the FCC Form 470/RFP responses and contract fine print
- 6th Report and Order provides further clarifications and examples of rule violations



# Fair and Open Competition

## FCC Form 470

- Indicates the services and categories of service which entities are seeking
- Must be based on tech plan for Priority 2 services
- Must be posted for at least 28 days
- Indicates if they are planning/have issued RFP or other documents regarding the procurement
- Indicates any special requirements and/or disqualification factors
- Indicates who will be receiving the services



# Fair and Open Competition

## Only applicants can:

- Determine the types of service you will seek on an FCC Form 470
- Prepare and fill out the FCC Form 470
- Sign, certify, and/or submit FCC Form 470
- Negotiate with prospective bidders
- Run the competitive bidding process



# Fair and Open Competition

## Requests for Proposal

- FCC rules refer to RFPs generically but they may have a variety of names (Request for Quotes, Scope of Work, Summary of Projects, Instructions to Bidders, etc.)
- FCC rules do not require RFPs but state and local procurement rules may
- Must be based on entities' tech plan
- Must be available to bidders for at least 28 days
  - Applicants must count 28 calendar days from whichever (FCC Form 470 or RFP) was posted or available last

**Example:** RFP posted on December 1, FCC Form 470 posted on December 15; December 15 starts the 28-day count



# FCC Form 470 and RFP Issues

- Applicants must ensure they post for the correct category of service
  - New FCC Form 470 combines Telecom and Internet Access
- Sufficient detail in FCC Form 470 to enable service providers to formulate bids
  - Cannot provide generic descriptions (e.g., all eligible telecom services, Digital Transmission Services)
  - Cannot provide laundry lists of products and services
- Applicants cannot state that the procurement is subject to sole source bidding and therefore exempt from the FCC's competitive bidding requirements.



# Imposing Restrictions

- Applicants may set some eligible services requirements
  - Applicants may require service providers to provide services that are compatible with one kind of system over another (e.g. Brand X compatible)
- Bidder disqualification criteria must be spelled out in FCC Form 470 and/or RFP and be available to all
- Cannot list specific make and model of services sought without also allowing equivalent products and/or services to be bid
  - “XYZ manufacturer's router model 345J or equivalent”



# Sample Language

- It is the service providers responsibility to read the entire bid. The bid is posted at **DISTRICT WEBSITE** The issuing office is the sole point of contact in the State for the selection process. Vendor questions regarding IFB related matters see Item 12 above
- The bid is to price a variety of broadband connectivity and network engineering solutions that avoid duplication by maximizing the use of existing public and private infrastructure and provides the best possible service quality for Arkansas students.



# Sample Language

- Ethernet, Fixed Wireless or Other Technology Connectivity (Transport) for locations that do not have connectivity to the Current State Network (the leased data network that provides connectivity to the Internet and data center for State agencies, boards and commissions) under contract, where the currently awarded vendors are not able to waive the cost of facility placement, or where bandwidth requirements cannot be met with the existing transport protocol of the awarded vendor.



# Sample Language

- Dedicated Internet (Direct Internet) This shall be business grade symmetrical bandwidth (same upload and download speeds) to supplement the Internet provided over the State network where Ethernet bandwidth from the customer site to the State network is not adequate to provide the Internet bandwidth required by the customer.
- See complete IFB for further details

# Examples of RFP Clauses

- The State Procurement Official reserves the right to award a contract or reject a bid for any or all line items of a bid received as a result of this IFB, if it is in the best interest of the State to do so.
  
- Bids will be rejected for one or more reasons not limited to the following:
  - a) Failure of the vendor to submit his bid(s) on or before the deadline established by the issuing office.
  - b) Failure to sign an Official Bid Document.
  - c) Failure to complete the Official Bid Price Sheet(s).
  - d) Any wording by the vendor in their response to this IFB, or in subsequent correspondence, which conflicts
  - e) with or takes exception to a requirement in the IFB.
  - f) Failure of any proposed goods or service to meet or exceed the specifications.



# Sample Language

- This Invitation for bid is issued in an effort to improve broadband capacity and internet connectivity for Arkansas public schools
- The vendor should propose the most economical solution that fulfills the mandatory requirements of the IFB
- The IFB seeks to obtain:
  - a) Ethernet, Fixed Wireless or Other Technology Connectivity (Transport) for the locations specified.
  - b) Dedicated Internet (Direct Internet) This **shall** be business grade symmetrical bandwidth (same upload and download speeds).



# Sample Language

## **Target Broadband Access for Teaching, Learning, and School Operations**

### **School Year 2015 Target**

- An External Connection to the Internet

At least 100 Mbps per 1000 students/  
staff

### **School Year 2017 Target**

- At least 1 Gbps per 1000 student/staff
- Internal Wide Area Network (WAN) connections from the district to each school and among schools within the district



# Sample Language

- This Invitation for Bid (IFB) is issued by SCHOOL DISTRICT to obtain pricing and a contract for 20 Mbps, 30 Mbps, 40 Mbps and 50 Mbps of Ethernet transport service to connect the School District to the State WAN Network. The service will be used to provide internet access and carry voice, data and video services for the school district. The service is to be installed based on the initial bandwidth requirements of the school district. The objective is to have a contract that allows for growth of bandwidth provided as the requirements of the school district increase.



# Suggested Information

- To assist bidders in determining pricing, an online map is available through the Arkansas Geographic Information Service with all locations, including topographical overlays and measurement tools. This map depicts public school facilities that serve as a District Hub for other schools or facilities in the district. The
- District Hub is the location that connects a district Metropolitan Area Network (MAN) to the Internet. The
- map is available at the following web link:
- <http://bit.ly/16s4Zhd>
- Alternatively, you can go to [www.agio.maps.arcgis.com](http://www.agio.maps.arcgis.com) and search by “bandwidth” or “demarc” in the search
- box at the upper right.



# Qualifying/Disqualifying Factors

## LACK OF FUNDS:

- The state may cancel this contract to the extent funds are no longer legally available for expenditures under this contract.

OR

- Acceptance of this contract is contingent upon approval of requested E-rate funding and receipt of a USAC Funding Commitment Decision Letter.



# CANCELLATION

- In the event the State no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding, the State may cancel the contract or purchase order by giving the contractor written notice of such cancellation 30 days prior to the date of cancellation.



# Qualifying/Disqualifying Factors

## E-RATE REQUIREMENTS

The service requested in this RFP will be purchased by E-rate eligible entities; consequently, the respondent **must** be registered as a telecom provider for participation in the E-rate Program. **The Respondent must provide its E-rate Service Provider Identification Number (SPIN) in the bid response.**



# Construct a Bid Evaluation

- When an applicant examines and evaluates the bids received for eligible services, it must select the most cost-effective bid. The price of the eligible products and services must be the primary factor in the evaluation, but does not have to be the sole factor.
- Other relevant evaluation factors may include: prior experience including past performance; personnel qualifications including technical excellence; management capability including schedule compliance; and environmental objectives.

# Example 1

<b>Factor</b>	<b>Weight</b>	<b>Vendor 1</b>	<b>Vendor 2</b>
Price of the eligible products and services	30%	15	30
Prior experience	25%	20	0
Personnel qualifications	20%	20	15
Management capability	15%	0	15
Environmental objectives	10%	5	3
<b>Total</b>	<b>100%</b>	<b>50</b>	<b>63</b>

# Example 2

<b>Factor</b>	<b>Weight</b>	Vendor 1	Vendor 2
Price of the eligible products and services	30%	30	25
Prior experience	25%	15	25
Ineligible cost factors	20%	20	15
Management capability	15%	10	15
Local Vendor	10%	5	10
<b>Total</b>	<b>100%</b>	<b>80</b>	<b>90</b>



# Document, Document, Document

Retain **ALL** documentation  
for at least five years from  
the last date of service

Delivery

Bids, Q/A, Evaluation, Winning &  
Losing Bids

# Questions?

