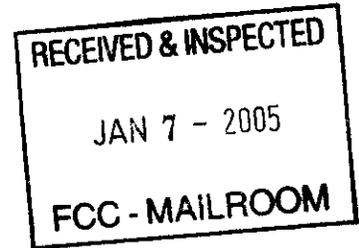


YESHIVA KEHILATH YAKOV SCHOOL DOCKET FILE COPY ORIGINAL

638 Bedford Avenue, Brooklyn, N.Y. 11211

January 5, 2005

Letter of Appeal
FCC, Office of the Secretary
445 12th Street SW
Washington, DC 20554



APPEAL

Re: Funding Year : 2003
Date of appeal decision letter: 11/9/04
Billed Entity Name: Yeshiva Kehilath Yakov
Billed Entity Number: 11733
Form 471 Application #: 364209

In reference CC Docket No. 02-6 Yeshiva Kehilath Yakov hereby appeals the decision on the following FRN:

Funding Request Number 988314
Service Provider: Verizon-New York Inc.
Competitive Bidding Violation

A] In support of your request, you assert that Yeshivath Kehilath Yakov always uses the lowest bidder as the primary factor in selecting vendors. However, in this case you learned that the savings from the any other vendor versus Verizon was merely 3 percent and not significant enough to the make the switch.

RESPONSE:

The primary factor for selecting vendors is always the lowest bidder. However, even with the savings from another vendor versus Verizon considered, which was actually very insignificant, we needed to select a provider with other advantages as well, as it is very crucial for us to have the most reliable phone service available in the area.

As specified, price must not be the sole factor in selecting vendors. We need all the other benefits provided by Verizon that the other bidders could not offer. All telephone lines in our area are actually owned by VERIZON who always respond quicker to a VERIZON direct customer rather than to customers of another vendor who resell their services. Experience has proven this to us with major problems at one of our locations, and we knew that the difference in rate savings would eventually certainly not be worth switching for.

A different provider would, in the long run, cost us more in lost services and time. We used experience and thinking *after*, and together with, cost consideration.

No. of Copies rec'd 0+1
List ABCDE

B] During the course of PIA review the SLD determined that price was not the primary factor in the vendor selection process. Since price is the not primary factor the SLD concluded that the vendor selection process did not comply.

RESPONSE:

During the vendor selection process we gave Verizon 100% capability of servicing our existing system. This by no measure means that this was the *ONLY* factor considered in selection of a provider. On a score sheet of selection, Verizon would total 100% plus extra credits for all the additional factors well thought-out.

The rates of Verizon are comparatively insignificantly above the other bidders, *and we certainly took cost into foremost consideration*, but with the capability to service us with expertise, as is most vital for our institution, and past experience with servicing and understanding our needs, along with financial stability, Verizon came up way above other bidders in the selection criteria.

Contrary to what the SLD determined, price was weighted the heaviest! *With* this factor being the primary issue considered, as desired by the rules of the Schools and Libraries Support Mechanism, we still came up with our selection of Verizon.

We are confident with our selection done according to regulations, and score Verizon 150%.

C] Program rules do not permit SLD to accept new information on appeal except when an applicant was not given an opportunity to provide information during the initial review or when an error was made by SLD.

RESPONSE:

We wish to understand what new information we provided with the submission of our appeal. As far as we are concerned, all the information was provided by the review and nothing was changed or added.

However, we did attempt to *clarify* our process of selection so that the information originally provided to the SLD gets correctly interpreted. It is only fair that if the SLD did not read our worksheet as we trusted they would, we be given a chance to explain ourselves. We see no justification for denying our appeal on said basis.

D] FCC regulations require that the entity selecting a service provider "carefully consider all bids submitted and may consider relevant factors other than the pre-discount prices submitted by providers." In regard to these competitive bidding requirements, the FCC mandated that "price should be the primary factor in selecting bid." In regard to these requirements, the FCC mandated that "price should be the primary factor in selecting a bid." When allowed other relevant factors may be considered including past performance and management capability. As stated by the FCC other factors form a reasonable basis to evaluate whether an offering is cost- effective.

RESPONSE:

Since factors other than discounted prices may be considered in the selection process of a vendor, VERIZON was chosen BECAUSE IT IS MOST COST EFFECTIVE FOR US. What advantages is there in selecting a provider that has no experience in the services we require, does not qualify with technical excellence, has no management capability, no schedule compliance or environmental objectives?

We are an institution with many years of experience and a highly professional staff. Our business is a not-for-profit organization and every dollar spent is carefully analyzed. Much attention was given in the selection process of vendors. This is how every expenditure is weighed, even if the monies are being provided through special funding.

The decision by the SLD to deny our appeal should be revoked. We trust that you will carefully analyze our correct selections and help us resolve this matter.

Thank you for your support.

For any questions concerning the above please contact:

JOSEPH GOLD

Yeshiva Kehilath Yakov School
638 Bedford Avenue
Brooklyn, New York, 11211
Tel: 718-963-1212 ext:108
Fax: 718-488-5982
E mail: KYRS@Thejnet.com



Administrator's Decision on Appeal - Funding Year 2003-2004

November 9, 2004

David Oberlander
Yeshivath Kehilath Yakov
638 Bedford Avenue
Brooklyn, NY 11211

Re: Billed Entity Number: 11733
471 Application Number: 364209
Funding Request Number(s): 988441, 988314, 988344
Your Correspondence Dated: July 12, 2004

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 2003 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 an appeal is submitted, a separate letter is sent.

Funding Request Number: 988441
Decision on Appeal: **Approved, Funding Reduced**
Explanation:

ACCEPTED

- On appeal, you seek reversal of the SLD's decision to deny the funding request for 30% unsubstantiated charges. You assert that the documentation submitted was intended to prove that you currently have five (5) existing lines with Verizon. The charges were based on the highest average monthly rate on one line to substantiate a base for a monthly charge and to ensure to have enough available funding to cover the five (5) lines plus two additional lines, which you anticipated to being approved.
- Based on your appeal letter and the relevant documentation the funding request is approved. However, the funding is reduced for the ineligible equipment insurance and service activation fee.
- Your Form 471 application included costs for the following ineligible products and/or services: equipment insurance and service activation fee. FCC rules provide that

funding may be approved only for eligible products and/or services. 47 C.F.R. §§ 54.502, 54.503. The USAC web site contains a list of eligible products and/or services. See the web site, www.sl.universalservice.org, Eligible Services List. FCC rules require that if less than 30% of an applicant's funding request includes ineligible products and/or services, the funding request must be reduced. 47 C.F.R. § 54.504(c)(1). 9% of your funding request was for ineligible products and/or services. Therefore, your funding request has been reduced. It has not been determined through our review of your appeal that the amount of the request that we reduced was for eligible items.

Funding Request Number: 988314
Decision on Appeal: **Denied in full**
Explanation:

APPEAL ONLY
ON THIS FRN

- On appeal, you seek reversal of the SLD's decision to deny the funding request for competitive bidding violations. In support of your request, you assert that Yeshivath Kehilath Yakov always uses the lowest bidder as the primary factor in selecting vendors. However, in the case of FRN 988314, after careful analysis you learned that the savings from any other vendor versus Verizon was merely three (3) percent and not significant enough to make the switch.
- During the course of Program Integrity Assurance review, Yeshivath Kehilath Yakov was asked to provide documentation explaining the vendor selection process. The SLD thoroughly reviewed the documentation and determined that based on the documentation provided, it was clear that price was not the primary factor in the vendor selection process. The vendor's proximity to the school and capability to service the existing system versus having a vendor without service experience was given greater weight than price. Since price was not the primary factor in the evaluation criteria in the vendor selection process, the SLD determined that the vendor selection process did not comply with the rules of the Schools and Libraries Support Mechanism.
- After thorough review of the assertions made in your appeal, it has been determined that the decision to deny this request was correct based on the documentation provided during the course of the review. SLD's review of your application determined that price was not the primary factor when you selected your service provider. Program rules do not permit SLD to accept new information on appeal except when an applicant was not given an opportunity to provide information during the initial review or when an error was made by SLD. Consequently, your appeal is denied in full.
- FCC regulations require that the entity selecting a service provider "carefully consider all bids submitted and may consider relevant factors other than the pre-discount prices submitted by providers."¹ In regard to these competitive bidding requirements, the

¹ 47 C.F.R. § 54.511(a).

FCC mandated that "price should be the primary factor in selecting a bid."² When allowed under state and local procurement rules, other relevant factors an applicant may consider include "prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives."³ As stated by the FCC in the Tennessee Order, other factors, such as prior experience, personnel qualifications, including technical excellence, and management capability, including schedule compliance, form a reasonable basis to evaluate whether an offering is cost-effective.⁴ Recently, the Commission reaffirmed its position that schools must select the most cost-effective service offering and in making this decision, price should be the primary factor considered. See 47 C.F.R. § 54.511(a).

Funding Request Number: 988344
Decision on Appeal: **Denied in full**
Explanation:

ACCEPTED

- On appeal, you seek reversal of the SLD's decision to deny the funding request for competitive bidding violations. In support of your request, you assert that Yeshivath Kehilath Yakov always uses the lowest bidder as the primary factor in selecting vendors. In the case of FRN 988344, Capsule Communications was the service provider at the time of submission of the funding request. You state that you were anticipating an immediate change to American Long Lines whose rates are lower. However, it takes time to receive the SLD approval and transferring the process to the new vendor. You are currently using American Long lines.
- During the course of Program Integrity Assurance review, Yeshivath Kehilath Yakov was asked to provide documentation explaining the vendor selection process. The SLD thoroughly reviewed the documentation and determined that based on the documentation provided, it was clear that price was not the primary factor in the vendor selection process. The vendor's proximity to the school and capability to service the existing system versus having a vendor without service experience was given greater weight than price. Although on appeal you state that you were planning to migrate your long distance service to American Long Lines whose rate were lower, this statement conflicts with information you previously provided in response to the vendor selection and evaluation criteria questions. Since price was not the primary factor in the evaluation criteria in the vendor selection process, the SLD determined that the vendor selection process did not comply with the rules of the Schools and Libraries Support Mechanism.
- After thorough review of the assertions made in your appeal, it has been determined that the decision to deny this request was correct based on the documentation

² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order*, 12 FCC Rcd 8776 at ¶ 481 (1997) ("*Universal Service Order*").

³ *Id.*

⁴ Request for review by the Department of Education of the State of Tennessee, Federal-State Joint Board on Universal Service, changes to the Board of Directors of National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, *Order*, 14 FCC Rcd. 13,734 (1999).

provided during the course of the review. SLD's review of your application determined that price was not the primary factor when you selected your service provider. Program rules do not permit SLD to accept new information on appeal except when an applicant was not given an opportunity to provide information during the initial review or when an error was made by SLD. Consequently, your appeal is denied in full.

- FCC regulations require that the entity selecting a service provider "carefully consider all bids submitted and may consider relevant factors other than the pre-discount prices submitted by providers."⁵ In regard to these competitive bidding requirements, the FCC mandated that "price should be the primary factor in selecting a bid."⁶ When allowed under state and local procurement rules, other relevant factors an applicant may consider include "prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives."⁷ As stated by the FCC in the Tennessee Order, other factors, such as prior experience, personnel qualifications, including technical excellence, and management capability, including schedule compliance, form a reasonable basis to evaluate whether an offering is cost-effective.⁸ Recently, the Commission reaffirmed its position that schools must select the most cost-effective service offering and in making this decision, price should be the primary factor considered. See 47 C.F.R. § 54.511(a).

Since the Administrator's Decision on Appeal approves additional funding for your application, SLD will issue a Revised Funding Commitment Decision Letter (RFCDL) to you and to each service provider that will provide the products and/or services approved for discounts in this letter. SLD will issue the RFCDL to you as soon as possible. The RFCDL will inform you of the precise dollar value of your approved funding request. As you await the RFCDL, you may share this Administrator's Decision on Appeal with the relevant service provider(s).

If the original FCDL approved funding in part for the products and/or services covered by this appeal, the 120-day deadline for filing Forms 486 is determined based on the date of the original FCDL that approved funding for the request(s). However, if the original FCDL denied funding for the products and/or services covered by this appeal, Forms 486 cannot be filed until you have received your RFCDL.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the Federal Communications Commission (FCC). For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-

⁵ 47 C.F.R. § 54.511(a).

⁶ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order*, 12 FCC Rcd 8776 at ¶ 481 (1997) ("*Universal Service Order*").

⁷ *Id.*

⁸ Request for review by the Department of Education of the State of Tennessee, Federal-State Joint Board on Universal Service, changes to the Board of Directors of National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, *Order*, 14 FCC Rcd. 13,734 (1999).

6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and 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 or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

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

Schools and Libraries Division
Universal Service Administrative Company