



OUSF Schools and Libraries Workshop

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Oklahoma Corporation Commission
September, 2017

Agenda

- ▶ E-rate
- ▶ OUSF Overview
- ▶ Eligible Entities
- ▶ Funded Services
- ▶ Funded Bandwidth
- ▶ Competitive Bidding
- ▶ Contracts
- ▶ OUSF Funding Determination
- ▶ Affidavits
- ▶ Final Questions and Comments

Disclaimers

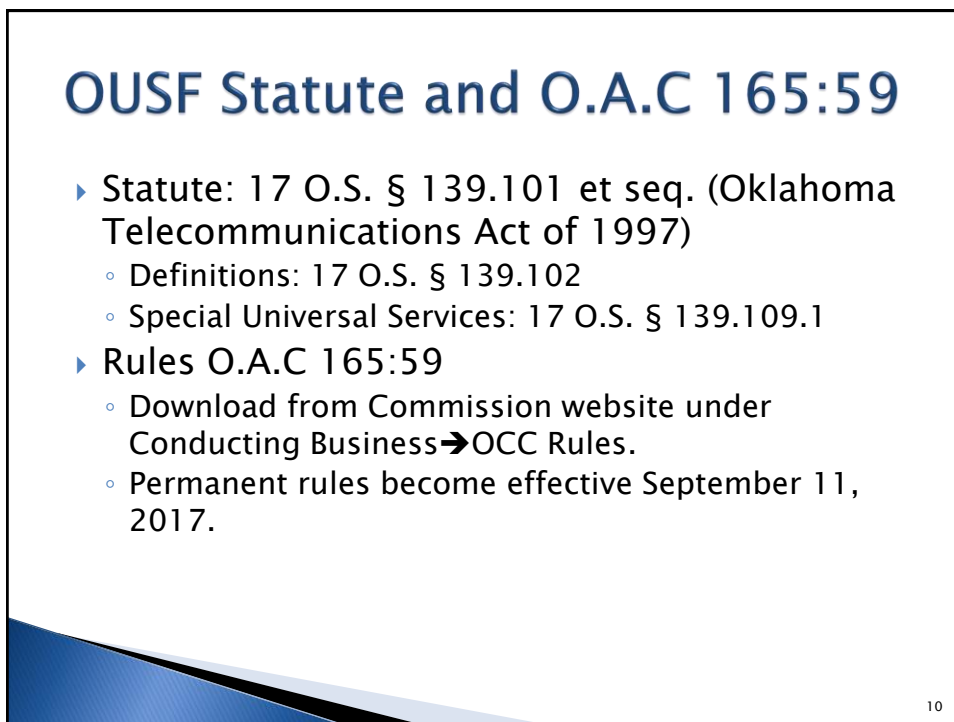
- ▶ Not legal advice.
- ▶ Subject to change.
- ▶ Not covering entire statute or rules.
- ▶ Federal funding has additional requirements.
- ▶ OUSF Funding commitments depend on the facts presented during Preapproval or in the Application.
- ▶ Examples showing funding assume all other OUSF program requirements were followed.

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E-Rate

- ▶ Required to apply if eligible.
- ▶ OUSF bidding requirements are compatible with E-rate bidding requirements.

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A presentation slide with a white background and a blue gradient at the bottom left. The title "OUSF Statute and O.A.C 165:59" is in a large blue font. Below the title is a bulleted list of items. A small number "10" is in the bottom right corner.

OUSF Statute and O.A.C 165:59

- ▶ Statute: 17 O.S. § 139.101 et seq. (Oklahoma Telecommunications Act of 1997)
 - Definitions: 17 O.S. § 139.102
 - Special Universal Services: 17 O.S. § 139.109.1
- ▶ Rules O.A.C 165:59
 - Download from Commission website under Conducting Business → OCC Rules.
 - Permanent rules become effective September 11, 2017.

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Special Universal Services

- ▶ "Special Universal Services" means the telecommunications services supported by the OUSF which are furnished to public schools, public libraries and eligible health care entities as provided for in Section 6 of this act.
- ▶ Participation is voluntary – individual eligible entities choose whether to participate.

See 17 O.S. § 139.102(39)

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OUSF Administrator

- ▶ "Administrator" means the Director of the Public Utility Division of the Corporation Commission.

See 17 O.S. § 139.102(3)

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Eligible Provider

- ▶ Providers of telecommunications services which hold a certificate of convenience and necessity (CCN) and OneNet. (17 O.S. § 139.102(11))
- ▶ ILECs are included. (17 O.S. § 139.106(M))
- ▶ Available from OCC Website → Divisions → Public Utility → Telephone → Regulated Telephone Companies.
 - The spreadsheet has multiple sheets – search all worksheets.
 - Direct Link:
<http://www.occeweb.com/pu/RegUtilities/RegulatedTelecomUtilities.xls>

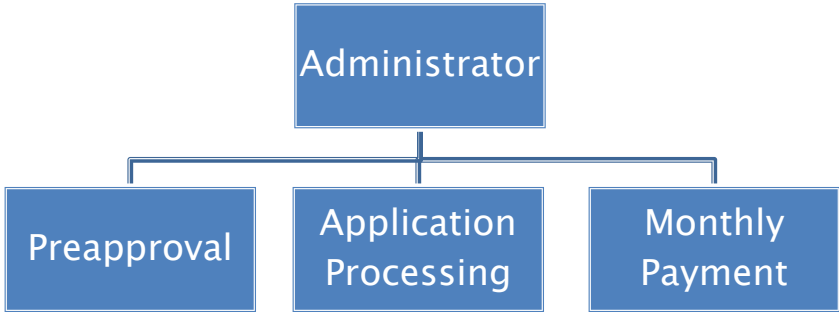
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Terminology

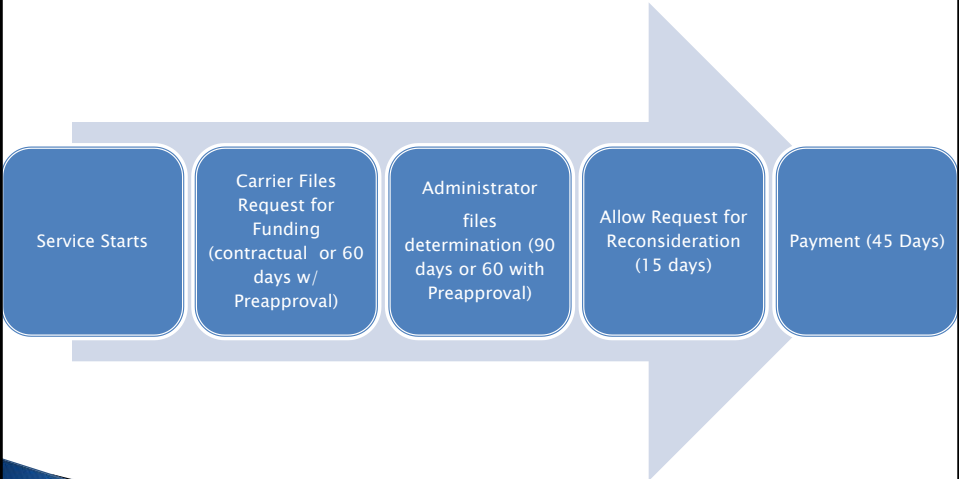
- ▶ Eligible Entity – The public school local education authority, public library or library system, or healthcare facility that is eligible to receive OUSF funding.
- ▶ Beneficiary – Eligible entity.
- ▶ Applicant – an eligible service provider that applies for OUSF reimbursement.
- ▶ RFP – Request for Proposal. Any document that provides more information about requested services than can fit on 470.

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OUSF Funding Structure



Cause Processing and Times



Preapproval

- ▶ **Beneficiary** submits Affidavit to PUD.
- ▶ OUSF Administrator provides Approval Funding Letter (AFL) within 90 days.
- ▶ Requires provider to request funding within 60 days of starting service.
- ▶ Can be requested multiple times
- ▶ Informal process for RFPs.

See 17 O.S. § 139.109.1(F)(2);O.A.C.165:59-3-61.

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Request for Funding Overview

- ▶ Beneficiary sends completed Affidavit to Service Provider.
- ▶ **Service Provider** submits Request for Funding.
- ▶ OUSF Analyst processes Causes, including asking for additional information (Data Requests)
- ▶ Analyst files Determination within 90 days.
 - Internal processes require an earlier completion date.
- ▶ Determination becomes final after 15 days if Request for Reconsideration not filed.
- ▶ Withdrawals can occur administratively*.

* OAC 165:59-3-68(d) Effective 9/11/17

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Request for Funding – Beneficiary’s Role

- ▶ Complete Affidavit and submit to service provider.
- ▶ Answer all Data Requests promptly.
 - The analyst has a deadline and will make a determination without the information.
- ▶ Read and understand the courtesy copy of the Determination. It tells if you received the funding you expected.
 - Analyst only provides a courtesy copy prior to filing if there is sufficient time.
- ▶ Read the Determination when it is filed – you only have 15 days to request Reconsideration.
- ▶ If you do not understand a document you receive from the Commission, ASK!

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Reconsideration

- ▶ Formal process to contest OUSF Administrator’s Determination.
- ▶ Attorney required for filings and hearings (if any) before ALJ and Commission.
- ▶ Beneficiaries should coordinate with their service provider.
- ▶ Commissioners issue final order within 120 days.

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Eligible Entities

- » Libraries
- Schools

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Eligible Libraries

- ▶ **Public Libraries** (17 O.S. § 139.102(36))
 - Open to all under identical conditions and supported by public funds.
 - Does not include libraries operated by:
 - Universities, colleges, or schools;
 - Museums;
 - Oklahoma Historical Society;
 - County Law Libraries.

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Eligible Schools

- ▶ **Public Schools** (17 O.S. § 139.102(37))
 - PreK–12 free schools funded by public taxation.
 - Career Technology Centers.
 - Does not include:
 - Private schools;
 - Virtual schools;
 - Home schools.

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Funded Services



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Funded Services

- ▶ Libraries and Schools: Category One Non-Voice Services on the FCC Eligible Services List (17 O.S. § 139.109.1(A)(2)–(3))
 - Equipment must be owned and managed by an eligible provider.
- ▶ Taxes and fees are not eligible.

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Funded Bandwidth

» Libraries
Schools

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Funded Bandwidth – Libraries

- ▶ ...shall include the provision of bandwidth sufficient for providing library services per standards as recommended by the Federal Communications Commission...(17 O.S. § 139.109.1(A)(3))
- ▶ FCC Recommendations*
 - At least 100 Mbps for libraries that serve fewer than 50,000 people.
 - At least 1 Gbps for libraries that serve 50,000 people or more.

*See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, 29 FCC Rcd. 8886, para. 37 (2014) (*E-Rate Modernization Order or E-Rate Modernization FNPRM*)

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Funded Bandwidth – Schools

- ▶ ...the provision of bandwidth sufficient for providing educational services not to exceed, without good cause shown, the standards established for the relevant funding year by the State Educational Technology Directors Association (SETDA)...(17 O.S. § 139.109.1(A)(2))

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SETDA Recommendations

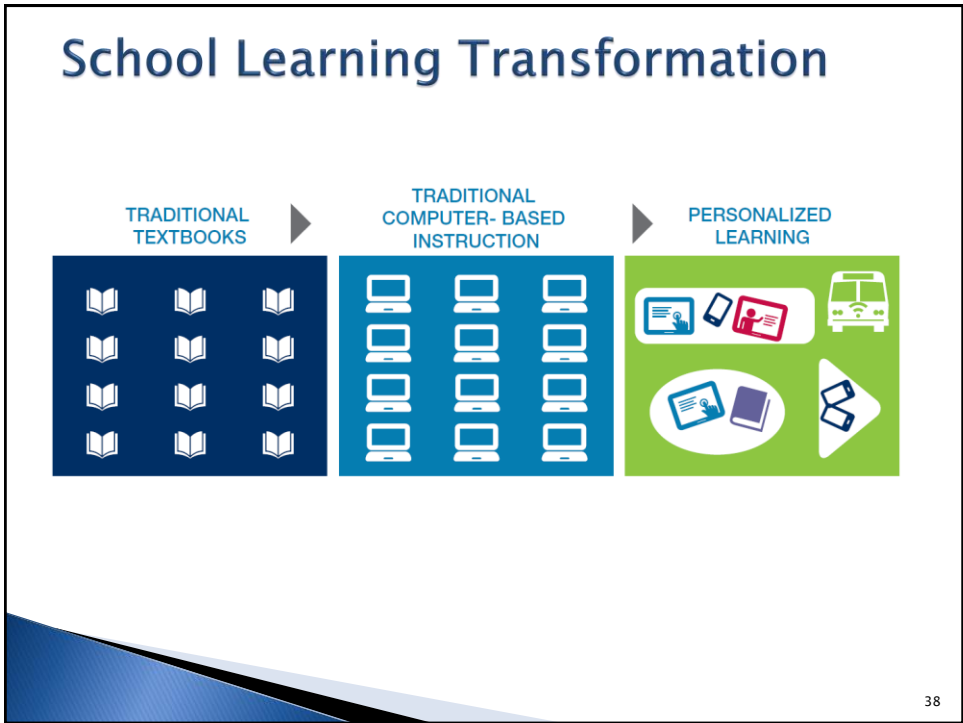
- ▶ [*The Broadband Imperative II: Equitable Access for Learning.*](#)
- ▶ Updated September 8, 2016.

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Broadband Imperative II Focus

- ▶ Increase Infrastructure to Support Student-Centered Learning.
- ▶ Design Infrastructure to Meet Capacity Targets.
- ▶ Ensure Equity of Access Outside of School for All Students.
- ▶ Leverage State Resources to Increase Broadband Access.

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SETDA Internet Recommendations

INTERNET SERVICE PROVIDER RECOMMENDATIONS		
School Year	2017-18 Targets	2020-21 Targets
Small School District (fewer than 1,000 students)	At least 1.5 Mbps per user (Minimum 100 Mbps for district)	At least 4.3 Mbps per user (Minimum 300 Mbps for district)
Medium School District Size (3,000 students)	At least 1.0 Gbps per 1,000 users [^]	At least 3.0 Gbps per 1,000 users
Large School District (more than 10,000 students)	At least 0.7 Gbps per 1,000 users	At least 2.0 Gbps per 1,000 users

[^]Published by SETDA 2012; Adopted by the FCC in 2014
<https://www.fcc.gov/general/summary-e-rate-modernization-order>
 *User: students, teachers, administrators, staff, and guests
 Methodology: See [Appendix A](#)

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SETDA WAN Recommendations

WAN RECOMMENDATIONS		
School Year	2017-18 Targets	2020-21 Targets
Connections to each school to link to the internet via a district aggregation point and for in-house administrative functions	At least 10 Gbps per 1,000 users	At least 10 Gbps per 1,000 users
*User: students, teachers, administrators, staff, and guests. District-wide based on WAN site with largest number of users.		

Competitive Bidding: For Beneficiaries



Requirements
Suggestions

Competitive Bidding Requirements

Fair and Open Competitive Bidding Required
(Exception: exempt in E-rate or RHC program):

- ▶ Identify the bandwidth range requested.
- ▶ Not limit bidders based upon technology.*
- ▶ Open to all OUSF-Eligible providers.
- ▶ Not structured to exclude OUSF-Eligible carriers.

See 17 O.S. § 139.109.1(B)(5)

*Look for further OUSF guidance after USAC clarifies their 8/22/17 guidance.

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Competitive Bidding Requirements

Rules Summary

- ▶ (a)(1) The bidder must be an eligible provider, as defined in 17 O.S. § 139.102.
- ▶ (2) Bidding shall not be structured in a manner to exclude carriers eligible to receive OUSF funding where the OUSF Beneficiary is located.
 - (A) The bid request must require ineligible services be priced separately from OUSF eligible services. [Items that are listed as taxes and fees are not eligible.]
 - (B) The bid request shall not require that the Internet and WAN be provided by the same eligible provider.
 - (C) To avoid bid structuring, the bid request shall clearly identify the requested bandwidth range, inclusive of the eligible bandwidth limit, of the OUSF Beneficiary, and shall include a minimum and a maximum bandwidth at standard available levels as suggested in guidelines promulgated by the FCC or Commission rules.

See OAC165:59-7-19
Effective 9/11/17

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FCC Form 470 Standard Available Levels*

Mbps	Mbps	Gbps
1.5	100	1
5	200	2
10	300	5
25	400	10
50	500	25
	750	

* NECA ETS (Ethernet Transport Service) Channel Termination (CT) Tariffs include 250 Mbps and 2.5 Gbps but do not include 200 Mbps, 300 Mbps, 400 Mbps, and 2 Gbps and 25 Gbps.
(NECA Tariff 5, July 1, 2017, 16.13.4(A)(1) p. 984)

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Bandwidth Guidance

- ▶ Schools with more than 10,000 students determine their “eligible bandwidth limit” as long as it is no more than the SETDA minimum. (See *The Broadband Imperative II: Equitable Access for Learning*, 2016, P. 14)
- ▶ Schools with 10,000 students or fewer should request up to their 2020–21 SETDA bandwidth, but state in the 470 the maximum capacity of their internal network/equipment.
- ▶ Federal funding requires capacity to use anything you order.
 - Exception: Higher bandwidths above the capacity of the internal network that are lower cost.
- ▶ Look for further guidance.

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Competitive Bidding Requirements

- ▶ (b) Bids must contain all costs;*
- ▶ (c) Bidders are presumed to know statutory requirements for contracts for public entities;

*Beneficiaries are under no obligation to contact a provider to ask for missing pricing or construction costs. They can classify the bid as incomplete.

See O.A.C. 165:59-7-19

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Competitive Bidding Suggestions

- ▶ Check pricing:
 - <http://www.compareandconnectk12.org>
- ▶ Evaluation matrix:
 - Prepare before bidding.
 - Ask for all matrix items in the bid request.
- ▶ Suggested statements for bid request*:
 - All technologies will be considered.
 - Intent is to conform with OUSF bidding requirements.

* These are not get-out-of-jail-free statements.

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Competitive Bidding Suggestions

- ▶ **Require:**
 - Bidders to be eligible to receive OUSF funding*.
 - All costs be included in the bid*.
 - Ineligible services be separated*.
 - Monthly recurring charges devoid of construction.
- ▶ **Specify:**
 - Symmetric (same upload and download) bandwidth.
 - Dedicated Internet Access (DIA), not best effort.
 - Preferred contract lengths.
 - Preferred contract terms (see contract section).
 - Service start date.

*Required for OUSF

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Competitive Bidding Suggestions

- ▶ **Request bid to contain:**
 - All contract and/or service terms and conditions (no surprises).
 - Service provider minimum service guarantee.
 - Service Level Agreement (SLA).
- ▶ **Closing date:**
 - Put closing date on 470/RFP.
 - Indicate process for closing date extensions.
 - Leave bid request open beyond closing date if asked and able.

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Competitive Bidding Summary

- ▶ Do:
 - Be clear that you will accept any technologies bid.
 - Be clear that your intent is to conform to OUSF competitive bidding requirements.
 - Verify that your request meets all OUSF Fair and Open Competitive Bidding requirements.
- ▶ Avoid
 - “Fiber preferred” or other language that indicates a preference for a particular technology.
 - Language that might exclude eligible providers.
 - A single date for mandatory visit.

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Competitive Bidding – Disqualification Criteria Suggestions

- ▶ Have SPIN/FCC Form 498 ID (for E-rate/RHC-eligible entities).
- ▶ Be eligible to receive OUSF funding for Special Universal Service.
- ▶ *Avoid disqualification criteria* that could appear to restrict technologies or bidders.

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Responses to Bid Requests: For Providers



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Provider Bid Responses

- ▶ Make sure ALL costs are included.
 - Beneficiary can disregard any bids without all costs.
- ▶ Do not bid outside of the requested range.
 - If Beneficiary selects a bid outside the range, they will most likely will not receive OUSF funding.
- ▶ Include contract terms and conditions.
 - No surprises for the beneficiary.
- ▶ Providers are presumed to know requirements for contracts with public entities.
 - Public Beneficiary can disregard bids that do not conform (OAC165:59-7-19(c)).

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For Providers

If you see a request for bids that does not appear to conform to OUSF requirements, contact the Public Utility Division.

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Contracts for Beneficiaries

- » OUSF Requirements
- Public Entities
- General Suggestions

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Contracts

- ▶ OUSF limits to 5 year maximum contract.
- ▶ Oklahoma public beneficiaries have specific requirements.
- ▶ All beneficiaries receiving E-rate/RHC must follow their state and local purchasing requirements.

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Contracts with Oklahoma Public Entities

- ▶ Limited to *current year funds* commitment unless voter approved.
 - Renewals permitted in contract.
 - Renewals should be mutually ratified.
- ▶ Bid responses should address limitation.
- ▶ Applies to public schools and city-, county-, or state-owned healthcare and libraries.

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Contracts with Oklahoma Public Entities

"No county, city, town, township, school district, or other political corporation, or subdivision of the state, shall be allowed to become indebted, in any manner, or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year without the assent of three-fifths of the voters thereof..."

Okla Const., Art. X §26(a)

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Contracts with Oklahoma Public Entities

"Contracts executed or executory, entered into in one fiscal year and seeking to bind school district's revenues of a succeeding fiscal year, are void."

Independent School District No. 1, McIntosh County, Oklahoma v. P.A. Howard, Okl., 1959 OK 17, [336 P.2d 1097](#) (1959)

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Contracts with Oklahoma Public Entities

In a variety of cases involving school districts and municipal corporations of various kinds we have been called upon to apply the provisions of sec. 26, art. 10, and *we have repeatedly held that contracts, executed or executory, entered into in one fiscal year, which in any way seek to bind the revenues of a succeeding fiscal year, are void.* See the following cases, and the many cases cited or discussed therein: Campbell v. State, 23 Okla. 109, 99 P. 778, O'Neil Engineering Co. v. Incorporated Town of Ryan et al., 32 Okla. 738, 124 P. 19 Boardman Co. v. Board of County Commissioners, 136 Okla. 85, 276 P. 474; Faught v. City of Sapulpa, 145 Okla. 164, 292 P. 15; School District No. 76, Creek County, v. Bath, 120 Okla. 204, 250 P. 1003; Dungan v. Independent School District No. 39 of Gage, Ellis County, 182 Okla. 385, [77 P.2d 1117](#); Herd Equipment Co. v. Eagle Township, 180 Okla. 172, [68 P.2d 420](#).

Smith v. School Dist. No. 1, Marshall County, 1940 OK 226, 187 Okla. 184, [102 P.2d 131](#) (1940)

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Contracts with Oklahoma Public Entities – Schools

Any rental contract extending beyond June 30 of the fiscal year shall be void unless it contains provisions for mutual ratification of renewal pursuant to the conditions provided for in this subsection. It is the intent of this subsection to authorize boards of education to enter into lease contracts *but not to incur any obligation against the school district in excess of the income and revenue provided for such purposes for the fiscal year in which the lease contract is operative.*

70 O.S. §5-117B

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Potential Contract Options for Oklahoma Public Beneficiaries

- ▶ One year initial term with one or more one year renewals (considered multi-year by USAC and OUSF).
- ▶ Multi-year contract with all beneficiary payments due in first year (seek attorney's advice).
- ▶ Multi-year contract issued as part of bond vote.
- ▶ Avoid high cost long term contracts.

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Long Term Contracts

If a long-term contract includes change clauses for changes in sites or services, the Oklahoma Universal Service Fund Beneficiary shall not be required to conduct a new competitive bid during the life of the original contract, which may not exceed five (5) years.
(17 O.S. § 139.109.1(B)(8))

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Contract Suggestions

- ▶ Avoid liquidated damages.
- ▶ Avoid non-renewal charges.
- ▶ After first year, include 30 or 60 day cancellation notice with no early termination charges.
- ▶ Include service level agreement and minimum guaranteed bandwidth (not best effort).

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Contract Suggestions

- ▶ Make contingent on federal and state funding if eligible.*
- ▶ Require carrier to file for OUSF within 60 or 90 days of starting service.

*The Beneficiary will be responsible for any services already received if funding is denied.

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OUSF Funding Determination



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OUSF Funding

- ▶ Beneficiary follows OUSF fair and open competitive bidding guidelines to receive bids.
- ▶ Beneficiary selects whichever provider they wish consistent with E-Rate/RHC/internal rules.
- ▶ OUSF Funding based on Lowest Cost Reasonable Qualifying Bid (LCRQB).
- ▶ Maximum funding is 125% (25% above) the LCRQB of the non-discount amount, less OUSF-ineligible taxes and fees*.
- ▶ For initial planning, *assume* that lowest bid will be LCRQB.

*17 O.S. § 139.109.1(B)(6)

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Lowest Cost Reasonable Qualifying Bid (LCRQB)

For purposes of this act, "lowest cost reasonable qualifying bid" means a bid that:

- ▶ represents the lowest total cost proposal including monthly recurring and nonrecurring charges for eligible services,
- ▶ is reasonable to meet the needs of the Oklahoma Universal Service Fund Beneficiary as listed in the request for bids,
- ▶ is submitted during the same competitive bidding period as the awarded bid,

17 O.S. § 139.109.1(B)(7)

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Lowest Cost Reasonable Qualifying Bid (LCRQB)

- ▶ is for a bandwidth within the range requested for bid and selected by the Oklahoma Universal Service Fund Beneficiary,
- ▶ is for the same contract term as the bid that was selected by the Oklahoma Universal Service Fund Beneficiary,
- ▶ meets the requirements specified in the request for bid by the Oklahoma Universal Service Fund Beneficiary, and
- ▶ was the result of a fair and open competitive bidding process as defined in this act.

17 O.S. § 139.109.1(B)(7)

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Lowest Cost Reasonable Qualifying Bid (LCRQB)

- ▶ ALL bids received must be submitted with affidavit, even disqualified bids.
- ▶ Analyst will use the selected bandwidth and higher bandwidth bids in determining which is LCRQB.
- ▶ Not following OUSF requirements may result in reduced or no OUSF funding.

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LCRQB Example

Entity receives bids of \$1,000, \$1,200, \$1,400 and no ineligible taxes or fees.

- ▶ Example 1
 - OUSF Administrator determines \$1,000 to be LCRQB.
 - If Entity chooses \$1,200: No out-of-pocket.
 - If Entity chooses \$1,400: Entity pays non-discount portion between \$1,250 and \$1,400.
- ▶ Example 2
 - Entity provides compelling (determined by Administrator) reason on Affidavit to not use \$1,000 for LCRQB.
 - Analyst determines \$1,200 to be LCRQB
 - Entity chooses \$1,400: no out of pocket.

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Cost Effectiveness (E-rate and RHC)

- ▶ Carefully consider all bids received.
- ▶ Choose the most cost effective option.
- ▶ Single bids must still be cost effective:
 - “Shake the trees,”
 - Memorialize that fact.
- ▶ Situations where recipients do not pay their own pro-rata portion may result in more USAC scrutiny.

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Affidavit



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OUSF Affidavit

- ▶ Only required for:
 - Preapproval (send to PUD);
 - Initial Funding Request (send to **service provider**);
 - Change in Funding (Send to **service provider**).
- ▶ Certification and oath:
 - All information provided (including attachments) is accurate and truthful;
 - A legally responsible representative of the OUSF Beneficiary (who can sign on their behalf) actually signed the affidavit under oath to affirm the information is accurate and truthful.
- ▶ Download from <http://www.occeweb.com/pu/OUSF/OUSF.htm>.
- ▶ Completed Excel file required to be submitted with the Affidavit.

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Final Questions and Comments

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