

Competitive Bidding Requirements

What is Competitive Bidding?

Competitive bidding is a formal process to identify and request equipment and services the applicants need, so that potential service providers can review those requests and submit bids for them.

This process is designed to be fair and open and requires the applicant to select the most cost-effective provider based on its bid evaluation factors. The price of the eligible equipment and services must be given the most weight during the bid evaluation process.

The entity that will run the competitive bidding process may include an applicant, a state procurement agency, or another entity that an applicant has authorized to negotiate on its behalf with a Letter of Agency (LOA). This entity must certify an FCC Form 470 (Description of Services Requested and Certification) in the E-Rate Productivity Center (EPC) and must be prepared to receive and evaluate bids and negotiate with service providers.

Filing an FCC Form 470

The FCC Form 470 for the upcoming funding year is generally available in EPC one year before the start of the funding year.

Services provided under tariff or on a month-to-month basis require an FCC Form 470 to be posted each year. However, if a multi-year contract results from a completed competitive bidding process, it is not necessary to post a new FCC Form 470 in subsequent funding years until the existing contract has expired, and a new contract is required.

After the FCC Form 470 is certified, USAC will issue an FCC Form 470 Receipt Notification Letter (RNL) in the entity's EPC News feed. Applicants can edit some fields in a certified FCC Form 470. Allowable changes include:

- editing an application name
- changing the main contact person and/or technical contact person
- making minor, non-substantial updates to a request for proposal (RFP)

Applicants must wait at least 28 days from the date the FCC Form 470 is certified before closing the competitive bidding process. Changes to the FCC Form 470 that materially affect the competitive bidding process require applicants to restart the 28-day waiting period before selecting a service provider, signing a contract, or certifying an FCC Form 471.

If a consultant is assisting you with the application process, you must go to your organization profile in EPC, add your consultant in the Manage Your Organization Relationships area of your EPC account, and identify your consultant on your FCC Form 470.

Requests for Proposals

The entity filing an FCC Form 470 may also issue an RFP, in addition to the FCC Form 470. In general, an RFP is a formal bidding document that describes the project and requested equipment and services in sufficient detail, so that potential bidders understand the scope, location, and any other requirements. However, the term "RFP" or "RFP document" generically means any bidding document that describes the applicant's project and requested equipment and services in more detail than in the fields provided on the FCC Form 470.

E-Rate program rules do not require applicants to issue an RFP. Generally, an applicant is not required to issue an RFP unless it is a requirement of that entity's state or local procurement rules or regulations. However, an entity that has issued or will issue an RFP, must upload that document concurrently with the FCC Form 470 in EPC. Do not upload a document containing a link to the RFP. The actual RFP or RFP document must be uploaded with the FCC Form 470.

EPC requires an RFP to provide more details with your FCC Form 470 if you are requesting the options for:

- "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"

Open and Fair Competitive Bidding Process

The entity filing the FCC 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 all bidders must know what is required of them and information must be shared with all bidders.

With limited exceptions, service providers and potential service providers cannot give gifts to applicants.

In addition, the value of free equipment and services (e.g., price reductions, promotional offers, free equipment) generally must be deducted from the pre-discount cost of funding requests.

The goal of the competitive bidding process is to have as many bidders as possible respond to an FCC Form 470, RFP, or other solicitation method so that the applicant can receive better service and lower prices. The applicant must take an affirmative role in evaluating bids. Applicants may not delegate the evaluation role to anyone associated with a service provider.

When reviewing bids, the applicant must conduct a fair and open competitive procurement.

"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 FCC Form 470, RFP, or other solicitation method should be clear about the type and quantity of products and services the applicant is seeking and must be based directly on the applicant's technological needs. In addition, the applicant must avoid using generic or encyclopedic service descriptions on their FCC 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 FCC Form 470 or service description include "all eligible services," "any Schools and Libraries (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 an open and fair competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. For example, the applicant should not have a relationship with a service provider prior to the competitive bidding process 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.

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

When submitting updated RFP documents the following pop-up message appears in EPC:

Remember that when you upload additional RFP documents, you cannot make a substantial change to the scope of the services sought. If you are requesting a substantial change to what you have already posted, you must file a new FCC Form 470 which will start a new 28 day clock. Examples of substantial changes may include adding additional speeds, adding additional products and services, adding additional locations or entities. Do you wish to proceed?

In general, should you need to make one or more substantive changes that modify the original scope of your competitive bid, you must file a new Form 470 or extend the bidding deadline by 28 days.

The following changes have been designated as “substantial”, or “cardinal” and you MUST post a new Form 470:

- 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.
- Adding additional bandwidth speeds
- Adding additional locations or entities
- 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 the FCC currently is reviewing this issue.

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.

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 may upload an additional document noting the cancellation of that form and referring potential bidders to your new Form 470.

Tips for E-Rate RFPs

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

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.

2) When Specifying a Requested Manufacturer's Equipment, you must include "Or Equivalent" Language and you may Require Compatibility and Interoperability With Existing Equipment

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 and/or interoperable with a specific manufacturer's equipment or service that already 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 to amend 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 28 day 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 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 USAC 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, 2024). 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) Do Not Sign Contract Prior to 28 Days After Form 470 Posting

Pay careful attention to not signing 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 USAC's Web site.

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. No Rule Violation = Both below \$20 and did not exceed \$50 threshold.	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.
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.	Joe Applicant is invited to a customer appreciation lunch at a seminar. Meal value = \$22 Rule violation = exceeded \$20 threshold
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.	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.

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 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 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.

Competitive Bidding & FCC Form 470 USAC FAQs

Q 1: When can I file an FCC Form 470?

A 1: You can file an FCC Form 470 for FY 2025 now. The FCC Form 470 for FY 2025 became available on September 19, 2024.

Q 2: What is an RFP and is one required?

A 2: A Request for Proposal (RFP) is a detailed form of solicitation for equipment and services that provides any additional details necessary for potential bidders to respond. Program applicants may issue RFPs in addition to filing the FCC Form 470. An RFP may be known by a variety of names, for example, an Invitation for Bids (IFB) or Request for Quotes (RFQ). In most instances, RFPs are not specifically required as part of the E-Rate program, but you must issue one if it is required by FCC rules or by your state or local competitive bidding or procurement rules. If you are issuing an RFP and/or one or more RFP documents, you are required to upload those documents to your FCC Form 470. Applicants should make sure their latest RFP is available for a full 28 days before selecting a service provider.

Q 3: How do I count the 28-day competitive bidding waiting period? Do I exclude weekends and holidays?

A 3: The 28-day waiting period starts the calendar day (including weekends and holidays) you certify your FCC Form 470. The day you certify the form is day one. For example, if you certify on 1/1/2024, your Allowable Contract Date is 1/29/2024. The Allowable Contract Date (ACD) is the earliest date on which an applicant can sign a contract for contracted services or enter into an arrangement for tariffed (T) or month-to-month (MTM) services with a service provider. The ACD can be found in the Receipt Notification Letter posted on your News tab in EPC. The letter is posted shortly after you certify your FCC Form 470.

To assist applicants and ensure they meet their 28-day minimum, EPC calculates the date when their 28-day waiting period ends.

Applicants now have the ability to add a new RFP to any non-cancelled FCC Form 470 in EPC. In doing so they are prompted to answer the substantial change question. If they answer yes, then the ACD is automatically recalculated. See the FCC Form 470 Allowable Contract Date Changes slides in E-Rate Program Overview 2024 Applicant and Service Provider Training presentation.

Remember, the 28-day waiting period is a minimum requirement. You can wait longer than 28 days. For more information and to view the ACD infographic, please visit the 28-Day Waiting Period page.

Q 4: What changes can I make to my FCC Form 470?

A 4: You can make the following changes to a certified FCC Form 470:

- Edit the nickname you created for your form.
- Change the main contact person on the form.
- Edit the technical contact person you identified on the form.
- Add an RFP document.

For FY2025, users can now upload an RFP document to any non-cancelled Form 470, even if that Form 470 did not originally have an RFP. This grants applicants more flexibility if they need to make a change to their form.

Q 5: How do I make corrections to the FCC Form 470?**A 5:**

- Navigate to the form in EPC. You can do this in two ways:
 - Go to the bottom of your landing page and search for and locate your form using the search criteria provided, or
 - Click the Records tab, choose FCC Forms 470, and use the search criteria provided to locate your form.
- Choose Related Actions from the menu.
- Click the link for the action you want to take from the menu.

Q 6: My FCC Form 470 does not show the correct number of entities. What do I need to do?

A 6: We strongly recommend updating the entities in your EPC entity profile before you start a form. CSC can help you create entities, add and remove entities, and create annexes as needed. If you do this work before you submit and certify your FCC Form 470, the number of entities should be correct. However, if your entity count is still not correct, you can add an RFP document to your form to explain the discrepancy (for example, if services are delivered to annexes that have a different address, but EPC did not count them as separate entities).

Q 7: What service/function should I list this service/product under on the FCC Form 470?

A 7: You may not be sure exactly where on the FCC Form 470 to list particular equipment or services. If they appear to fit into more than one category of service or service type, you should:

- List the equipment or service under all of the categories or service types where it fits, and
- Provide a detailed explanation of the services you are requesting in the narrative field of the FCC Form 470 and/or your RFP or RFP document.

Q 8: Is an FCC Form 470 always required?

A 8: No. There are some limited situations where applicants do not need to submit and certify an FCC Form 470:

- If you have a multi-year contract that is still in effect, and the costs/services are still within the terms of the establishing FCC Form 470. However, you do need to file a new FCC Form 471 each funding year and use the prior supporting FCC Form 470.
- Commercially Available Business class Internet Option (CABIO) Category 1 (C1) services are exempt from the FCC Form 470 posting requirement if they meet certain requirements.
- Category Two (C2) equipment or services requested by libraries totaling a pre-discount cost of \$3,600 or less annually per library are exempt from the FCC Form 470 posting requirement if they meet certain requirements.

Q 9: What if there is only one service provider in my area? Am I still required to file an FCC Form 470?

A 9: Yes. If you are receiving services under tariff or on a month-to-month basis, you must file an FCC Form 470 each year.

You do not have to file an FCC Form 470 if:

- You are under a multi-year contract that covers your services for the upcoming funding year.
- You have a contract with voluntary extensions, and you and your service provider agree to exercise an extension that covers your services for the upcoming funding year.
- You order a commercially available, business-class internet access service that meets specific requirements.

Q 10: What should I do if I submitted and certified an FCC Form 470 and left off some services?

A 10: The clearest way to proceed is to submit and certify a new FCC Form 470 and include all of the services you want on that form and its associated RFP and/or RFP documents.

You may also attach one or more RFP documents to your existing form to add the services that were omitted under a particular category of service. Keep in mind that the addition of those services will probably be a substantial change, and you must restart your 28-day waiting period from the date you add the document to your FCC Form 470. For FY 2025, if you are making a substantial change, the allowable contract date will automatically update in EPC to extend by 28 days. If you are unsure whether adding a new service is a substantial change, err on the side of caution and restart the 28-day waiting period.

A third option is to submit and certify a new FCC Form 470 that contains only the additional services. If you choose this option, be very clear whether you want bids that include all of the equipment and services in both FCC Forms 470 and if you are willing to accept separate bids for the services included on each form.

For more information on the FCC Form 470 and the competitive bidding process, you can refer to the following resources available on the USAC website:

- Applicant Step 1 – Competitive Bidding
- Applicant Step 2 – Selecting Service Providers
- Instructional videos on how to file the FCC Form 470.

Other guidance documents

- Competitive Bidding Infographic
- Eligible Services Overview
- Document Retention

Q 11: What if I don't receive any bids?

A 11: It is possible that a project receives one or no bids. When that happens, you have some options. After waiting the 28 days, you can proactively solicit bids. If you are currently receiving service, you can consider a current bill as a bid response. However, you should confirm that your current provider is willing to continue to provide service and to verify the cost of that service for the upcoming funding year. If you only receive one bid, you can accept it if it's cost effective. You should create a memo to document the situation.

Q 12: What can I do if I only receive one bid? Can I choose it?

A 12: Yes, but only if it is cost-effective. If the service does not appear to be cost-effective based on your evaluation, you can solicit bids from other service providers and evaluate those bids as well.

If the bid is cost-effective, send yourself an email or create a memo to the file indicating that you only received one bid. Retain that email or memo and your evaluation with your other competitive bidding documentation.

Q 13: Do I have to choose the bid with the lowest price?

A 13:

No. You choose the evaluation factor(s) you will use to evaluate the bids you receive. You can choose as many or as few factors as you like.

You must include the price of the equipment and services that are eligible for E-Rate discounts as an evaluation factor, and that price factor must be weighted more heavily than any other single factor in your evaluation.

You can refer to the USAC website for guidance on constructing an evaluation. That guidance also includes a sample bid evaluation matrix.

Q 14: As a service provider, how do I submit a bid on the equipment and services requested?

A 14: As a service provider, you should use the FCC Form 470 tool to search and view certified FCC Form 470 service requests.

Another tool you can use is the Open Data platform. It allows users to view, filter, and search for FCC Forms 470 and extract a variety of data about posted FCC Forms 470 such as the scope of the work, the category of service requested, geographic location, applicant type, and other information.

Once you find a request on which you want to bid, review the FCC Form 470 carefully, especially the narrative sections. Look for any attachments or Request for Proposals, or “RFP documents.” Applicants who have specific requirements on preparing and submitting bids should provide that information there.

If there are no specific requirements provided, contact the contact person (or the technical contact person, if one is identified) for any additional information. Do not submit questions or bids directly to USAC.

Q 15: Can I submit a bid after 28 calendar days have passed?

A 15: Yes, you may submit a bid after the Allowable Contract Date unless the applicant’s requirements state otherwise. However, many applicants may select a service provider on the Allowable Contract Date, and applicants are not required to consider bids received after they have selected a service provider.

To avoid confusion, applicants are encouraged to include a date when bids are due or will no longer be considered. Service providers are also encouraged to submit bids within 28 calendar days after an FCC Form 470 is posted as well.

Q 16: What do I do if I get “Robobids”, SPAM bids, or bids that are not responsive to the equipment and services I am requesting?

A 16: All bids received should be retained during the competitive bidding process. Disqualification factors can be applied to bids received that do not meet minimum bid requirements, do not include site- or project-specific details, and/or are not responsive to the applicant’s requests. Applicants may include language in their FCC Form 470 narrative or request for proposal (RFP), such as “SPAM and/or robotic responses will not be considered valid bid responses and will be disqualified from consideration.” By doing this, applicants can disqualify bids based on this factor. The decision to disqualify any non-responsive bids should also be memorialized and retained to demonstrate compliance with the E-Rate competitive bidding rules.

THE COMPETITIVE BIDDING PROCESS

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allows applicants to identify and request products and/or services so that potential service providers can review those requests and submit bids for them.

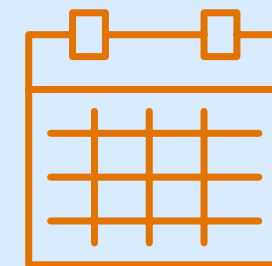
Tab 7 Bidding Rules, p. 21



The process consists of five steps:

- 1** Get Ready to File
 - Perform a needs assessment
 - Review your state and local procurement rules
 - Review the [Eligible Services List](#)
- 2** [File and certify an FCC Form 470](#)
 - Provide sufficient information for potential vendors to provide a comprehensive bid (e.g., for managed internal broadband services specify the exact equipment/services to be managed)
 - Potential bidders (service providers) cannot help you file FCC Form 470
 - You have the option to submit a Request for Proposals (RFP) with your form
 - There are [competitive bidding exemptions](#) for certain Category 1 and Category 2 (libraries only) equipment/services
 - After you certify your FCC Form 470, USAC issues a Receipt Notification Letter (RNL) with your Allowable Contract Date (ACD) – the earliest date you can enter into an agreement or sign a contract
- 3** Ensure an [open and fair process](#)
 - Provide any FCC Form 470, RFP and other information/updates in EPC for all potential bidders for at least 28 days
 - “Open” means there are no secrets in the process and that all bidders know what is required of them
 - “Fair” means that all bidders are treated the same and that no bidder has project information others do not
 - Abide by the [Gift Rules](#)

- 4** Wait **at least 28 days** before selecting a service provider
 - The ACD (included on your RNL) is 28 days after the FCC Form 470 is **certified**
 - The day you **certify** the FCC Form 470 is day 1. If the FCC Form 470 is certified on the 1st of the month, you may select a service provider **on or after** the 29th of the month
 - If you later **change the information** needed to respond to the bid, you must restart the 28 days
 - If you issue an RFP on a later date, you must restart the 28 days
 - * State or Local procurement rules may require a longer waiting period
- 5** [Select a service provider](#)
 - Select a service provider after your ACD and before certifying the FCC Form 471
 - Consider all responsive bids
 - Use a [Bid Evaluation Matrix](#)
 - Ensure price is the primary evaluation factor (highest weighted factor). Only the costs of eligible goods/services should be evaluated in this criterion
 - Enter into a legally binding agreement and document selection date (after the minimum 28-day waiting period)
 - Upload your legally binding agreements and contracts to EPC



Retain all competitive bidding documentation, including the Bid Evaluation Matrix, for ten years after the last day you receive services or the end of that funding year, using whichever date is later.

