

Summary of FCC Proposal to Mandate E-rate Bidders' Portal

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Executive Summary

At the recommendation of the federal General Accounting Office (GAO) and Office of Inspector General (OIG) of the Federal Communications Commission (FCC), and in order to reduce fraud risk in the E-rate program, the FCC released a [Notice of Proposed Rule Making \(NPRM\)](#) that proposes to make the following significant changes to the competitive bidding rules of the E-rate program:

- 1. Mandated Bidding Portal:** Service providers will be required to submit bids to a central bidding portal managed by USAC and would be prohibited from submitting bids directly to schools/libraries or other parties. Bids would be withheld from schools/libraries until the Form 470 Allowable Contract Date (29 days after the Form 470 is posted) and then released to the applicant for bid evaluation.
- 2. Mandated Public Communication Channel with Vendors:** Service providers will post their questions anonymously to applicants through the bidding portal, to which applicants must respond during the competitive bidding process. No communication between service providers and applicants related to competitive bidding process will be permitted outside of the bidding portal during the bidding process. All communication will be publicly posted for applicants and all interested bidders to see.
- 3. Required Documentation Submission to USAC:** Applicants will be required to upload the following into the bidding portal before submitting the Form 471:
 - ✓ Completed bid evaluation worksheets or matrices;
 - ✓ Explanation for any disqualified bids;
 - ✓ List of people who evaluated the bids (along with their title/role/relationship to the applicant);
 - ✓ Memos, board minutes, or similar documents related to the service provider selection/award;
 - ✓ Copies of notices to winners;
 - ✓ Any correspondence with the service providers prior to and during the competitive bidding, evaluation, and award phase of the process; and
 - ✓ Contracts or other documentation that outlines service, cost, term.

The FCC's goal is to have the bid portal operational beginning July 1, 2023 for use with Funding Year 2024 E-rate procurements.

Program stakeholders are asked to provide comment on these proposals, and specifically to address if these measures will impose hardship on E-rate program participants and if the proposals conflict with state and local bidding requirements. Stakeholder comments are due by March 28, and reply comments are due by April 27. Comments should be submitted at: <https://www.fcc.gov/ecfs/filings> under Proceeding (Docket) 21-455.

Background

- GAO and FCC's Office of Inspector General have stated that non-compliance with competitive bidding self-certifications and inability to verify compliance is a key fraud risk because all applicants are not currently required to upload all bidding documents in a central repository.
- Lack of available competitive bidding documentation leads to improper payment findings in the E-rate program and otherwise contributes to the improper payments percentage reported to Congress.
- Both GAO and OIG recommend a central repository for the submission of competitive bidding documents to alleviate these problems.

FCC NPRM Questions Related to Each Rule Change

Rule Change 1: Mandated Bidding Portal

Service providers will be required to submit bids to a central bidding portal managed by USAC and would be prohibited from submitting bids directly to schools/libraries or other parties. Bids would be withheld from schools/libraries until the Form 470 Allowable Contract Date and then released to the applicant for bid evaluation.

FCC Questions:

- Would the requirement to use a central bidding portal discourage participation by applicants and service providers in the E-Rate program?
- Would applicants be more inclined to hire consultants if a bidding portal is imposed?
- Are there other expenses that applicants would incur if a competitive bidding portal is enacted?
- Are there solutions other than a bidding portal or changes to the competitive bidding rules that could reduce bid collusion and the risk of fraud? For example, should the FCC require that bids be uploaded into a central repository by the applicant *after* the competitive bidding process is concluded?
- Commenters are invited to address the feasibility, necessity, and cost effectiveness of implementing a nationwide bidding portal.
- Should service providers be required to submit bids in a particular manner that would enable applicants to compare competing bids? Conversely, do applicants have difficulty in comparing bids if providers submit their bid responses in a variety of formats?
- What if no bids are received or no responsive bids are received? FCC proposes that the portal allow applicants in these situations to extend their competitive bidding periods as needed and seek comment on this proposal.
- Are there any other scenarios (besides services currently granted a competitive bidding exemption – the CABIO option) in which E-Rate participants should not be required to use the bidding portal?
- Related to requiring applicants to wait a specified amount of time before they can access bids submitted in response to their Form 470 service requests: Is 28 days appropriate? Shorter or longer period? What impact is there on applicants if they must wait before they can access bids?
- Should the Form 470 deadline be established that is more than 28 days from the Form 471 filing deadline, to allow for both a minimum number of days (e.g., a 28-day waiting period) plus

additional time (e.g., two weeks?) for applicants to review bids and make service provider selections?

- Are there processes that would be disrupted by withholding bid responses from applicants for a minimum period of time?
- Would a bid holding period help applicant avoid inadvertent bidding errors that lead to denials?
- Are there potential obstacles the Commission should examine, such as conflicts with certain state and local procurement requirements, or other technical challenges program participants may have regarding using a bidding portal for competitive bidding?
- Would adopting an E-Rate bidding portal require service providers submitting bids in certain jurisdictions to submit bids in more than one way because of existing state or local requirements? If, for example, certain state or local requirements mandate that service providers submit bids directly to applicants such as through e-mail, or through another online platform that would allow applicants to view bids before they would be permitted to under any new E-Rate requirements, how might that impact the usefulness of a USAC-administered portal?
- Would the bidding portal interfere with applicants who use a state master contract that requires a mini-bid process?
- In addition, some states may have requirements relating to public disclosure of bids, prequalification of bidders and treatment of proprietary or confidential information. How should the Commission take those requirements into account in establishing a bidding portal?
- Although the current E-Rate competitive bidding requirements apply in addition to state and local competitive bidding requirements and are not intended to preempt such state or local requirements, FCC seeks comment on how to address any apparent conflicts with the goals the Commission is attempting to achieve through the proposals stated herein.
- Certain state, local or other requirements, as well as other factors, may dictate varying procurement timeframes and processes for different applicants in the E-Rate program. Comment is requested on how the use of the proposed E-Rate competitive bidding portal or an imposed waiting period could impact procurement timing for these applicants.
- For applicants using state master contracts, is there documentation that applicants should be required to upload into the portal to demonstrate compliance with the E-Rate rules?

Rule Change 2: Mandated Public Communication Channel with Vendors

Service providers will post their questions anonymously to applicants through the bidding portal, to which applicants must respond during the competitive bidding process. No communication between service providers and applicants related to competitive bidding process will be permitted outside of the bidding portal during the bidding process. All communication will be publicly posted for applicants and all interested bidders to see.

FCC Questions:

- How should the portal handle clarifications sought by applicants about bids that have been submitted and made available for review?

- What other types of communications between service providers and applicants and procurement activities should be captured in the portal, and how to implement this in a way that is streamlined and easy to use for E-Rate program participants?
- Are there other types of functionality that should be considered for the bidding portal, and how should these functions be implemented in a way that will help support fair and open competitive bidding?
- What are the procurement processes that facilitate bidding in stages, potentially including initial and subsequent rounds of bidding (e.g., requests for best and final offers)? Because these are procurement steps that effectively extend the competitive bidding period, how should they be captured in the bidding portal and how would this impact the proposal to implement a time period when bids are withheld from applicants? How could these processes be replicated and captured in the bid portal in a way that maintains anonymity and refrains from bid disclosure yet promotes transparency?
- Would the use of a bidding portal interfere with a multi-stage procurement process and if so, how?

Rule Change 3: Required Documentation Submission to USAC

Applicant will be required to upload the following into the bidding portal before submitting the Form 471:

- ✓ Completed bid evaluation worksheets or matrices;
- ✓ Explanation for any disqualified bids;
- ✓ List of people who evaluated the bids (along with their title/role/relationship to the applicant);
- ✓ Memos, board minutes, or similar documents related to the service provider selection/award;
- ✓ Copies of notices to winners; and
- ✓ Any correspondence with the service providers prior to and during the competitive bidding, evaluation, and award phase of the process.
- ✓ Contracts or other documentation that outlines service, cost, term

FCC Questions:

- Are the bidding materials the portal would capture, such as the bids and related communications, plus the applicant submission of its bid comparison documentation, sufficient for compliance review?
- If applicants do not receive any bids in response to their posted requests, should applicants be required to provide other documentation explaining how they selected a specific service provider?
- Should controls be implemented to prevent applicants from proceeding with filing their Form 471s before submitting required competitive bidding and contract documentation? For example, should there be a system-implemented control put in place and should applicants be prohibited from filing FCC Forms 471 in EPC until required documents are uploaded into the portal? Or, would it be less burdensome on both applicants and USAC to direct USAC to not process submitted Form 471s until the required documentation has been filed?

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Additional FCC Questions

The FCC's NPRM also seeks comments on these other issues/questions:

Document Storage and Recordkeeping Requirements

- Should E-rate applicants be excused from the 10 year local recordkeeping requirement for all competitive bidding documents that were uploaded to the portal? In other words, for any documents uploaded to the portal cloud is there any need for applicants to also retain these documents?
- Should applicants and service providers be permitted access to their stored competitive bidding documents for a period long enough to be able to comply with recordkeeping requirements?
- Should this access be provided in a way to permit them to produce the records at the request of any representative (including any auditor) appointed by a state education department, USAC, the Commission, or any local, state or federal agency with authority over the entity, as is required by section 54.516(b)?
- Are there any legal or other barriers to having E-Rate program participants comply with documentation and recordkeeping requirements by operation of using the bidding portal to store their competitive bidding records.

System Issues

- FCC wants to know how best to leverage EPC in implementing a bidding portal.
- Are there specific administrative burdens or benefits that the Commission should consider if the bidding portal is integrated with EPC? What about using a separate system?
- Is there a risk of applicant confusion and technical difficulty if applicants are asked to use two systems to store documentation for the E-Rate program?
- Can any obstacles be overcome with user testing and outreach?

Other Questions from the FCC:

- Are there other aspects of the FCC's existing competitive bidding rules that are confusing, burdensome, or vague that may lead to inadvertent, but not necessarily fraudulent, competitive bidding violations? If so, what are they and what modifications might the Commission make to resolve any confusion and provide clarity around these rules?
- FCC seeks comment on proposals including implementation timeline.
- Are there any other issues that may arise from the bidding portal?
- What other operational, legal, logistical or administrative concerns are there that were not identified in the NPRM?