

June 15, 2020

Bid Protest Committee
Buffalo Board of Education
C/O Room 801 City Hall
Buffalo, NY 14202

Reference: Bid Protest to BID #20-0621-064 Wireless Access Points

Dear Bid Protest Committee,

This letter serves as HarpData LLC's (HarpData) bid protest as to the respective awardee for the above-referenced contract. HarpData protest the bids as non-responsive due to the following detailed statements describing grounds for the protest:

1. Reason for Disqualification

HarpData was told by Director of Purchasing, Richard Fanton, on May 07, 2020 that our bid was disqualified for the following reasons:

- Non-responsive due to BPS Policy 5410
 - After reviewing the policy, it is unclear what violation was made.
- Non-responsive due to "Substitute Product"
 - The RFP requested "to procure a quantity of 4,275 Aruba AP-535 Unified Campus AP (Part Number JZ347A) **or equivalent**" and further indicated "If the respondent is providing an alternate solution, complete documentation must provide for how the proposed equipment is equivalent or exceeds each of the specifications" which we included in the written portion of our proposal.
 - Furthermore, it is our belief that our bid was never reviewed by the technical evaluation team to determine if our alternative solutions met the technical requirements.

2. Awardee should have been disqualified

It is our belief that that Alternative Information Systems(AIS) was allowed to submit an additional bid option after submitting non-TAA hardware pricing which should have disqualified their bid. At bid opening, AIS' bid was recorded as \$2,308,500.00 indicating that the awarded amount of \$2,693,250.00 was negotiated after the bid opening.

- Of the five bidders, HarpData and AIS were the only vendors with a bid surety. If AIS' bid was disqualified, that would have left HarpData as the winning bidder.

3. Awarded contract value exceeds our technically equivalent solution by \$696,568.50

At a time where both the district and the city are trying to overcome budget deficits, it is unconscionable to think that our bid, which was the only bid to actually meet the districts requirements per the RFP, was disqualified for an invalid reason and a cost disparity of \$700k.

HARPDATA

- HarpData's final bid was \$1,996,681.50 where AIS' was awarded \$2,693,250.00 for just the wireless access points. There is a separate RFP for the maintenance that covers this same hardware and it should be noted that both the hardware and maintenance for our proposal was \$2,580,945.75. Considerably less than what the district awarded for the hardware portion only.

4. Uncommon Award Practices by purchasing department

This process in which this award was made does not follow protocol in several instances.

- **Clear disqualified bidder awarded**

It appears that the awardee's bid should have been disqualified, however they were allowed to submit an alternative bid **after the bid opening** when the Director of Purchasing, Richard Fanton found superficial reasons to disqualify what appears to have been the winning bid.

- **No reporting of Award**

Per article 7 of the RFP: *"Once bids for commodities & services are opened, recorded and awarded, the bid tabulation results shall be posted within the Purchase Department's web page via the following link: <https://www.buffaloschools.org/Page/3877>"*

However, this award result still has not been added as of the date of this letter. Director of Purchasing, Rick Fanton indicated to my organization in a phone call on May 7, 2020 that "It is likely that no communication went out to anyone but the award winner from the **department that handles that.**" He made mention that this was a difficult timing situation with COVID-19 response and everything being moved to remote work.

- **Purchase not Board Approved**

Richard Fanton also explained that the BOE Board Meeting occurred on March 18, 2020 and that going forward the meeting minutes are available the next day online at <https://go.boarddocs.com/ny/buffalo/Board.nsf/Public>. However, upon inspection of the site and the official recorded meeting minutes, it appears as though the award was not only unlisted on the district award site, but it also does not appear to have been discussed in the March 18, 2020 BOE meeting nor any other meeting to date.

Richard Fanton did send what appears to be official Board Recommendation Documents, prepared by CTO Myra Burden, listing the March 18, 2020 meeting as when this award would have been approved. It is unclear how this bid has been awarded for \$700k above the only qualified bid without board approval.

5. June 9, 2020 Investigative Post Article

We would request the Board to review the June 9, 2020 Investigative Post online article concerning the Board's November 2019 contract award of **RFP #19-0620E4-105 Connected Communities - Public Wi-Fi for Students** to HarpData. The article contains a December 4, 2019 Memo from Richard Fanton strongly critical of HarpData being awarded the contract. We are concerned whether Mr. Fanton's actions in writing the memo affected his decision to disqualify HarpData on May 7, 2020.

We appreciate the opportunity to submit this protest letter and look forward to your response. Please do not hesitate to contact me should you have any questions.

Sincerely,



Ivory Robinson
President/Chief Executive Officer