

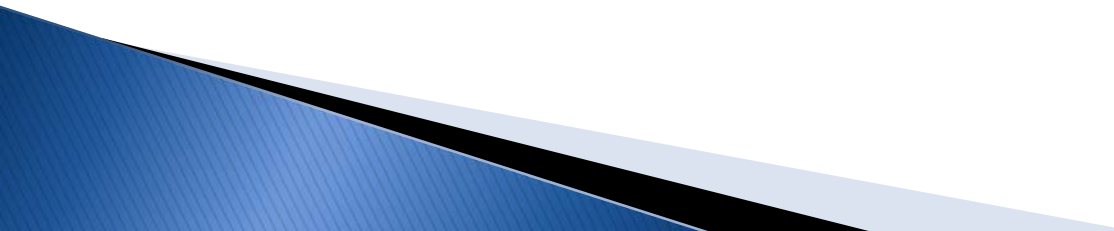


# OUSF Funding

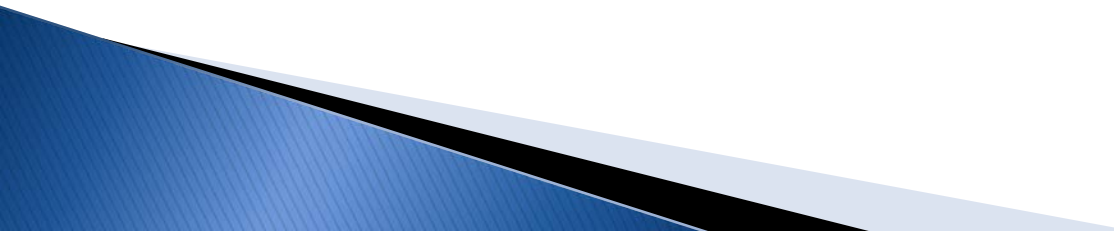
Public Utility Division  
Oklahoma Corporation Commission  
Derrel Fincher  
E-Rate Coordinator

March 2017

# Agenda

- ▶ OUSF Changes and Overview
  - ▶ Preapproval
  - ▶ 470/RFP requests suggestions
  - ▶ Contract terms suggestions
  - ▶ OUSF funding & E-rate cost effectiveness
  - ▶ OUSF Affidavit
- 

# Disclaimers

- ▶ Not legal advice
  - ▶ Subject to change
  - ▶ Not covering entire statute or rules
  - ▶ Federal funding has additional requirements
  - ▶ Funding determinations depend on the facts presented during Preapproval or in the Application
- 

# OUSF Changes

# House Bill 2616 (2016) Effective May 9, 2016

- ▶ **Modified** 17 O.S. § 139.101 et seq. (Oklahoma Telecommunications Act of 1997)
- ▶ **Repealed** 17 O.S. § 139.109 (Creation of Oklahoma E911 Emergency Service Fund – Oklahoma Telecommunications Technology Training Fund)
- ▶ **Added** 17 O.S. § 139.109.1 (Special Universal Services – Competitive Bidding Exemption – Authority of Administrator – Authority of Corporation Commission)

# Key Changes

- ▶ Specified bandwidths to be funded without proof of need.
- ▶ Better specified funded services.
- ▶ Added competitive bidding requirements.
- ▶ Added funding determination method.
- ▶ Added maximum times for processing.
- ▶ Changed from litigation-based process to administrative process.
- ▶ Added Preapproval.

# Rules O.A.C 165:59

- ▶ Download from Commission website under Conducting Business → OCC Rules
- ▶ Emergency rules expire September 2017
- ▶ Rulemaking in process
  - 2/3/17 (10 AM): Technical Conference
  - 2/22/17 (10 AM): Technical Conference
  - 3/8/17 (9:30 AM): En Banc Hearing

# Eligible Provider

- ▶ Providers of telecommunications services which hold a certificate of convenience and necessity (CCN) and OneNet

See 17 O.S. § 139.102(11)





# 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.

See 17 O.S. § 139.102(39)

# OUSF Administrator

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

See 17 O.S. § 139.102(3)



# Funded Services

- ▶ **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.

# Eligible Oklahoma 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.

# 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*)

# Eligible Oklahoma 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.

# Funded Bandwidth – Schools

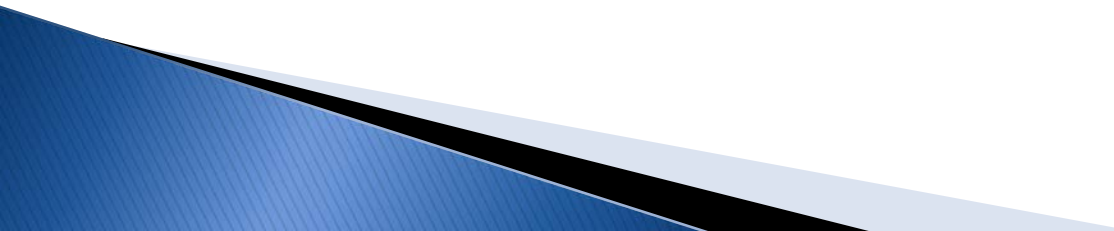
- ▶ ...the provision of bandwidth sufficient for providing educational services not to exceed, without good cause shown, the standards established for the relevant funding year by the State Educational Technology Directors Association (SETDA)...(17 O.S. § 139.109.1(A)(2))

# SETDA Recommendations

- ▶ *The Broadband Imperative II: Equitable Access for Learning.*
- ▶ Updated September 8, 2016.



# 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.
- 

# School Learning Transformation

TRADITIONAL  
TEXTBOOKS



TRADITIONAL  
COMPUTER- BASED  
INSTRUCTION



PERSONALIZED  
LEARNING



# SETDA Internet Recommendations

## INTERNET SERVICE PROVIDER RECOMMENDATIONS

School Year	2017-18 Targets	2020-21 Targets
<b>Small School District (fewer than 1,000 students)</b>	At least 1.5 Mbps per user (Minimum 100 Mbps for district)	At least 4.3 Mbps per user (Minimum 300 Mbps for district)
<b>Medium School District Size (3,000 students)</b>	At least 1.0 Gbps per 1,000 users <sup>^</sup>	At least 3.0 Gbps per 1,000 users
<b>Large School District (more than 10,000 students)</b>	At least 0.7 Gbps per 1,000 users	At least 2.0 Gbps per 1,000 users

<sup>^</sup>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](#)

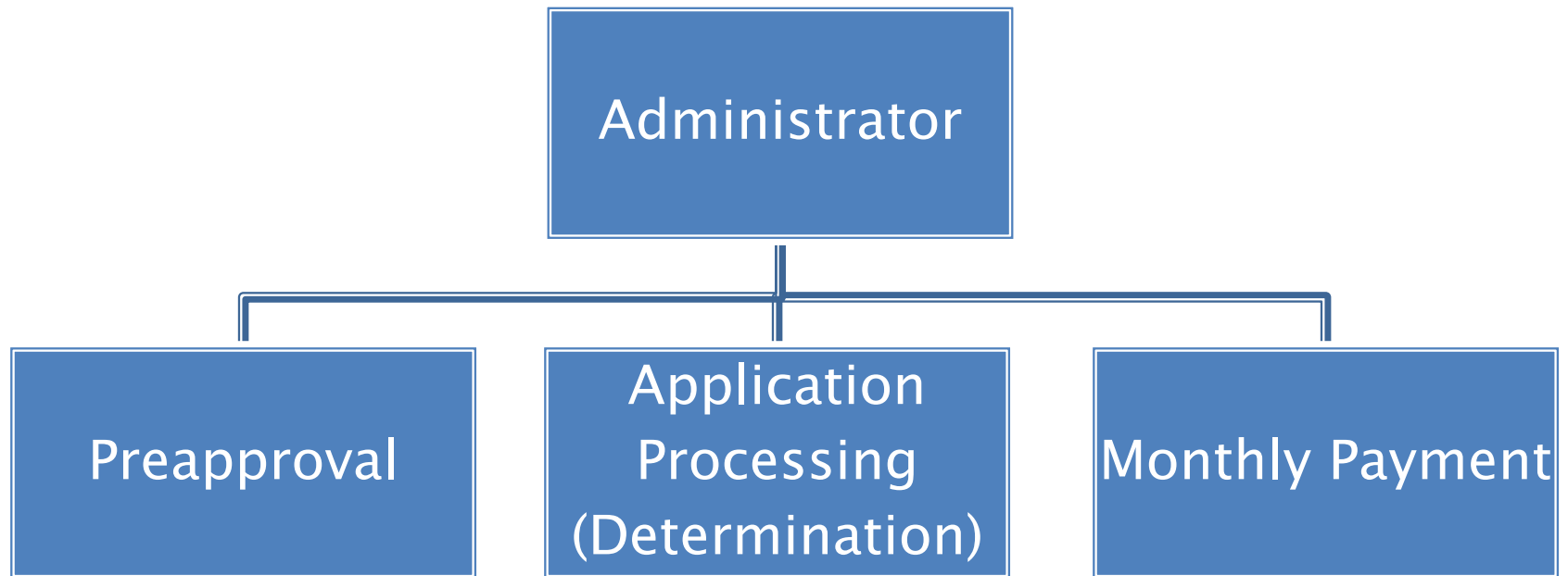
# SETDA WAN Recommendations

## 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

# OUSF Funding Structure



# Cause Processing and Times

Service Starts

Carrier Files Application  
(contractual or 60 days with Preapproval)

OUSF Administrator files determination (90 days or 60 with Preapproval)

Reconsideration Option (15 days)

Payment (45 Days)

# Competitive Bidding Requirements

## Fair and Open Competitive Bidding Required (Exception: exempt in E-rate):

- ▶ Identify the bandwidth range requested.
- ▶ Not limit bidders based upon technology.
- ▶ The bidding shall be open to all OUSF-Eligible Carriers.
- ▶ The bidding will not be structured to exclude OUSF-Eligible carriers.

# Competitive Bidding Requirements for Reimbursement

## 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) The bid request shall clearly identify the bandwidth range requested by the OUSF Beneficiary.

See OAC165:59-7-19



# Competitive Bidding Requirements (continued)

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

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

# Preapproval

- ▶ Beneficiary can submit for preapproval using affidavit.
- ▶ OUSF Administrator has 90 days to provide preapproval letter.
- ▶ Requires provider to file within 60 days of starting service.
- ▶ Applies for Funding Year 2017 and later.
- ▶ Informal process for RFPs.

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

# 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,

# 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.

# 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.

# Funding Determination – 125% of LCRQB

- ▶ Maximum funding is 125% of the LCRQB of the non–discount amount, less OUSF–ineligible taxes and fees.

See 17 O.S. § 139.109.1(B)(6)

# LCRQB Example

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

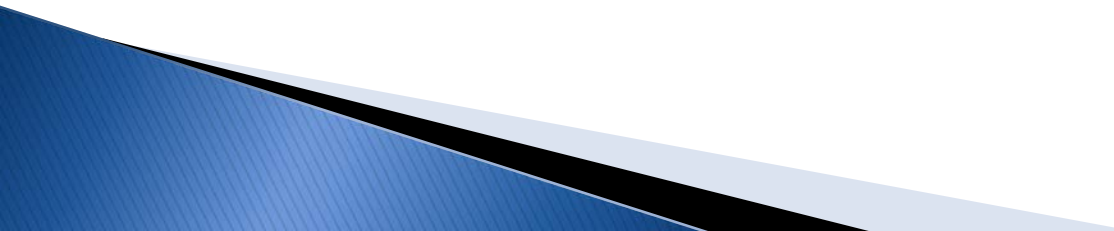
## ▶ Example 1

- 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.

# Contracts

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



# 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- or county-owned libraries and healthcare.

# 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)

# 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., 336 P.2d 1097 (1959)

# 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](#).

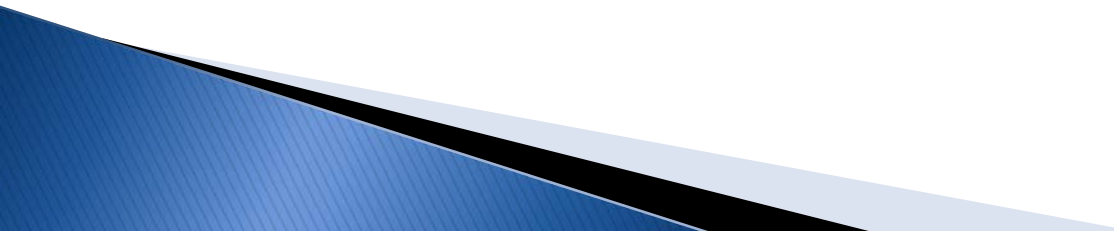
Smith v. School Dist. No. 1, Marshall County, 187 Okla. 184, [102 P.2d 131](#) (1940):

# 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

# 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.
  - ▶ Multi-year contract issued as part of bond vote.
  - ▶ Be smart about multi-year contracts.
- 

# Contracts – General

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))

# 470/RFP Guidance



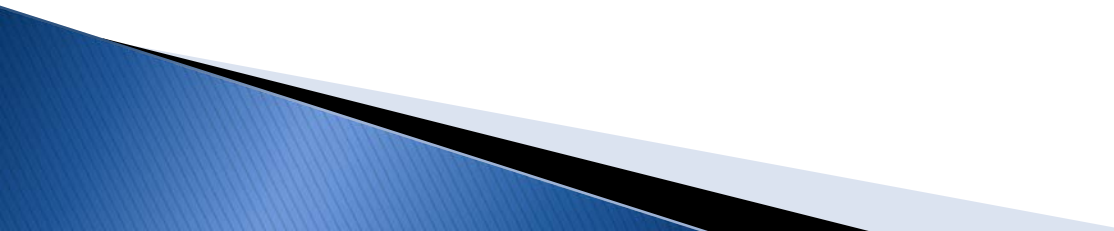
# Competitive Bidding Suggestions

- ▶ Use <http://www.compareandconnectk12.org> to become aware of pricing.
- ▶ State that all technologies will be considered.
- ▶ State that intent is conform with OUSF bidding requirements.
- ▶ Put closing date on 470/RFP and how closing date extensions will be indicated.
- ▶ Leave RFP open for longer than 28 days if asked.
- ▶ Require that all bidders be an eligible provider for OUSF purpose as given in 17 O.S. §139.102(11).

# Competitive Bidding Suggestions (continued)

- ▶ Ask for monthly recurring charges devoid of construction (Special construction has special rules).
- ▶ Require that all costs are included in the bid (required for OUSF).
- ▶ Include all OUSF competitive bidding requirements.
- ▶ Specify preferred contract lengths.
- ▶ Specify symmetric bandwidth.
- ▶ Specify Dedicated Internet Access (DIA), not best effort.
- ▶ Specify your preferred contract terms (see contract section).
- ▶ Specify service start date/cutover date.

# Competitive Bidding Suggestions (continued)

- ▶ Ask for bid to contain all contract and/or service terms and conditions (no surprises).
  - ▶ Request service provider minimum service guarantees and Service Level Agreement (SLA) as part of bid.
  - ▶ Prepare evaluation matrix before bidding.
  - ▶ Ask for all items in evaluation matrix in the bid request.
- 

# Competitive Bidding Suggestions (continued)

## ▶ Do:

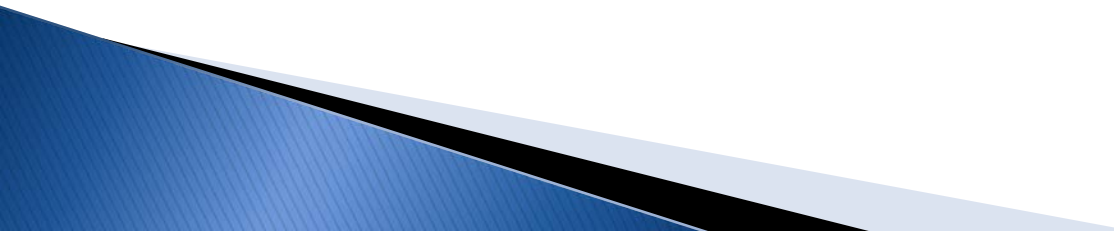
- Be clear that you will accept any technologies bid.
- Be clear that your intent is to conform to OUSF competitive bidding requirements.

## ▶ Avoid

- “Fiber preferred” or other language that indicates a preference for a particular technology.
- Single option for mandatory visit.
- Selecting “Lit Fiber Service” without other selections. (<http://bit.ly/OUSF-W3>).

# Disqualification Criteria

## Suggestions

- ▶ Must have a SPIN/FCC Form 498 ID (for RHC-eligible entities)
  - ▶ Must be eligible to receive OUSF funding for Special Universal Service
  - ▶ (Avoid disqualification criteria that could appear to restrict technologies or bidders)
- 

# Maximize number of bids received

- ▶ Your bid process should be structured to receive the maximum number of bids by:
  - Few disqualification criteria.
  - Remain open longer than 28 days if necessary.
  - Be specific about what is requested.
  - Make walkthroughs or meetings optional.

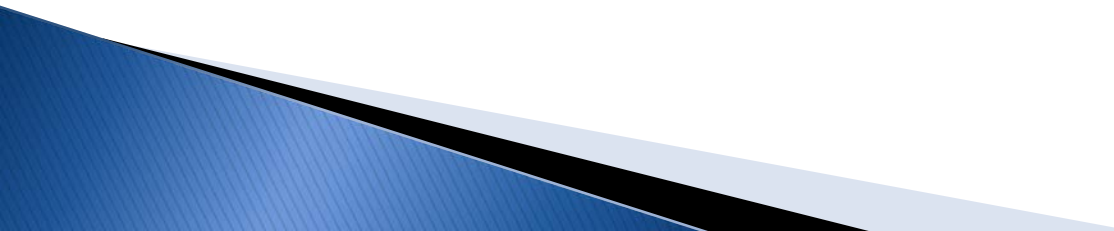
# Bid Response Summary for Providers

- ▶ Make sure ALL costs included.
- ▶ Bandwidths outside of the requested bandwidths most likely will not receive OUSF funding.
- ▶ Include contract terms and conditions.
  - No surprises for the beneficiary.
- ▶ Providers are presumed to know the law.

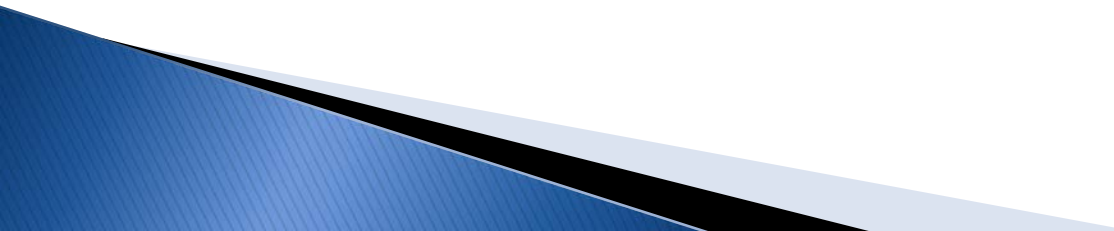
# Contract Guidance



# Oklahoma School/Library/Public Contracts

- ▶ Current year fund commitment only.
  - ▶ Can have renewals – considered as multi-year by USAC and OUSF.
  - ▶ Longer fund commitments are probably not valid unless approved by three-fifths of voters.
  - ▶ Cannot pay for services delivered in one year with funds from a later year.
- 

# Helpful Contract Suggestions (specify on bid request)

- ▶ 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).
- 

# Helpful Contract Suggestions (continued)

- ▶ Make contingent on federal and state funding if eligible\*.
- ▶ Require carrier to file for OUSF within 60 or 90 days of starting service.
- ▶ Require that service provider appeals adverse OUSF findings
- ▶ (caveat – they may require that their bid be LCRQB).

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

# E-rate Cost Effectiveness

- ▶ Carefully consider all bids received with price as the primary factor.
- ▶ Choose the most cost effective option.
- ▶ Single bids must still be cost effective (*Ysleta Order*).
  - “Shake the trees”
  - Memorialize that fact.
- ▶ Situations where recipients do not pay their own pro-rata portion may result in more USAC scrutiny.

# Examples – Annual Cost

Speed	Selected	LCRQB	Comment
10 Mbps	\$60,480	\$18,300	20 Mbps
20 Mbps	\$87,600	\$19,860	50 Mbps
100 Mbps	\$70,200	\$37,700	
100 Mbps	\$79,250	\$21,260	
100 Mbps	\$83,600	\$27,600	
250 Mbps	\$116,370	\$34,440	

# OUSF Affidavit

- ▶ Only required for:
  - Preapproval (send to PUD)
  - Initial Funding Request (send to service provider)
  - Change in funding (send to service provider)
- ▶ Download from <http://www.occeweb.com/> in the Public Utility Division.
- ▶ Example...

# Thank you!

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Public Utility Division – [pudsubmissions@occemail.com](mailto:pudsubmissions@occemail.com), (405) 521-4114