



## **Buffalo Board of Education**

## **Bureau of Purchase**

*Richard J. Fanton, Director of Purchase*  
816 City Hall, Buffalo, New York 14202  
Phone: (716) 816-4107 Fax: (716) 851-3502

"Putting Children and Families First to Ensure High Academic Achievement for All"

# **INTEROFFICE MEMORANDUM**

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To: Geoffrey Pritchard, CFO

From: Richard J. Fanton, Director of Purchase

Date: December 4, 2019

Subject: HarpData and Connected Communities

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We recently routed and approved the HarpData contract for the Connected Communities project for roughly \$1.3M. During and after this process there has been significant communication with HarpData and various staff members regarding contract and payment terms. These communications caused me to go back and review the project and its award process.

As a result of this review I have identified the following concerns with the project and its award to HarpData.

### Time Line:

1 – This award was based on the SECOND RFP process for Connected Communities. The original RFP was 19-0619E4-073; the second was 19-0620-105.

2 – HarpData submitted a response for the first RFP that was subsequently deemed “non-responsive” due to their failure to include the required bid surety. The bid surety requirement is one of the ways we attempt to ensure the financial strength of potential vendors.

3 – One respondent failed to bid and provided the following (abridged) explanation as to why: “I feel compelled to urge the avoidance of the technical implementation this RFP is requesting”. In other words this vendor did not feel the project itself was technically sound (attached).

4 – The IT department subsequently declared the sole responsive bidder as “inadequate” from a technical standpoint and requested the re-bid of the project.

5 – The RFP was subsequently modified. This modification did not materially change the technical specifications of the RFP, but did explicitly remove the possibility of a performance bond requirement for the awarded/contracted vendor. While my research has not found any specific BPS usage requirements for a performance bond, a performance bond is often required in a situation where there is no history with an awarded vendor and significant financial risk. Given the size of this project and our lack of history with HarpData it is my professional opinion that a performance bond SHOULD have been required in this instance. I can find no other instance in which the possibility of a performance bond has been EXPLICITLY removed from a RFP/BID specification. Unfortunately we do not practice revision control with draft RFP documents and it is impossible to determine when this change was made or who made the change.

6 - HarpData responded to the second RFP with the same proposal as the first RFP and did meet the bid surety requirements of the second RFP. Therefore they were deemed a responsible respondent and included in the evaluation process.

7 - After the evaluation process, HarpData was determined to be the “best value” respondent and awarded the bid. This award was approved by the Board on 7/7/19.

8 – The first revision of the contract was submitted for approval via Adobe on 9/17/19. It was reviewed by me on 9/18/19 and subsequently approved by me on 9/22/19. It was then routed to the vendor who rejected it for the payment schedule in section 4b.

9 – The second revision of the contract was reviewed by me on 10/27/19 and rejected by me because the revised payment terms in section 4b did not match what was proposed in the RFP. Without listing all the details here, the proposed payment schedule would have required the district to essentially pre-pay for much of the later services in the contract.

10 – IT discussed with HarpData the payment terms issue and subsequently revised the contract back to the original version. This version was subsequently approved and signed by all parties on 11/22/19.

11 – As a new vendor HarpData had to fill out the new vendor application. During this process HarpData once again attempted to revise the payment terms outside of what is defined in the contract. I rejected their proposal by e-mail on 12/2/19.

#### Issues/Concerns:

- 1 – There are multiple indicators of financial concern with HarpData.
  - Failure to provide bid surety with initial response
  - Aggressive pursuit of more favorable payment terms
- 2 – There is no basis for the removal of the performance bond requirement for a project of this size and scope and a vendor with no history with the District.
- 3 – There are indications that HarpData actively solicited District business prior to the issuance of the original RFP.
- 4 – There are indications that the project itself is technically suspect.

#### Recommended Corrective Actions:

1 – We should notify HarpData that no work should be done against this contract pending review by our incoming CTO and exercise our 30 day termination clause in the contract pending this review. The contract can always be re-established if necessary.

2 – We should clearly define our Performance Bond requirements.

3 – We should re-issue this RFP with our new Performance Bond criteria.

4 – We should scale down the proposed project pending validation that the solution proposed will actually work.



Richard Fanton  
Director of Purchase  
[rjfanton@buffaloschools.org](mailto:rjfanton@buffaloschools.org)  
(716) 816-4107