



Federal Communications Commission
Washington, D.C. 20554

January 29, 2015

DA 15-125

Via Certified Mail, Return Receipt Requested

Arthur Mobley
COO
Black Entrepreneurs Association, Inc.
1110 E. Washington Street
Phoenix, AZ 85034

**Re: Notice of Interim Default Payment Obligation for Auction 94 Construction Permit
FM978-C3 (Wickenburg, AZ)**

DO NOT DISCARD THIS IMPORTANT NOTICE
OF A DEMAND FOR PAYMENT
OF A DEBT OWED THE UNITED STATES AND ORDER OF PAYMENT

Dear Mr. Mobley:

This Order provides notice and demands payment of the interim default payment obligation for Black Entrepreneurs Association, Inc. (“BEA”) with respect to its default arising out of Auction 94. As described fully below, BEA had the winning bid in Auction 94 for FM Broadcast construction permit FM978-C3 (Wickenburg, AZ) (hereinafter, “permit FM978-C3”).¹ After the close of Auction 94, BEA defaulted on its payment obligation for its winning bid. Thus, BEA became subject to the default provisions of section 1.2104(g)(2) of the Commission’s rules.²

On May 14, 2013, the Media Bureau and the Wireless Telecommunications Bureau (“Bureaus”) announced the winning bidders in Auction 94, including BEA.³ The Bureaus also announced that by no later than May 29, 2013, each Auction 94 winning bidder was required to have on deposit enough funds to bring each winning bidder’s deposit to twenty percent (20%) of its winning bid(s).⁴ If a winning bidder’s upfront payment was not sufficient to meet the down payment requirement, the winning bidder was required to deposit sufficient funds to meet its down payment.⁵ The Bureaus further instructed that by June 12, 2013, all winning bidders were required to submit a final payment for the balance of the net amount of each winning bid.⁶ The Bureaus also announced that by midnight on July 24, 2013, each winning bidder would be required to submit its long-form application.⁷

¹ See Auction of FM Broadcast Construction Permit Closes; Winning Bidders Announced for Auction 94, *Public Notice*, 28 FCC Rcd 6973 (2013) (“*Auction 94 Closing Public Notice*”).

² 47 C.F.R. § 1.2104(g)(2); see also *Auction 94 Closing Public Notice*, 28 FCC Rcd at 6976 ¶ 13.

³ See *Auction 94 Closing Public Notice*, 28 FCC Rcd at 6987 Attach. A.

⁴ *Id.* at 6974 ¶ 3; see also 47 C.F.R. § 1.2107(b).

⁵ *Auction 94 Closing Public Notice*, 28 FCC Rcd at 6974 ¶ 3.

⁶ *Id.* at 6974 ¶ 6; see also 47 C.F.R. § 1.2109(a).

⁷ *Auction 94 Closing Public Notice*, 28 FCC Rcd at 6977 ¶ 21.

BEA's net winning bid was \$63,700.00.⁸ The Bureaus applied the \$3,500.00 upfront payment amount that BEA had on deposit toward its down payment requirement of \$12,740.00 and notified BEA that an additional amount of \$9,240.00 was due to meet its down payment obligation.⁹ BEA failed to remit its required down payment due by May 29, 2013; instead, on June 3, 2013, BEA submitted a payment of \$9,702.00.¹⁰ Subsequently, BEA failed to submit the final payment of \$50,960.00 due by June 12, 2013. Additionally, BEA did not submit a long-form application for permit FM978-C3. Thus, BEA became subject to the default provisions of sections 1.2104(g) and 1.2109(c) of the Commission's rules.¹¹

Under the Commission's rules, at the close of the auction a winning bidder assumes a binding obligation to pay the full amount of its accepted winning bid.¹² A bidder who defaults on that obligation or is disqualified is considered to be a defaulting bidder under the Commission's rules and is subject to a default payment.¹³ The default payment has two components: a deficiency payment and an additional payment amount.¹⁴ The deficiency payment component applies only in the event that the subsequent winning bid the next time a construction permit for the allotment is won is less than the defaulted bid. The deficiency payment amount is the difference between the bidder's net defaulted bid and the subsequent net winning bid, or the difference between the bidder's gross defaulted bid and the subsequent gross winning bid, whichever is less.¹⁵ The additional payment amount is owed by each defaulting bidder.¹⁶ Pursuant to the rule in effect at the time of Auction 94, the additional payment amount is equal to twenty percent (20%) of the defaulter's bid, or the subsequent winning bid, whichever is less.¹⁷

Until a construction permit for the relevant allotment is won in a subsequent auction, the Commission cannot determine the full amount of the default payment that is owed. Pursuant to its rules,

⁸ *See id.* at 6987 Attach. A.

⁹ *See id.* at 6989 Attach. B. On May 14, 2013, Commission staff sent to BEA a pre-filled Remittance Advice Form (Form 159) showing the amount of its first down payment and final payment in an overnight mailing that also included a copy of the *Auction 94 Closing Public Notice*.

¹⁰ BEA submitted an untimely down payment of \$9,240.00 and included a separate payment of \$462.00. On its FCC Form 159, dated June 3, 2013, BEA provided a handwritten explanation stating that "[d]ue to a technical error the attached default payment amount of \$462 (5%) is hereby submitted to cure the default after payment was not presented as instructed again due to technical error." Section 1.2107(b) of the Commission's rules does not provide for a late payment period once the down payment deadline has lapsed, and the Commission has consistently denied every request for waiver of the down payment deadline for a winning bidder that has failed to timely remit its down payment. *See, e.g.,* Kankakee Valley Broad. Co., Inc., 22 FCC Rcd 8591, 8597 ¶ 13 (2007). Moreover, the *Auction 94 Closing Public Notice* explicitly warns that "if a winning bidder fails to complete [the] down payment process . . . by 6:00 p.m. ET on May 29, 2013, it will be in default." 28 FCC Rcd at 6974 ¶ 5.

¹¹ 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

¹² 47 C.F.R. § 1.2104(g)(2).

¹³ 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

¹⁴ 47 C.F.R. § 1.2104(g)(2).

¹⁵ 47 C.F.R. § 1.2104(g)(2)(i).

¹⁶ 47 C.F.R. § 1.2104(g)(2).

¹⁷ *See id.*; Auction of FM Broadcast Construction Permits Rescheduled for April 23, 2013; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 94, *Public Notice*, 27 FCC Rcd 14299, 14341 ¶ 171 (2013) ("*Auction 94 Procedures Public Notice*").

the Commission therefore assesses an interim default payment amounting to twenty percent (20%) of the net winning bid.¹⁸ Once a subsequent winning bid is established for the relevant construction permit, the Bureaus will determine BEA's final default payment. Once a subsequent winning bid for the relevant allotment is established, the remaining amount owed by the defaulting party, if any, is then assessed.

Accordingly, BEA is considered to be in default on permit FM978-C3 for which it was the winning bidder in Auction 94, and is subject to the applicable default payment.¹⁹ Pursuant to section 1.2104(g)(2) of the Commission's rules and the procedures established for Auction 94, BEA owes an interim default payment of \$12,740.00, which is twenty percent (20%) of its total net winning bid of \$63,700.00.²⁰ In accordance with section 1.2106(e), we will apply BEA's \$13,202.00 payments on deposit toward satisfying this interim default payment obligation.²¹ Once a subsequent winning bid is established for the relevant allotment, we will determine BEA's final default payment obligation. If an additional payment is required, a further order will assess such payment.²²

Ordering Clauses

Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and section 1.2104(g)(2) of the Commission's rules, 47 C.F.R. § 1.2104(g)(2), Black Entrepreneurs Association, Inc. is ASSESSED an interim default payment of \$12,740.00.

IT IS FURTHER ORDERED that, pursuant to sections 1.2104 and 1.2106 of the Commission's rules, 47 C.F.R. §§ 1.2104 and 1.2106, Black Entrepreneurs Association, Inc.'s funds on deposit with the Commission will be applied toward satisfying the interim default payment obligation.

IT IS FURTHER ORDERED that, pursuant to section 1.2104(g)(2) of the Commission's rules, 47 C.F.R. § 1.2104(g)(2), Black Entrepreneurs Association, Inc. will be subject to a final default payment for its defaulted winning bid during Auction 94 for construction permit FM978-C3 (Wickenburg, AZ) once the allotment associated with the construction permit is won in a subsequent auction and the full payment amount is determined.

¹⁸ See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 434 ¶ 102 (1997); Implementation of Section 309(j) of the Communications Act — Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5563 n.51 (1994); *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14341 ¶ 171; see also Implementation of Section 309(j) of the Communications Act — Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2382-83 ¶ 197 (1994).

¹⁹ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

²⁰ *Id.*

²¹ 47 C.F.R. § 1.2106(e).

²² See *Mountain Solutions Ltd., Inc., Memorandum Opinion and Order*, 13 FCC Rcd 21983, 21997 ¶ 25 (1998).

IT IS FURTHER ORDERED that this Order shall be sent to Black Entrepreneurs Association, Inc. by certified mail, return receipt requested. This action is taken pursuant to authority delegated by section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

Sincerely,

Gary D. Michaels
Deputy Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

cc: Therman Stewart (via email)
Arthur Wood (via email)