

System: 165.135.210.45 sec fax,sec, 4181087 --- Time Printed: 08-30-2004 15:55:21

From: 7143891653
Media: Fax 10 pages
Subject:
Status:
Received: 02:29 AM 08/29/04

DOCKET FILE COPY ORIGINAL

RECEIVED & INSPECTED
AUG 30 2004
FCC - MAILROOM

FAX

RECEIVED & INSPECTED
AUG 30 2004
FCC - MAILROOM

DATE: August 28, 2004

TO: FCC FILINGS
ATTN: OFFICE OF THE SECRETARY
FAX: 202-418-0187
PHONE: 202-418-7400

SUBJECT: REQUEST FOR REVIEW
E-RATE CASE REVIEW NUMBER 21-102595

DOCKET #: 96-45 AND 97-21 AND/OR 02-6

FROM: FRAN OLDER
PHONE: 714-473-6153
FAX: 949-552-5270
REF: E-RATE ENTITY 158862

NUMBER OF PAGES: 10 INCLUDING COVER

①

To: FCC Filings
Fax: 202-418-0187
Date: August 28, 2004
To: Federal Communications Commission (FCC)
Attn: Office of the Secretary
Ref: CC Docket Nos. 96-45 and 97-21 and/or 02-6
Subj: Request for Review/e-Rate Case Review Number 21-102595
Re: Billed Entity Number: 158862
471 Application Number: 297762
471 Application Number: 324756
SLD's Correspondence Dated: April 22, 2003

RECEIVED & INSPECTED

AUG 30 2004

FCC - MAILROOM

Summary: SLD's Accusation of Bidding Violation

SLD's Denial Letter Dated April 22, 2003 continues to insist that on the basis of an address, phone and fax number used on Form 470, I was an agent or an employee of a service provider and, therefore, committed a bidding violation. I wish to request a review of SLD's appeal to the FCC that this is an incorrect conclusion by SLD and an unreasonable allegation and assert that I have tried every way possible to overcome confusing instructions on the program.

Firstly - The SLD has interpreted this to be a bidding violation which would create an unfair competitive advantage to certain service providers and has taken it upon themselves to accuse me of just that. This constitutes an untrue accusation because I can prove beyond any doubt that I never received, handled, transmitted or in any other way influenced any bidding decisions made by the applicant. Perhaps the most blatant assumption being made on the part of SLD comes forward when they allege that I had a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. As stated above, there could not have been a conflict of interest because as the applicant's consultant, I did not determine the services sought and I was not involved in the selection of the applicant's service providers. All bids and contracts were sent directly to Mr. Donald A. Verleur, CEO for the Entity at his address and kept in his files separate from mine. Fair bidding practices were followed according to the rules and regulations of the United States Congress, the FCC and the USAC. Therefore, it seems to me that the SLD is reaching unnecessarily far to try to sustain a decision which was based on limited information.

I believe SLD's decision is a misunderstanding and I want to clear my name of any impressions of willful misconduct when Forms 498 and 473 were actually filed by service providers. Starting in the early years of the program, the instructions for these forms were misunderstood to mean a person who could be contacted with questions about the form and must be able to answer questions in a timely manner regarding information on the program; therefore, several service providers listed me as their contact person, not just the service provider in question, LWAssociates. Also, it is my understanding that

this is not at all unique to my situation and that it is common practice in the program and a frequent occurrence to use the applicant's consultant as their contact person.

SLC further states, "pursuant to FCC guidance, this principle applies to any service provider contact information on FCC form 470, including address, telephone and fax numbers and email address. This statement was never made clear to me or to anyone else I worked with in the 6 years of the program. The address that appears to be in common between myself and LWAssociates is actually a Postal Mail Box service known as AIM Mail Center, and one of the services they provide is the use of their phone and fax numbers to all of their customers, which explains why my address, phone and fax numbers might occasionally be the same as LWAssociates.

Secondly - SLD sites the so-called MasterMind appeals decision in support of their denial because they discovered the contact person in that case was an actual employee of MasterMind; however, I was not an employee of LWA or any other service provider. I was an independent consultant only to applicants, and paid by the applicants (in this case, Approach Learning and Assessment Centers) and various other applicants I have served throughout the United States.

Thirdly - SLD further attempts to support their incorrect assumption by stating that there is "a contradiction between an SLD error which caused my name, address and phone number to appear as a contact person for a service provider and a letter written by Congresswoman Loretta Sanchez, dated October 30, 2002, which discusses a misunderstanding of program rules. The fact is that both are true. It is obvious that SLD's records continue to be confused because even in their letter dated April 22, 2003 my address is incorrect and I never received the original letter. It should also be of interest to you to note that the address used to reach me with the appeal decision letter was not the address that SLC is alleging in the bidding violation, it is not the address of the service provider in question. I waited thirteen months to hear back from SLD on my funding year 2002 appeal and finally called the SLD Client Service line to check status of my appeal letter and spoke with Debbie Wilburn, TCSB on June 30, 2004. Debbie opened a case review #21-102595 and faxed a copy of the SLD's letter to me. Had I not followed-up on my own, I would never have had the opportunity to appeal to you.

I respectfully request an impartial review of this appeal and I certify that all of the foregoing is true and correct to the best of my knowledge.

Respectfully submitted,



Fran Older
5319 University Drive, PMB #416
Irvine, CA 92612
Phone: 714-473-6153
Fax: 949-552-5270 (c/o Aim Mail Centers)
Page 2 of 2



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2002-2003

April 22, 2003

Fran Older
Approach Learning and Assessment Centers
2130 East 4th St., Suite 200
Santa Ana, CA 92705

Re: Billed Entity Number: 158862
471 Application Number: 297762
Funding Request Number(s): 764315, 764324, 764333, 764340, 764341,
764346, 764350, 764353, 764355
Your Correspondence Dated: August 28, 2002

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2002 Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 764315, 764324, 764333, 764340, 764341, 764346,
764350, 764353, 764355
Decision on Appeal: Denied in full
Explanation:

- In your letter of appeal you have stated that the application was denied because your name was listed as the contact person for a Service Provider (LW Associates) and the Applicant (Approach Learning and Assessment Centers). You have argued that the SLD has 2 different contact persons listed in its databases for LW Associates. The USAC database shows the correct contact person, while the SLD database incorrectly shows you, Ms Fran Older, as the contact person for LWA. You further state that LWA filed Form 498 with USAC on 7/12/2002, which populated the SLD database with the correct contact persons information on 8/27/2002. You have requested priority handling of this appeal in order to

avoid interruption of services for children preparing to enter college and to avoid untimely and unbudgeted funding by the school for recurring services. You also ask that the "bidding violation" decision be reversed and removed from this school's files so they may proceed with funding approval on Funding Year 5 (2002) and be able to submit their Funding Year 6 application without delay. You assert that the application has cleared exhaustive Selective Reviews, including full disclosure of all bids and proposals. You contend that at no time was a Form 498 SPIN Change Correction processed by the service provider or the applicant to include your name as the contact person for the service provider and that it seems that an internal typographical error is the only explanation for the confusion. You state that due diligence was exhibited by the applicant and the service provider for all timelines required for applications and documentation, while it took the SLD 45 days to make a change that you believe could have been made by PIA through phone, fax or e-mail. You again request priority status as the school has suffered an unnecessary delay in Funding Year 1999 when their application was granted on appeal after an unnecessarily lengthy delay.

- Upon review of the appeal it was determined that your Form 470 included service provider contact information in Block 1, Item 6. This information includes the name of Fran Older, located at 5319 University Dr # 416, Irvine, CA, with the phone # 949-786-1785, and fax # 949-786-4125. At the time the selective review was performed, these were the contact person, address, and phone number for LW Associates as listed in the SLD database for SPIN contacts. On appeal you have acknowledged that this information was changed by the service provider to remove your information on 7/12/2002, 11 days after the date of your Funding Commitment Decision Letter. On appeal you have alleged that an internal SLD error is responsible for your name, address, and phone number appearing as contact for the service provider. This is contradicted in a letter that has been written in your behalf to the SLD from Congresswoman Loretta Sanchez dated 10/30/2002. Congresswoman Sanchez attributes this error to a misunderstanding of program rules as when the form was filed, LW Associates simply thought that the contact on the form should be the person who handled the questions and correspondence for the applicant. This correspondence also states that Ms. Older is an independent E-rate consultant and is not paid or connected with any service provider, including LW Associates. However, at the time this application was reviewed, the SLD's records indicated that Fran Older was the contact person for LW Associates. Therefore, the SLD could only conclude that the contact person for the applicant was connected to the service provider, LW Associates. Program rules require applicants to provide a fair and open competitive bidding process. As per the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's consultant,

✓ who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." As the schools consultant/contact person is also the contact person for a service provider from whom the applicant is requesting services, all FRN's that are associated with this Form 470 must be denied per program rules. Consequently, the appeal is denied.

- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.¹ FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.² In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeals decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.³ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁴ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address.
- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.⁵ A competitive bidding violation and conflict of interest exists when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC) via United States Postal Service: FCC, Office of the Secretary, 445-12th Street SW, Washington, DC 20554. If you are submitting your appeal to the FCC by other than United States Postal Service, check the SLD web site for more information. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. The FCC must RECEIVE your appeal **WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER** for your appeal to be filed in a timely fashion. Further information and new options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, www.sl.universalservice.org.

¹ See 47 C.F.R. §§ 54.504(a), 54.511(a).

² See 47 C.F.R. § 54.504(a), (b)(2)(vi).

³ See *In re MasterMind Internet Services, Inc.*, CC Docket 96-45, ¶ 9 (May 23, 2000).

⁴ See *id.*

⁵ See, e.g., 48 C.F.R. § 9.505(a), (b).

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2002-2003

April 22, 2003

Fran Older
Approach Learning and Assessment Centers
2130 East 4th St., Suite 200
Santa Ana, CA 92705

Re: Billed Entity Number: 158862
471 Application Number: 324756
Funding Request Number(s): 869713
Your Correspondence Dated: August 28, 2002

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2002 Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 869713
Decision on Appeal: Denied in full
Explanation:

- In your letter of appeal you have stated that the application was denied because your name was listed as the contact person for a Service Provider (LW Associates) and the Applicant (Approach Learning and Assessment Centers). You have argued that the SLD has 2 different contact persons listed in its databases for LW Associates. The USAC database shows the correct contact person, while the SLD database incorrectly shows you, Ms Fran Older, as the contact person for LWA. You further state that LWA filed Form 498 with USAC on 7/12/2002, which populated the SLD database with the correct contact persons information on 8/27/2002. You have requested priority handling of this appeal in order to avoid interruption of services for children preparing to enter college and to avoid untimely and unbudgeted funding by the school for recurring services. You also ask that the "bidding violation" decision be reversed and removed from this schools files so they may proceed with funding approval on Funding Year 5 (2002) and be able to submit their Funding Year 6 application without delay. You

assert that the application has cleared exhaustive Selective Reviews, including full disclosure of all bids and proposals. You contend that at no time was a Form 498 SPIN Change Correction processed by the service provider or the applicant to include your name as the contact person for the service provider and that it seems that an internal typographical error is the only explanation for the confusion. You state that due diligence was exhibited by the applicant and the service provider for all timelines required for applications and documentation, while it took the SLD 45 days to make a change that you believe could have been made by PIA through phone, fax or e-mail. You again request priority status as the school has suffered an unnecessary delay in Funding Year 1999 when their application was granted on appeal after an unnecessarily lengthy delay.

- Upon review of the appeal it was determined that your Form 470 included service provider contact information in Block 1, Item 6. This information includes the name of Fran Older, located at 5319 University Dr # 416, Irvine, CA, with the phone # 949-786-1785, and fax # 949-786-4125. At the time the selective review was performed, these were the contact person, address, and phone number for LW Associates as listed in the SLD database for SPIN contacts. On appeal you have acknowledged that this information was changed by the service provider to remove your information on 7/12/2002, 11 days after the date of your Funding Commitment Decision Letter. On appeal you have alleged that an internal SLD error is responsible for your name, address, and phone number appearing as contact for the service provider. This is contradicted in a letter that has been written in your behalf to the SLD from Congresswoman Loretta Sanchez dated 10/30/2002. Congresswoman Sanchez attributes this error to a misunderstanding of program rules as when the form was filed, LW Associates simply thought that the contact on the form should be the person who handled the questions and correspondence for the applicant. This correspondence also states that Ms. Older is an independent E-rate consultant and is not paid or connected with any service provider, including LW Associates. However, at the time this application was reviewed, the SLD's records indicated that Fran Older was the contact person for LW Associates. Therefore, the SLD could only conclude that the contact person for the applicant was connected to the service provider, LW Associates. Program rules require applicants to provide a fair and open competitive bidding process. As per the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." As the school's consultant/contact person is also the contact person for a service provider from whom the applicant is

requesting services, all FRN's that are associated with this Form 470 must be denied per program rules. Consequently, the appeal is denied.

- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.¹ FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.² In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeals decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.³ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁴ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address.
- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.⁵ A competitive bidding violation and conflict of interest exists when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC) via United States Postal Service: FCC, Office of the Secretary, 445-12th Street SW, Washington, DC 20554. If you are submitting your appeal to the FCC by other than United States Postal Service, check the SLD web site for more information. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. **The FCC must RECEIVE your appeal WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER** for your appeal to be filed in a timely fashion. Further information and new options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, www.sl.universalservice.org.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

¹ See 47 C.F.R. §§ 54.504(a), 54.511(a).

² See 47 C.F.R. § 54.504(a), (b)(2)(vi).

³ See *In re MasterMind Internet Services, Inc.*, CC Docket 96-45, ¶ 9 (May 23, 2000).

⁴ See *id.*

⁵ See, e.g., 48 C.F.R. § 9.505(a), (b).