

Fair and Open Competitive Bidding

Applicants must ensure an open and fair competitive bidding process to receive E-rate funding.

In the Form 470, the applicant describes the types of products and services desired and for which bids are accepted. The competitive bidding process begins when the Form 470 Description of Services Requested and Certification Form is certified in the E-rate Productivity Center (EPC). The applicant must be ready to accept bids once the Form 470 is certified. Service providers will review the applicant's FCC Form 470 through EPC and submit bids to provide the requested products and services. Applicants then report the selected services and products on the Form 471.

Request for Proposals

A Request for Proposals (RFP) is defined as any supplemental information you will share with vendors in addition to the E-rate Form 470. An RFP is only mandatory when bidding dark fiber and self-provisioned fiber projects. Even if not mandatory, you may find it to be useful when you have a large or detailed procurement. Providing an RFP could help service providers better understand the services you are bidding in your Form 470. An RFP describes the project undertaken and contains sufficient details to inform potential bidders of the scope, location, and any other requirements for the project.

Applicants must decide whether to issue an RFP before posting a Form 470 because the RFP must be uploaded as part of the Form 470 filing process. If state or local procurement regulations impose additional requirements, such as eligibility requirements for bidders, these requirements must also be noted on FCC Form 470. After the RFP and Form 470 are posted online, if supplemental documents such as addenda are issued, they too must be uploaded to the Form 470 filing system. Please refer to the separate guidance document on Tips for E-rate RFPs and Contracts for more information about RFPs.

Conducting an Open and Fair Competitive Bidding Process

The entity filing the Form 470 must ensure that the competitive bidding process is open and fair:

- All bidders must be treated the same.
- No bidder can have advance knowledge of the project information.
- There are no secrets in the process - such as information shared with one bidder but not with others - and that all bidders know what is required of them.
- With limited exceptions, service providers and potential service providers cannot give gifts to applicants.
- In addition, the value of free services (e.g., price reductions, promotional offers, free products) must generally be deducted from the pre-discount cost of funding requests.

The goal of competitive bidding is to have as many bidders as possible respond to a Form 470, RFP, or other solicitation method so that the applicant can receive better service and lower prices.

The competitive bidding process must be open and fair. "Open" means there are no secrets in the process – such as information shared with one bidder but not with others – and that all bidders know what is required of them. "Fair" means that all bidders are treated the same and that no bidder has

advance knowledge of the project information. The Form 470, RFP, or other solicitation method should be clear about the products, services, and quantities the applicant is seeking. In addition, the applicant must avoid using generic or encyclopedic service descriptions on their Form 470, RFP, or other solicitation method. Generic or encyclopedic requests will inhibit service providers from composing a responsive bid without additional information or insight into the applicant's bid solicitation.

- Examples of a generic Form 470 or service description may include "all eligible services," "any E-Rate Program products," or "all telecom services."
- Examples of an "encyclopedic" service description are replications of the entire Eligible Services List or a "grocery" list of services that does not cover a specific service or product.

In order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way.

Similarly, applicants must avoid conflicts of interest in the bidding process. For example, a conflict of interest exists when the applicant's consultant is associated with a service provider that is selected and is involved in determining the services sought by the applicant and the selection of the applicant's service provider(s).

‘Cardinal Changes’ to 470s and/or RFPs

In general, should you need to make one or more significant ("cardinal") changes that modify the original scope of your competitive bid, you must file a new Form 470. Service providers that are not interested in bidding on the services contained in the original scope of your project or services may be interested in bidding on your changed scope, and vice versa. Also, bidders are supposed to be provided with all relevant information about the procurement for the entire 28 day bidding period.

For certain changes, you MUST post a new Form 470. Here are some examples:

- You certified your Form 470 without uploading any RFP documents, but have now issued an RFP document and need to upload it as part of your Form 470.
- You did not post services for a service type, and now realize that you need to post for services in that service type.
- Your state or local competitive bidding rules and regulations require you to post a new form for the changes you want to make.

If your changes can fit into the description of your existing Form 470 – and you attached at least one RFP document to your original form – you can add one or more RFP documents to provide information about the change(s) you want to make. However, if you post a new RFP document and your changes are significant, you must restart your 28-day clock.

How do you know if your changes are “significant” and thus violate the Cardinal Change Rule? This is a gray area in the E-rate program. USAC does not have a definitive list of changes, but in 1997, the FCC adopted the “cardinal change doctrine” in relation to when minor contract modifications may be permitted without having to conduct a new Form 470 procurement. This phrase also lacked a strict definition but was discussed with reference to court interpretations of the Competition in Contract Act (“CICA”) for federal acquisition and contracting purposes. Specifically:

The cardinal change doctrine is used in connection with contractors' claims that the Government has breached its contracts by ordering changes that were outside the scope of the changes clause. The cardinal change doctrine looks at whether the modified work is essentially the same as that for which the parties contracted. In determining whether the modified work is essentially the same as that called for under the original contract, factors considered are the extent of any changes in the type of work, performance period, and cost terms as a result of the modification. Ordinarily a modification falls within the scope of the original contract if potential offerors reasonably could have anticipated it under the changes clause of the contract.

A similar test for E-rate procurement purposes would be to determine whether a given change in the products or services in your Form 470 procurement may have affected the bidding strategies of potential bidders or whether service providers might or might not have bid at all.

USAC has broadly interpreted what is meant by a modification to include such items as:

- Adding any new location to the scope of the procurement
- Adding any new service or equipment to the scope of the procurement
- Providing additional information that they believe would have been needed to prepare a proposal.

When in doubt, faced with a question as to the need to rebid/extend the bidding window by 28 days, it is always best to err on the side of caution and extend the bidding period or repost the Form 470. If you have issued an RFP and uploaded it in EPC, **be sure to post an addendum in EPC that announces the deadline extension for receipt of proposals.**

Bottom line: USAC encourages applicants to post a new Form 470 when making changes, just to avoid any confusion. If you attached an RFP document to your original Form 470, you can attach a document noting the cancellation of that form and referring potential bidders to your new Form 470.

Restrictions on Gifts from Service Providers

Gift Prohibition

All gifts from service providers to applicants are **prohibited** except for:

(1) Modest refreshments that are not offered as part of meal (*e.g.*, coffee and donuts provided at a meeting) and items with little intrinsic value intended for presentation (*e.g.*, certificates and plaques); and

(2) Items that are worth \$20 or less (*e.g.*, pencils, pens, hats, t-shirts, and other items worth less than \$20, including meals), as long as those items do not exceed \$50 per employee from any one source per funding year. This is commonly referred to as the “20/50 rule.”

Are there any other exceptions?

Yes, there is an exception for charitable contributions. Service providers can continue making charitable donations to E-rate eligible entities in the support of schools – including, for example, literacy programs, scholarships, and capital improvements – as long as such contributions are not directly or indirectly related to E-rate procurement activities or decisions and are not given to circumvent the competitive bidding rules, including requiring applicants to pay for their non-discount portion of eligible costs.

Exception for personal gifts. There is an exception for gifts to family and personal friends when those gifts are made using personal funds of the donor (without reimbursement from an employer) and are not related to a business transaction or business relationship.

What individuals are subject to the gift prohibition rules?

- Service Provider: includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.
- Applicants: All individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such school, library, or consortium with the Schools and Libraries Program of the Universal Service Fund (E-rate Program), including individuals who prepare, approve, sign or submit E-rate applications, technology plans, or other forms related to the E-rate Program, or who prepare bids, communicate or work with E-rate service providers, E-rate consultants, or with USAC, as well as any staff of such entities responsible for monitoring compliance with the E-rate Program.

How is the \$50 per funding year exception computed?

Aggregate value of all gifts from any employees, officers, representatives, agents, independent contractors, or directors of the service providers are considered when computing the \$50 annual limit that applies to each individual employee that works for an E-rate applicant.

Are the restrictions in place all the time?

Yes, these restrictions on gifts always are applicable, not just during the time period when the competitive bidding process is taking place.

Do state and local restrictions on gifts still apply?

Yes, applicants and service providers also remain subject to applicable state and local restrictions regarding gifts. To the extent a state or local provision is more stringent than the federal requirements, violation of the state or local provision constitutes a violation of the Commission rule.

What if applicants are unsure of whether a specific situation is covered by the gift restriction?

The Sixth Report and Order states that USAC and the FCC will have a procedure to answer these kinds of inquiries. Questions should be submitted to the Client Service Bureau through Submit a Question or your EPC portal.

What are some examples of permissible and impermissible gifts?

Gifts OK	Gifts NOT OK
Coffee and donuts at a presentation	Meal at presentation over \$20
Door Prize: Ball cap worth \$20 or less	Door Prize: \$30 gift card
Certificate or plaque presented at conference	Gold watch given as thank you gift
	Travel, food or lodging at conference, even if you are speaking on behalf of the provider
Pens handed out a conference worth \$20 or less	Conference giveaways: any item exceeding \$20 in value (e.g., briefcase)
Holiday present to sibling, not reimbursed by company, paid with own funds	Customer Appreciation meal/gift exceeding \$20
Joe Applicant get \$18 lunch from Larry, the Cable Guy. No other meals or gifts during the funding year from anyone employed by, or representing, the Cable Company. No Rule Violation = Total gift below \$20 and \$50 threshold.	Joe Applicant get \$12 lunch from Larry, the Cable Guy three times during the funding year. (Total: \$36 total). Larry’s boss, takes Joe to lunch for \$18. (Total from Cable Company: \$54). Rule violation = exceeded \$50 threshold
Jane Applicant wins mouse pad at a conference from Internet R Us. (Value = \$8) Jane Applicant also receives \$15 box of chocolates from Internet R Us.	Jane Applicant wins a wireless mouse and mouse pad at a conference from Internet R Us. (Value = \$24 +\$8) Rule violation: One gift exceeded \$20 threshold.

<p>No Rule Violation = Both below \$20 and did not exceed \$50 threshold.</p>	
<p>Joe Applicant attends a conference and picks up a free ballpoint pen and stress ball from a company he's never heard of. No further gifts are given. No Rule Violation = Total gift below \$20 and \$50 threshold.</p>	<p>Joe Applicant is invited to a customer appreciation lunch at a seminar. Meal value = \$22 Rule violation = exceeded \$20 threshold</p>
<p>Jane Applicant received a bag of peaches in the summer from a provider. Value of peaches = \$10 No other gifts are given by anyone from that company for the rest of the funding year. No Rule Violation = Below \$20 and did not exceed \$50 threshold.</p>	<p>Jane Applicant is invited to speak at a conference regarding services she gets from a provider. The provider offers to pick up travel costs. Rule violation: Total gift exceeded \$20 threshold.</p>

Service Provider Do's and Don'ts

Service Provider Prohibitions:

- A service provider cannot serve as the Form 470 contact person or technical contact person.
- Any service provider contact information (i.e., name, address, email address) on the Form 470 invalidates the Form 470 when the category of services the applicant is requesting are the same services the service provider furnishes.
- A service provider cannot provide any input into the applicant's RFP.
- A service provider cannot assist the applicant in preparing the Form 470.
- No person associated with a service provider can submit the Form 470 or Services Ordered and Certification Form (Form 471). There should never be a situation where a person is authorized by an applicant to make decisions for the applicant and at the same time be associated in any capacity with the service provider that submits bids in response to the Form 470 and appears on the Form 471. If such a relationship is discovered, it may lead to enforcement action and denial of funding.
- A service provider cannot provide funding or a grant to pay for the applicant's non-discount portion. Nor may the service provider waive the applicant's non-discounted portion of the charges. The applicant has a strict, unequivocal obligation to pay the non-discounted portion and must certify to this on Form 471.
- A service provider cannot coerce or pressure the applicant to use a specific service provider. If USAC determines that a service provider has engaged in coercive practices or if USAC receives a complaint from an applicant, an investigation may lead to enforcement actions and possible reduction or loss of funding. Coercive actions include, but are not limited to, contracts that presume a relationship with subcontractors or other service providers not chosen by the applicant, the inducement to contract with the service provider as a result of "free" assistance in completing application forms, the offer of free or heavily discounted equipment as an inducement to sign a contract or purchase order, and contracts that contain penalty clauses.
- A service provider cannot interfere with the competitive bidding process. Service providers, through the actions of their representatives and employees, may not interfere with or obstruct the applicant's competitive bidding process.

Service Provider Allowable Activities:

- Service providers are allowed to answer general questions about the products and services they sell in response to applicant inquiries, but they may not prepare any part of a RFP, specifications sheet or Form 470 that will be used by the applicant for conducting a competitive bid procurement.
- After the applicant has completed its bid evaluation and selected the most cost-effective service provider, the service provider may assist the applicant in providing the necessary information to complete the Form 471.
- The service provider may seek or assist in locating other resources, from third parties (non-vendor related) grants or foundations to pay the non-discount portion of the products or services, only if such funds are committed to the applicant prior the filing of the Form 471.
- Service providers may provide information to applicants to assist applicants in responding to PIA questions. Applicants should be sure to retain control and ultimate responsibility for responding to PIA questions.
- Service providers may assist applicants with service substitutions and other post-commitment activities. Applicants, however, must remain responsible for completing and certifying all forms to USAC.
- See also Vendor Gift Restrictions write-up in this Tab of the E-rate Resource Manual, which describes the strict limits on acceptance of anything of value, such as gifts and meals, from E-rate vendors.

Free Services Advisory

An applicant may not receive free or discounted services from a service provider that have the effect of providing a discount level to the applicant greater than the discount allowed for Schools and Libraries support.

Applicants and service providers are prohibited from using Schools and Libraries support to subsidize the procurement of ineligible or unrequested products and services or from participating in arrangements that directly or indirectly reduce the applicant's non-discount share.

Basic principles

Funding requests or applications inconsistent with the following principles are contrary to program rules and will be denied.

- *Account for 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.
- *No Cost Shifting:* Costs, trade-in allowances, and discounts must be fairly and appropriately derived. For example, the cost for eligible components may not be inflated in order to compensate for discounts of other components not included in funding requests.
 - Applicants may not trade in equipment purchased with program funds sooner than five years after the date that the equipment was installed.
 - Once five years has elapsed, applicants may trade in equipment and may use money received from the trade-in to "pay" the applicant's non-discount share on other eligible equipment.
- *Eligible/Ineligible Cost Allocation:* A proportionate cost allocation is required between eligible and ineligible components.
 - The FCC Form 471 funding request(s) and the applicant's inventory or asset register must identify the ineligible components including the product name, model number and location.

In addition, applicants and service providers are cautioned that willful violations of program rules can result in criminal penalties.

The examples that follow provide further details of **prohibited practices**.

Example 1: Applicant receives a discount for services received.

Assume that a service provider's regular price for a service is \$100, but that it will offer the applicant a 20% price reduction. The funding request for this service must specify \$80 as the pre-discount cost, and the applicant must pay its share of this \$80 cost. It is a violation of program rules to submit a funding request in excess of the actual cost expected to be charged and paid.

Example 2: A discounted or free service is provided in exchange for applicant purchase of an eligible service.

Assume that a service provider offers to provide an eligible service for \$200, and also offers a 60% discount on a \$300 ineligible service when both the eligible and ineligible service are purchased together. (The 60% discount means that the applicant would need to pay only 40% of the usual \$300 cost.)

Because such an arrangement may have the effect of using program support to subsidize ineligible services, any discounts (or free services) must be allocated proportionately. For this example, the pre-discount cost of the eligible service should be shown as \$128, as illustrated in the following calculations.

	Eligible Service	Ineligible Service	Total
Usual cost for both service	\$200	\$300	\$500
Quoted cost for both services	\$200	\$120 (\$300 usual cost reduced by 40% discount)	\$320
Percent of usual cost to be paid	64% (\$320/\$500)		
Proportional cost of eligible service	\$128 (64% of \$200)		

Example 3: A request for proposal (RFP) specifies both eligible and ineligible services and seeks only a single price for the mixed-eligibility bundle.

Assume that an applicant issues an RFP that seeks internet access (eligible), high speed broadband (eligible), and web-hosting (ineligible). Responses received provide only a single cost for the bundled package.

A funding request that provides only a single cost for both eligible and ineligible components cannot be approved under program rules. Eligible and ineligible products and services must have separated costs, so that the ineligible components can be subtracted from funding requests.

A limited exception exists to the requirement for separated pricing. In some cases, an eligible product or service can include ineligible components on an ancillary basis, and the full package can be eligible for support if certain conditions are met.

For example, a service provider's standard internet access service also provides email as a standard component, and this offering is the most cost-effective solution without considering the ineligible features, then the full cost can be submitted as the pre-discount cost in a funding request. The distinction in this case is that the added feature is ancillary, it is not specifically requested by the applicant, and it is a part of the standard internet access package from the service provider.

Example 4: A service provider offers a discount for prompt payment.

Assume that an arrangement between a service provider and an applicant is for a service with a cost of \$1,000, but that the service provider offers a 10 percent discount if the applicant portion is paid within 30 days. The amount eligible for funding in this case is the net cost to the applicant for payment within 30 days, or \$900. Applicants must choose the most cost-effective solution and certify to USAC that funds are on hand to pay the applicant share.

Therefore, applicants are expected to take advantage of payment discounts, when offered, and must seek support only toward the actual costs (in this case, \$900) expected to be paid.

Example 5: A service provider donates funds to a grant organization, earmarked for an applicant.

Assume that an applicant seeks an eligible technology upgrade that costs \$100,000. The service provider donates \$10,000 to a grant organization, with a stipulation that the money goes to the applicant. This is a violation of program rules.

Program rules do not restrict applicants from accepting grants from bona fide organizations, nor do they restrict service providers from attempting to help applicants obtain grants from such organizations, so long as the grants and organizations are completely independent of the service provider.

Additional requirements and restrictions

The examples provided here are representative. Similar arrangements that effectively subsidize procurements or provide greater discounts than the applicant is entitled would also be violations of program rules.

Any party with a potential financial interest in the Schools and Libraries Program is subject to the guidance provided. For example, a subcontractor to a service provider may not engage in the prohibited activities described here.

Applicants are required to maintain records of the competitive bidding process including all bids obtained and the factors used in evaluating the responses and the determination of the winning bidder. These records must be provided to USAC or auditors on request.

Tips for E-rate RFPs

The following guidance reflects a combination of official and unofficial advice acquired through experience.

E-rate Requests for Proposal

A Request for Proposal (RFP) is a generic term that is intended to cover any supplemental information that is distributed to all bidders that describes the project undertaken and contains sufficient details to inform potential bidders of the scope, location, and any other requirements for the project. Other terms may include Request for Quote, Invitation to Bid, Specifications, etc. Applicants should consider *any* supplemental document to be an RFP and therefore must follow the E-rate rules applicable to RFPs.

In most cases, the applicant has the choice to issue an RFP. There are only a few situations where the E-rate program mandates the use of an RFP:

- 1) State or local bidding requirements require an RFP. In South Dakota, there are none that I am aware of.
- 2) The applicant is seeking proposals for dark fiber service or the construction and ownership of fiber facilities.
- 3) The applicant is seeking Category 1 network equipment.
- 4) The applicant is seeking Operations and Maintenance services for dark fiber or self-provisioned fiber services.

Even if an RFP is not mandatory, applicants may find that more complex procurements may benefit from issuing an RFP along with posting the Form 470 so that vendors may have more detailed information and instructions about the procurement. Because E-rate rules require a fair and open competitive bidding process, the issuance of a RFP and establishment of a systematic way to field and respond to all vendor inquiries so that vendors have access to the same information can greatly assist applicants in documenting compliance with E-rate bidding rules.

RFPs must be uploaded to the new EPC Portal when posting a Form 470.

Once the applicant has identified whether an RFP will be prepared, the RFP must be written and uploaded to the new EPC portal at the same time that the applicant posts the Form 470. The EPC portal will not allow an applicant to finalize the Form 470 without uploading the RFP when the applicant signifies that an RFP is going to be issued in conjunction with the Form 470. If an applicant posts a Form 470 and later decides to issue an RFP, the applicant must post a new Form 470, upload the RFP, and begin the 28-day bidding period anew.

RFP Changes and Modifications

Supplemental information such as answers to vendor questions, addendum to RFPs, etc. must also be uploaded to the EPC portal for the Form 470 application. If a modification to the scope and breadth of the RFP is made through an addendum, such changes are considered “Cardinal Changes,” and the E-rate rules require that the 28-day clock start over, but a new Form 470 is not required to be posted. USAC has broadly interpreted what is meant by “Cardinal Change” modifications to include such items as:

- Adding any new location to the scope of the procurement
- Adding any new service or equipment to the scope of the procurement
- Providing additional information that they believe would have been needed to prepare a proposal.

Unfortunately, this is not an all-inclusive list which means that there may be other changes made to your RFP that USAC could interpret to be “Cardinal Changes.” If you are not sure whether the additional information would be considered a “Cardinal Change,” and time allows, you should extend the date for responses to the RFP and re-start your 28-day clock. Be sure to post an addendum in EPC that announces the deadline extension for receipt of proposals.

Important Items to Include in RFPs

1) RFPs for dark fiber and/or self-construction of broadband networks should have a longer bidding period than 28 days.

While not explicitly stated in a regulation or order, FCC and USAC staff have advised applicants that the bidding period for these procurements should be at least six weeks or even longer if time permits. The theory is that these procurements are especially complex, and vendors need more time to prepare responsive bids. Staff is concerned that the bidding process is not fair and open if the bidding response period is insufficient.

2) When specifying a manufacturer, you must include “or equivalent” language and require system compatibility.

Beginning in FY 2013, applicants are not allowed to focus exclusively on one manufacturer’s equipment on the Form 470 or RFP. If a specific manufacturer is mentioned, then the language “or equivalent” also *must* be included and all bids for all solutions (manufacturer-specific *and* equivalent) must be evaluated. Applicants are permitted to include the requirement that the proposals must be compatible with a specific manufacturer’s equipment or service that is installed in your network. It is advisable for RFPs to prescribe that vendors that bid equivalent equipment are required to provide in their bid response documentation and information to substantiate that the equipment does have comparable specifications and is compatible with existing network equipment.

3) Scalability requests should be explicitly stated in the RFP.

In order to have flexibility in contracts to increase bandwidth or transmission speeds for services contracts such as data circuits and Internet, or purchase upgraded products or additional quantities, your Form 470 and associated RFP must both explicitly state your minimum and maximum quantities of service or products. This price information should be required to be provided by bidders in response to the RFP and should be included in the contract that is negotiated with the winning bidder. Per current E-rate guidance, in the absence of this detailed information in both the RFP and contract document, amendments to contracts that increase quantity of service or products are not permitted without initiating a new competitive bid process.

4) Mandatory Requirements to Quality for Bid Submission

The program guidance states that all reasons for disqualification of bids must be explicitly stated on the Form 470 application. Some applicants may seek to impose mandatory requirements on bidders that must be met in order for a bidder to be qualified to submit a proposal at the end of the bidding period. For example, such requirements may include mandatory attendance at a pre-bidding conference, mandatory attendance at site walk-through visits, mandatory submission of a letter of interest, etc. Any of these requirements that must be met prior to the end of the 28day bidding period must be managed carefully by applicants so as to avoid the perception that the bidding process is not open and fair. Since failure to comply with these mandatory requirements may disqualify bids, they should be explicitly stated on your Form 470 application and treated as grounds for disqualification of proposals.

5) Non-E-rate Funding-Out Clauses

If you cannot afford to pay 100% of your contract without E-rate discounts, or if you do not want the service or equipment unless you receive E-rate discounts, then you should be certain to include an “out clause” in your RFP and contract. Such a clause would include language stating that you intend to apply for E-rate discounts to help pay for the contract, and if you do not receive the full amount of requested E-rate funding, the applicant has the option to cancel the contract without incurring any termination liability. Keep in mind this means you cannot start your service before you receive your Funding Commitment Decisions Letter. Alternatively the applicant may wish to include language to qualify the “out clause” to have the choice of providing a written notice to proceed, prior to receiving funding approval, subject to the applicant agreeing to pay the full price for services until the funding approval is received.

6) Regulatory Change Clause

Include language that allows the applicant to cancel the contract in the event that there is a change to E-rate program rules that fully or substantially rescinds the eligibility of the contract services or equipment for E-rate funding. The parties may negotiate what is meant by “substantially rescinds” by including a monetary threshold or some other objective standard. This provision is especially important for multi-year agreements.

7) Red Light Rule

Applicants should require vendors to certify in their bid response that the vendor is not the subject of the FCC’s Red Light Rule, which means that they do not have any obligations outstanding with the FCC, USAC, or any other federal agency.

8) Vendor Under-Investigation Clause

Applicants should require that if a vendor learns that the company is the subject of an investigation by federal, state, local or any regulatory authority that could have an impact on the applicant’s ability to continue to receive the benefit of E-rate funding, the vendor must notify the applicant within 30 days of learning of such investigation. Applicant reserves the right to cancel the contract without penalty if the investigation impedes the applicant’s ability in any way to receive the benefit of E-rate funding.

9) Standard Terms and Conditions

Often, applicants will accept a vendor's bid response, only to find out when they begin to negotiate the actual contract that the vendor's standard Terms and Conditions are unacceptable. Require that vendors submit their proposed contract with their bid response and make them certify that they understand the final contract will be negotiated and that the applicant is not expected to agree to the vendor's standard terms and conditions. In order to have the best chance to reach a mutually agreeable contract, the contract negotiation process should begin as early as possible in the process. Applicants that are forced to negotiate contract terms at the end of the E-rate window typically do not fare well because the E-rate clock is ticking to get the contract signed.

10) Contract Extensions

The E-rate program allows for contract extensions as long as such terms are finite (not open ended) and were included in the original contract. RFPs must specify whether you are seeking contract extension options as part of the procurement and request bidders to include the pricing for the extension periods.

Be sure to set forth the specific term of the contract extension in your contract. Otherwise, you will have to rebid the contract instead of extending it. For example, a contract that has a 36-month initial term with a one year extension option is OK while a 36 month contract that automatically renews unless one of the parties cancels the contract is not OK.

Specify that pricing for any extension period will be the same as the initial term of the contract, or that price increases are strictly limited to inflation increases measured, for example, by growth of CPI. Do not allow for open ended pricing language such as "current market rates" for any extension period.

11) Avoid Automatic Contract Renewals

Some vendors have standard terms and conditions that prescribe for automatic contract renewals. In order to stop receiving the service, the customer is required to take affirmative steps to notify the vendor prior to the end of the current term that the customer wishes to stop receiving service. Contracts with these clauses can go on indefinitely. The E-rate program does not consider these kinds of renewals to be eligible for funding. Applicants should seek to omit such language from their E-rate contracts and should insist on spelling out exactly how many years of contract extensions may be exercised.

12) Specificity of Contract Language

Be sure to include specific language in your contract regarding the quality of work performed, and the schedule of installation or service. Also, be sure to include what the penalties will be for noncompliance with the installation guarantee date or service levels or quality.

13) Specify Discounts or Reimbursements

Applicants are permitted the final choice whether to receive discounts on bills or whether to pay their bills in full and submit the Form 472 BEAR to the SLD for reimbursement. Wherever possible, this choice should be established in your contract and 470/RFP to avoid all confusion and to provide the service

provider with as much notice as possible. Also, some service providers continue to refuse to provide discounted bills. If this is a non-starter for an applicant, their 470 and/or RFP should make it clear that they will not consider bids from vendors that are not able to discount bills, and the inability of a vendor to offer discounted billing is a disqualification factor.

14) Payment Schedule

If you have terms and conditions under which you will make scheduled payments, such arrangements should be included in your contract (for example, if your vendor wishes to be paid on a quarterly basis or if your vendor would like to receive upfront payments for work such as installation of a new network).

15) Contract Expiration Dates

Recurring Services: Every attempt should be made to make sure that contracts do not expire before the end of the upcoming funding year (June 30, 2023). E-rate funding is only provided for services received prior to the Contract Expiration Date. In addition, many schools and libraries have taken advantage of the multi-year contract option which allows them exemption from the 470 posting for the remaining years of the contract. Even with multi-year contracts, be certain they end on June 30.

Non-Recurring Services: Have your contract begin on April 1 and end September 30 instead of June 30. While the funding year ends June 30, FCC rules permit schools and libraries to complete the installation of nonrecurring services by September 30. Indicating the September 30 expiration date will alleviate you from having to file a Form 500 to change your date.

16) Bidding According to State Law

Public education entities: Be certain that if items requested on the 470 are required to be bid under state law, that you post these items for bidding advertisement at the same time. Competitively bidding on the SLD website does not exempt you from bidding at the local level according to the school code.

17) Do Not Sign Contract Prior to 28 Days After Form 470 Posting

Pay careful attention to not sign a contract or select a service provider before the end of the 28-day 470 waiting period. The contract must be signed, and the 471 application must be submitted on or after the Allowable Contract Date which is basically the 29th day after the corresponding 470 is posted on the SLD's Web site.