

May 2, 2013

Attached find the Department of Public Instruction's (DPI) response to the protest filed on February 15, 2013 by Skyward, Inc. regarding the state's letter of intent to award a contract for the statewide student information system (RFP #PA1150422).

The DPI convened a team of three individuals to thoroughly review the Skyward protest.

In addition, the DPI obtained the services of an independent outside consultant, former Wisconsin State Supreme Court Justice and Marquette University Law School Professor Janine Geske, to ensure the DPI properly and appropriately reviewed and responded to the protest. A letter from that independent consultant is also attached, declaring the DPI review process to be reasonable, professionally handled and fair.

After carefully reviewing the protest filed by Skyward, the DPI has found that Skyward's protest lacks merit, and that no law was violated in the RFP process. As such, the DPI denies Skyward's request to vacate the department's intent to award a contract for the statewide student information system to Infinite Campus.

Per Wis. Admin. Code § Adm 10.15, the protestor may appeal the decision of the procuring agency (DPI), provided the protestor alleges a violation of a statute or a provision of this chapter, to the Secretary of the Department of Administration (DOA) within 5 working days of issuance of the procuring agency's decision. The DOA secretary, or designee, shall take necessary action to settle and resolve the protest and shall promptly issue a decision in writing which shall be mailed or otherwise furnished to the protestor.

Also per state administrative code, the state shall not proceed further with the award of the contract until a decision is rendered in response to a potential appeal to the DOA, or unless the DOA secretary, after consultation with the head of the contracting agency, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

May 2, 2013

Messrs. Keith Bruett
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Eric J. Van Schyndle
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Secretary Michael Huebsch
Wisconsin Department of Administration
101 E. Wilson St.
P.O. Box 7864
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**Re: Department of Public Instruction Response to Skyward, Inc. Protest Dated
February 15, 2013**

Dear Secretary Huebsch and Messrs. Bruett, Duchemin, and Van Schyndle:

Please accept this letter as the Department of Public Instruction's ("department") response to the protest of Skyward, Inc. ("Skyward") dated February 15, 2013 (the "Protest"). That Protest was filed in response to the department's Request for Proposal #PA1150422 (the "RFP").

Introduction

Before discussing Skyward's Protest, it is important to remember the reasons we have a procurement process. Wisconsin's procurement laws are longstanding and based upon nationally-accepted best practices. State employees are required to follow procurement rules for several reasons:

- To provide vigilant stewardship of taxpayer funds;
- To comply with Wisconsin Statutes and Administrative Codes;
- To inspire public confidence in state government by following consistent and transparent processes;
- To ensure the vendor community has access to open and fair competition for state contracts; and
- To avoid individual liability for illegal purchasing.

State of Wisconsin Department of Administration, State Bureau of Procurement, Division of Enterprise Operations. *State of Wisconsin Procurement Desk Guide*, p. 2, January 2011.

It is also important to set forth the law governing the department's authority in reviewing Skyward's Protest. Wisconsin Admin. Code § Adm. 10.08(7) states:

- (7) CONTRACT AWARD. Award shall be based on the evaluation committee recommendation unless, after review by the department of the award or of a protest by a bidder or proposer, a change in an award is approved because:
- (a) Mathematical errors were made in scoring proposals;

- (b) The award was recommended to a proposer who should have been disqualified as not responsive to all mandatory requirements of the RFP;
- (c) Evidence of collusion or fraud involving either the proposer or an evaluation committee member is found;
- (d) The evaluation committee failed to follow the evaluation criteria as set forth in the RFP; or
- (e) Violations of this chapter or the statutes have occurred.

In order for the department to set aside its intent to award a contract to Infinite Campus pursuant to the RFP, Skyward must establish that one or more of the criteria in (a) through (e) above exist.

The Department's Review Process

To determine whether Skyward's Protest had merit, I established a three-person team of department employees to review the Protest, the historical record of the RFP process, and any other information the team deemed appropriate to conduct a thorough and thoughtful review. The team acted independently and did not involve me or anyone else in its work unless it determined that, as part of its review, it required information that the team did not already possess. The team was comprised of Suzanne Linton, Director of Management Services, Elizabeth Bucaida, Contracts Specialist-Advanced, and Janet Jenkins, Chief Legal Counsel.

The Protest

While Skyward's Protest contains six (6) pages of background and an overview of the RFP process, it contains four (4) actual grounds for its Protest, combined into two categories. The categories of and grounds for the Protest are:

Category 1 - The Department of Administration ("DOA") made errors in calculating the cost proposals.

- Ground 1 – Skyward's cost proposal was unfairly inflated.
- Ground 2 – Skyward's cost proposal was "conservatively" \$14.5 million less than Infinite Campus' cost proposal.

Category 2 – The technical scores were not based upon the set criteria.

- Ground 1 – Infinite Campus received a score higher than possible under the scoring protocol in seventy-three (73) instances.
- Ground 2 – Skyward was mistakenly underscored in one hundred thirty-nine (139) instances.

Category 1, Ground 1.

The primary element of Skyward's first ground in its Protest is that the "DOA unreasonably disallowed" Skyward from deducting \$4,638,001.67 from its cost proposal, which sum represents the amount Skyward would not have to spend on implementation given that more than 200 districts already use Skyward's product (Protest, pp. 7-8).

The RFP process required vendors to complete cost sheets. One of the items each vendor had to fill in on the cost sheet was the cost of implementation of its product over the five (5) years school

districts have under Wisconsin law to fully implement the Statewide Student Information System ("SSIS"). For purposes of the vendors' cost of implementation, the cost sheet broke out school districts by various populations of students. For two of the population ranges, school districts with 9,000-9,999 students and school districts with 26,000-49,900 students, Skyward entered "0 there are no students in this range."

On December 19, 2012, the DOA sent a letter to Skyward asking for clarification of Skyward's responses of "0 there are no students in this range." In that letter, the DOA stated, among other things, that Skyward's response would be interpreted by DOA as a representation by Skyward that Skyward would not charge the state any implementation costs for districts falling within the two population ranges during the 5-year implementation period. In the aforementioned letter, Skyward was given the following options to clear up the nonconformance: "Skyward shall conform to the instructions for BAFO Cost Sheet #2 and respond with a 'dollar amount,' 'no charge,' or 'included' as applicable using BAFO Cost Sheet #3." (BAFO is the acronym for "best and final offer.")

In responding to the DOA's request for clarification, Skyward added \$8 per student for any school district that had a student enrollment of 9,000 to 9,999 students at any time during the 5-year implementation period, and \$7 per student for every school that had a student enrollment of 26,000-49,999 at any time during the 5-year implementation period. By entering \$8 and \$7 for these population ranges, the total cost Skyward itself, not the DOA or the department, chose to add to its cost proposal for implementation was \$4,638,001.67. Had it so desired, Skyward could have entered "\$0" to indicate the cost per student would be zero (\$0). We consider the answers "\$0" and "0 there are no students in this range" to mean two entirely different things.

Even if, for purposes of argument, one assumes that the DOA somehow made Skyward add in costs of implementation, the deduction of \$4,638,001.67 from Skyward's cost proposal still did not make it the lowest cost bidder.

Category 1, Ground 2.

Skyward's second ground for its Protest is a claim that its cost proposal is at least \$14.5 million less than Infinite Campus' cost proposal for the full 10-year contract term. Skyward claims that Infinite Campus' cost proposal should be approximately \$19.7 million greater than the cost submitted by Infinite Campus. Skyward bases these claims on its own calculations. The department disagrees with both of these calculations. Based on the State's market basket approach for calculating contract costs, Infinite Campus' calculated cost is \$66,375,322.21 and Skyward's calculated cost is \$77,539,904.06. The savings in favor of Infinite Campus is \$11,164,581.85. These numbers are based on the final cost proposals submitted after BAFO #3.

Category 2, Ground 1.

The third basis for Skyward's Protest is that it claims Infinite Campus received a higher technical score than was possible under the scoring protocol. In support of this claim, Skyward argues that the only permissible scores were "0", "4", "5" or "6", and that both Infinite Campus and Skyward received scores other than those numbers, with Infinite Campus receiving many more "impermissible" scores.

Skyward is mistaken. Prior to the RFP evaluation process, the DOA, evaluation committee, and the

department, determined how evaluators would score the various items listed on the evaluators' score sheets. With respect to Section 5.13.2.3 of the RFP, for example, score categories were described in words as well as in numbers. The DOA defined these categories in a memo dated July 12, 2012 from Karen Aasen, of the State Bureau of Procurement at the DOA, to the evaluation committee members. The scoring categories and their permissible point levels were:

- Unsatisfactory/No Response: 0 points (range i)
- Below Acceptable: 1, 2 or 3 points (range ii)
- Acceptable: 4, 5 or 6 points (range iii)
- Above Acceptable: 7, 8 or 9 points (range iv)
- Excellent: 10, 11 or 12 points (range v)

For example, an evaluator could score a vendor product attribute or capability as "excellent" by giving that vendor 10, 11 or 12 points on the item or question under consideration by the evaluator. Thus, an evaluator could award from 0 to 12 points for each item on the vendor's proposal.

In certain instances, the score sheet contained written benchmarks. For the purposes of scoring vendors, benchmarks were used to describe attributes or capabilities of the vendors' products being evaluated; benchmarks corresponded to the scoring categories and point ranges listed above. When a written benchmark was not listed within a point range, the score was awarded based on where the evaluator believed the attribute or capability being evaluated fell within the written benchmarks (e.g. lower, higher, or between written benchmarks).

The simple score sheet example below is a fictitious review of coffee, which shows how evaluators could award points within all five point ranges. For purposes of this example, only one coffee is evaluated on the score sheet. The far left-hand column describes the rows to the right.

<i>Range →</i>	Unsatisfactory/ No Response (i)	Below Acceptable (ii)	Acceptable (iii)	Above Acceptable (iv)	Excellent (v)	My Score
<i># of points possible →</i>	0 points	1, 2 or 3 points	4, 5 or 6 points	7, 8 or 9 points	10, 11 or 12 points	
<i>Benchmark / Definition →</i>	Nothing but hot water	Smells badly; can see grounds in cup		Aromatic; full-bodied		

As one can see from this example, there are benchmarks in only ranges (i), (ii), and (iv): "Unsatisfactory/No Response," "Below Acceptable", and "Above Acceptable." Having written benchmarks in only ranges (i), (ii), and (iv) does not mean an evaluator may only give a score of 0, 1, 2, 3, 7, 8 or 9 points. Evaluators are experts and if they determine that certain characteristics or qualities are evidenced in the coffee that exceed the "Above Acceptable" category or benchmark, they can assign a point score of 10, 11 or 12 in the "Excellent" range.

In the same manner, in reviewing the RFP responses, an evaluator was permitted to assign a point value ranging from 0 to 12 points to the various items in a vendor's RFP response, even if a written benchmark did not appear in the point range. Thus, Skyward's claim that it and Infinite Campus received more points than permissible under the scoring protocol is incorrect.

Category 2, Ground 2.

Skyward's final ground for the Protest is that the evaluators mistakenly underscored Skyward's proposal in 139 instances. Skyward describes only one such instance. In evaluating the alleged error, the department reviewed the scores and the criteria for scoring and determined that the evaluators correctly based their scores on the information received in Skyward's proposal and presented in Skyward's product demonstration. Therefore, the department found no error.

Skyward explains how it determined it should receive only 4 additional points out of 920 it alleges it should have received in the alleged 139 instances of scoring errors. Given this almost total lack of information, the department has no basis on which to objectively evaluate, let alone accept, Skyward's argument.

Conclusion

The review of Skyward's Protest began with a discussion of the reasons state lawmakers created Wisconsin's procurement process. In creating the process, the legislature and the DOA have implemented numerous safeguards to ensure that the process actually achieves the goals established. These safeguards include, but are not limited to, the involvement of numerous, experienced persons in drafting the Request for Proposal, the significant involvement of the DOA in the process, and the involvement of various experts who evaluate proposals at different stages of the process.

In the review of Request for Proposal #PA1150422, there was an added and very important level of scrutiny. That scrutiny took the form of having Attorney Cari Anne Renlund of DeWitt, Ross, & Stevens "independently observe and monitor the procurement process from the time proposals were submitted by vendors through the completion of the evaluation and selection process." See *"Procurement Process Observation Report,"* at p. 2. At the conclusion of her role, Ms. Renlund wrote a comprehensive report about her observations and concluded:

- 1) The SSIS procurement, evaluation, and selection process was open, fair, impartial and objective, and consistent with the RFP criteria;
- 2) The State and the Evaluation Team carefully followed the statutory and regulatory requirements applicable to the procurement process;
- 3) All proposing vendors were afforded an equal opportunity to compete for the contract award; and
- 4) The procurement, evaluation and selection process satisfied the goals and objectives of Wisconsin's public contracting requirements. *Id.* at p. 16.

The department also has carefully reviewed each allegation in Skyward's Protest and all the exhibits attached to it. The team I appointed to review the Protest has done so and has prepared a response to each paragraph in the Protest¹. That response is attached to this letter as Appendix A.

I have carefully reviewed and considered Skyward's Protest, and the information submitted by the departmental team. In addition, I have considered the conclusions of former Supreme Court Justice and Marquette Law Professor, Janine Geske, who I asked to oversee the review process used by the team to ensure that the team was thorough in its review, and to determine whether the team's conclusion was reasonable given the evidence in the case. I have received a letter from Ms. Geske

¹ Skyward's Protest contains a number of statements that represent Skyward's opinions about various aspects of the procurement process. However, the only allegations that actually constitute Skyward's Protest are contained in paragraphs 29 through 84.

May 2, 2013
Page 6 of 16

dated April 25, 2013, outlining her role in, and assessment of, the review process the department used as well as her conclusions. A copy of that letter is enclosed.

I have determined Skyward's Protest lacks merit, and that no law was violated in the RFP process. I therefore deny Skyward's request to vacate the department's intent to award a contract to Infinite Campus pursuant to Request for Proposal #PA1150422.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tony Evers".

Tony Evers, PhD
State Superintendent

Appeal Rights

The protestor may appeal the decision of the procuring agency, provided the protestor alleges a violation of a statute or a provision of this chapter, to the secretary of the Wisconsin Department of Administration within 5 working days of issuance of the decision. The secretary, or designee, shall take necessary action to settle and resolve the protest and shall promptly issue a decision in writing which shall be mailed or otherwise furnished to the protestor. Wis. Admin Code § Adm 10.15(5)

Appendix A

#	Answer	Protest Statement/DPI Comments
1	No response required	
2	Agree	
3	Agree	<i>"Originally, proposals to the RFP were due by no later than June 5, 2012."</i>
	Agree	<i>"That date was delayed until June 19, 2012."</i>
	Agree	<i>"However, the day before proposals were due, DOA delayed the due date again to July 10, 2012....."</i> Per VendorNet RFP, on 6/18/12 the RFP due date of 6/19/12 is suspended until later in the summer.
	Disagree	<i>"...to permit it to hire a private attorney, Cari Anne Renlund ["CAR"], to oversee the procurement."</i>
4	Agree	
5	Agree	
6	Agree	
7	Agree	
8	Agree	
9	Agree	<i>"Before demonstrations commenced, one evaluator resigned, purportedly at the request of his employer due to time demands."</i>
	Disagree	<i>"This evaluator's scores were thrown out."</i> This evaluator's score was changed to "0" by the State Bureau of Procurement ("SBOP"), not "thrown out."
10	Agree	
11	Disagree	<i>"During Skyward's demonstration, an additional irregularity occurred."</i>
	Agree	<i>"An evaluator, identified only as 'Evaluator X' in Ms. Renlund's report, asked a number of questions during Skyward's presentation."</i> CAR Report, pages 11 and 12, H. Removal of Evaluation Team Member, describes the reasons for removing Evaluator X from the committee.
12	Agree	<i>"A Subject Matter Expert ('SME'), who attended the demonstration, slipped a note to Ms. Aasen, DOA's representative, stating that the SME 'perceived' that Evaluator X was 'assisting' Skyward 'in its responses to questions from the audience.'"</i>
	Agree	<i>"Ms. Aasen privately spoke to Evaluator X about the note, after which Ms. Aasen concluded that nothing improper had occurred."</i> CAR Report, page 11, H. Removal of Evaluation Team Member, describes the reasons for removing an evaluation team member from the committee.
	Agree in part	<i>"Ms. Aasen's conclusion was also consistent with her own observations of the demonstration."</i> Skyward's description of Ms. Aasen's conclusion doesn't exactly match the description in the CAR Report.
	Agree	<i>"Evaluator X did not ask another question nor speak aloud during the</i>

		<i>remainder of the demonstration."</i> <i>CAR Report, page 11.</i>
13	Agree	
14	Agree	<i>"Despite the fact that no impropriety was found, DOA removed Evaluator X from the Evaluation Committee."</i> Page 12, H. Removal of Evaluation Team Member of CAR Report, paragraph 3 states, "SBOP decided to remove Evaluator X from the Evaluation Team out of an abundance of caution to ensure the integrity of the selection process."
	Disagree	<i>"The evaluator's scores were thrown out."</i> CAR Report, page 5, 2. Evaluation Team Member, paragraph 3, the Evaluator's scores were changed to "0".
15	Agree	<i>"With five remaining evaluation members, the Evaluation Committee rescored Skyward and Infinite's proposals."</i> CAR Report, page 13, Rescoring described in J. Final Technical Scoring.
	Agree	<i>"At that point, without even reviewing or considering the cost proposals, the Evaluation Committee sought to request a best and final offer ("BAFO") from Infinite only."</i> Infinite was the highest scorer even if Infinite would not have been awarded the maximum points for being the lowest cost bidder. The Evaluation Committee suggested to the DOA that the DOA request a BAFO from Infinite only because Infinite was the highest scoring bidder. CAR Report, page 13, K, Best and Final Offers. BAFO process described. PRO-C-39 of the State's Procurement Manual, does not require cost review prior to BAFO.
16	Disagree	<i>"Recognizing the obvious flaw in essentially eliminating all bidders except Infinite before even considering price...."</i> CAR Report, page 13, K. Best and Final Offers paragraph 1. CAR Report, p. 14 "The BAFO process was conducted fairly and was consistent with Wis. Stat. § 16.75(2m)(3) and Wis. Admin. Code § 10.08(5)." PRO-C-39 of the State's Procurement Manual does not require cost review prior to BAFO.
	Agree	<i>"...DOA recommended that the Evaluation Committee request BAFOs from both Infinite and Skyward."</i>
17	Agree	

18	Disagree	<i>"Further irregularities occurred in the BAFO process."</i>
	Disagree	<i>"The BAFO request added a new requirement that made the RFP requirements conform to the specifications of Infinite's program."</i>
	Disagree	<p><i>"The new requirement in the BAFO stated that 'Proposers shall provide a Graphical User Interface (GUI) within the Statewide Database System that is equivalent to the GUI used by the Districts and has the same functionality as the District database systems.'"</i></p> <p>The BAFO request did not add a new requirement. The 12/6/12 BAFO letter, page 1 states "This BAFO request is intended to: 1) confirm mandatory requirements for implementing a centralized SSIS; 2) obtain a time commitment from Proposers to have all functionality and Contractor testing of the SSIS completed within 90 days or less of Contract execution; and 3) provide Proposers the opportunity to submit their best pricing for all Cost Sheet Components." Further, the 12/6/12 BAFO letter, page 2, section I, states "In alignment with all the requirements of the RFP, including the Special Terms and Conditions, the following paragraphs emphasize the State's general assumptions and expectations regarding your BAFO." Bullet 3 of section I states: "Proposers shall provide a Graphical User Interface (GUI) within the Statewide Database System that is equivalent to the GUI used by the Districts and has the same functionality as the District database systems." We do not view this as a new requirement.</p> <p>CAR Report, p. 14 "The BAFO process was conducted fairly and was consistent with Wis. Stat. § 16.75(2m)(3) and Wis. Admin. Code § Admin. 10.08(5).</p>
19	Agree	
20	Disagree	Skyward did not have the lowest cost proposal.
21	Disagree	We do not believe there were any irregularities.
22	Agree	Agree
23	No response required except:	CAR Report p. 7, C. Selection Requirements "...the cost proposals were reviewed and tabulated by SBOP."
24	No response required except:	This is Skyward's opinion. Skyward's current off-the-shelf product is installed in many districts. This is not the same product that DPI is expecting to be implemented as part of the conversion to the Statewide Student Information System.
25	Disagree	
26	Agree	
27	Agree	
28	Agree	Sue Linton at the department received Skyward's letter of intent to protest on February 8, 2013.
29	Agree	In addition to statute and admin code, the State Procurement Manual PRO-C-12, Competitive Negotiation (Request for Proposal), states "Competitive negotiation, or the request for proposal (RFP) process, is used for soliciting proposals where an award cannot be made strictly on specifications or price and several firms are qualified to furnish the product or service. However, price is always a major consideration."

30	Disagree	The CAR Report doesn't describe mathematical errors. Would need to discuss with SBOP. CAR Report, page 2, para. 4, "The selection process was consistent with the RFP criteria, including an exhaustive qualitative review of the proposals submitted against pre-written benchmarks and an objective cost component."
31	Disagree	There were no errors. The CAR Report doesn't describe mathematical errors. Would need to discuss with SBOP. CAR Report, page 2, para. 4, "The selection process was consistent with the RFP criteria, including an exhaustive qualitative review of the proposals submitted against pre-written benchmarks and an objective cost component."
32	Disagree	There were no errors. The CAR Report doesn't describe mathematical errors. Would need to discuss with SBOP. CAR Report, page 2, para. 4, "The selection process was consistent with the RFP criteria, including an exhaustive qualitative review of the proposals submitted against pre-written benchmarks and an objective cost component."
33	Disagree	There were no errors. The CAR Report doesn't describe mathematical errors. Would need to discuss with SBOP. CAR Report, page 2, para. 4, "The selection process was consistent with the RFP criteria, including an exhaustive qualitative review of the proposals submitted against pre-written benchmarks and an objective cost component."
34	Disagree	There were no errors. The CAR Report doesn't describe mathematical errors. Would need to discuss with SBOP. CAR Report, page 2, para. 4, "The selection process was consistent with the RFP criteria, including an exhaustive qualitative review of the proposals submitted against pre-written benchmarks and an objective cost component."
35	Agree	
36	Disagree	<p>Based on the State's market basket approach for calculating contract costs, Infinite's calculated cost is \$66,375,322.21 and Skyward's calculated cost is \$77,539,904.06. The savings in favor of Infinite is \$11,164,581.85. Numbers are based on the final cost proposals submitted after BAFO #3.</p> <p>The analysis provided by Skyward in its protest suggesting a \$14.5 million savings also suggests that Infinite's 10-year cost will be \$86,112,158. This is \$19.7 million increase over the amount Infinite provided in its response to DOA's request for best and final offer.</p> <p>CAR Report, p. 7, C. Selection Requirements, "...cost accounted for the remaining 25%. Scoring for the Cost Proposals was objective, and the Cost Proposals were not viewed by the Evaluation Team."</p>
37	No response required	See # 39 below.
38	No response required	See # 39 below.

39	Disagree	<p>On Skyward's first submission of the Cost Sheet, under the column labeled: "Implementation/Conversion needed for Districts to use Application. Price to include migrating five (5) years of Data per District and all Travel and Training," Skyward entered "0 there are no students in this range" on lines 65 and 71 of the cost sheet:</p> <p>Line 65: 9,000-9,999 enrolled students: "0 there are no students in this range"</p> <p>Line 71: 26,000-49,999 enrolled students: "0 there are no students in this range"</p> <p>The cost sheet instructions asked for a dollar amount to be entered in lines 65 and 71.</p> <p>The 12/19/13 letter sent to Skyward by the DOA, page 2, item 3.B, asked for clarification on Skyward's responses of "0 there are no students in this range" stating:</p> <p>"Skyward's pricing for rows 65 and 71 do not conform with the December 6, 2012, BAFO Cost Submittal Instructions. Skyward entered a 'zero' (0) for both of the above district sizes with an explanation that there are no students in the range. Skyward shall conform to the instructions for BAFO Cost Sheet #2 and respond with 'a dollar amount,' 'no charge' or 'included' as applicable using BAFO Cost Sheet #3. The values entered for the District Implementation/Conversion Costs/District Size pricing shall be the fixed price over the 5-year implementation period."</p> <p>"A '0' entered in a Cost Sheet cell will result in a charge of \$0 to the State during the 5-year implementation period. The implementation cost for each district will be determined by the size of the district at the time of implementation regardless of a district's enrollment figures for the Cost Sheet ranges that Skyward claims currently do not exist."</p> <p>"Pricing clarifications shall be provided on the attached and fully completed 'BAFO Cost Sheet #3' enclosed with this letter."</p> <p>Skyward's response to the above request for clarification was to add a price of \$8 and \$7 to the Cost Sheet submitted to DOA as follows :</p> <p style="padding-left: 40px;">\$8 / Enrolled Student on Line 65: 9,000-9,999 enrolled students</p> <p>and</p> <p style="padding-left: 40px;">\$7 / Enrolled Student on Line 71: 26,000-49,999 enrolled students</p>
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40	Disagree	<p>Even if, as Skyward assumes, there will be no cost for: <i>"Implementation/Conversion needed for Districts to use Application. Price to include migrating five (5) years of Data per District and all Travel and Training"</i> for the districts in which Skyward currently has product installed, a reduction in price of \$4,638,001.67 still does not make Skyward the lowest cost bidder.</p> <p>We disagree with Skyward's inference that there will be no implementation costs for the districts in which they currently have product installed as there will be new requirements, new modules, etc., in the SSIS developed for the State.</p> <p>Based on the State's market basket approach for calculating contract costs, Infinite's calculated cost is \$66,375,322.21 and Skyward's calculated cost is \$77,539,904.06. The savings in favor of Infinite is \$11,164,581.85. Numbers are based on the final cost proposals submitted after BAFO #3. We do not see a \$14.5 million price differential as Skyward states.</p> <p>The analysis provided by Skyward in its protest claiming a \$14.5 million savings also suggests that Infinite Campus' 10 year cost will be \$86,112,158. This is \$19.7 million increase over the amount Infinite Campus provided in its response to DOA's request for best and final offer. We disagree with Skyward's calculations.</p>
41	Agree	
42	Agree	<p><i>"The press release relied significantly upon Attorney Renlund's report. The release quotes to the report stating 'the vendor that received the highest technical score also proposed the lowest cost, and therefore received the highest cost score.' (emphasis added)."</i></p> <p>CAR Report, p 15. "SBOP indicated that the vendor that received the highest technical score also proposed the lowest cost, and therefore received the highest cost score."</p>
	Disagree	<p><i>"That is simply inaccurate."</i></p> <p>The statements made in the press release are accurate.</p>
43	Disagree	Infinite did propose the lowest cost.
44	Disagree	Based on the State's market basket approach for calculating contract costs, Infinite's calculated cost is \$66,375,322.21 and Skyward's calculated cost is \$77,539,904.06. The savings in favor of Infinite is \$11,164,581.85. Numbers are based on the final cost proposals submitted after BAFO #3. We do not see a \$14.5 million price differential as Skyward states.
45	Disagree	<p>The cost sheets calculated by Skyward are not supported by the State's process. <i>See #44.</i></p> <p>CAR Report p. 2 and 15.</p>
46	No response required	<i>See # 45 above.</i>
47	No response required	<i>See # 45 above.</i>
48	No response required	<i>See # 45 above.</i>

49	Disagree	Skyward's numbers are based on Skyward's calculations and are not supported by the State's market basket calculation. See #44.																													
50	Agree																														
51	Disagree	Skyward's numbers are based on Skyward's calculations and are not supported by the State's market basket calculation. See #44.																													
52	Disagree	Skyward's numbers are based on Skyward's calculations and are not supported by the State's market basket calculation. See #44.																													
53	Agree	<i>"The Administrative Code requires that the evaluating committee 'review all proposals submitted in response to an RFP, using, as a basis, the evaluation criteria included in the RFP.' See Wis. Adm. Code s Adm. § 10.08(4)(a)."</i>																													
	Disagree	<p><i>"That did not happen."</i></p> <p>Benchmarks and weighting of questions were designed by the department and the evaluation committee and reviewed by the DOA prior to the RFP evaluation process.</p> <p>1/17/2013 Evaluation Committee Report, page 2, Sec. 2, Summary of RFP Development Process, RFP Development, par. 3: "The development participants determined that only items ranked as a four or five would be weighted and scored."</p> <p>1/17/2013 Evaluation Committee Report, page 4, Sec. 3, Summary of RFP Evaluation Process: The Proposals were evaluated using the stated RFP criteria below. The Committee reviewed the Pass/Fail and Mandatory requirements in RFP sections 4.0, 5.0 and 6.0. Pre-written benchmarks were used by the Committee for evaluation of Mandatory Requirements in Section 4.0 and for assigning scores for the Functional and Non-Functional Technical Requirements in Sections 5.0 and 6.0 of the RFP.</p> <p>EVALUATION CRITERIA</p> <p>The Proposals will be scored using the following criteria:</p> <table> <tr> <th>Description</th><th>MAX points</th><th>Percentage of score</th></tr> <tr> <td>General Proposal Requirements- See Section 4.0</td><td>Pass/Fail</td><td></td></tr> <tr> <td>Mandatory Requirements See Sections 5.0, and 6.0</td><td>Pass/Fail</td><td></td></tr> <tr> <td>COST SCORE</td><td>6,159</td><td>25%</td></tr> <tr> <td>Implementation/Conversion and On-Going costs See Section 7.0</td><td></td><td></td></tr> <tr> <td>TECHNICAL SCORE</td><td>11,076</td><td>45%</td></tr> <tr> <td>Functional Technical Requirements See Section 5.0</td><td></td><td></td></tr> <tr> <td>TECHNICAL SCORE</td><td>7,392</td><td>30%</td></tr> <tr> <td>Non-Functional Technical Requirements See Section 6.0</td><td></td><td></td></tr> <tr> <td>TOTAL</td><td>24,627</td><td>100%</td></tr> </table>	Description	MAX points	Percentage of score	General Proposal Requirements- See Section 4.0	Pass/Fail		Mandatory Requirements See Sections 5.0, and 6.0	Pass/Fail		COST SCORE	6,159	25%	Implementation/Conversion and On-Going costs See Section 7.0			TECHNICAL SCORE	11,076	45%	Functional Technical Requirements See Section 5.0			TECHNICAL SCORE	7,392	30%	Non-Functional Technical Requirements See Section 6.0			TOTAL	24,627
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		See RFP, Sec. 3.1, Evaluation Criteria.
54	Disagree	<p>See #53.</p> <p>Benchmarks and weighting of questions were designed by the department and the evaluation committee and reviewed by the DOA prior to the RFP evaluation process.</p> <p>See RFP, Sec. 3.1, Evaluation Criteria.</p> <p>CAR Report p. 15, The Evaluation Team unanimously recommended that the SSIS contract be awarded to the highest scoring proposer. The vendor recommendation was fair to all vendors, and consistent with the RFP and applicable state law. See Wis. Stat. § 16.75(2m)(g).</p>
55	Disagree	See #54.
56	Agree	RFP Section 5.13.2.3 states "Describe the planning and usability features in the scheduling Module such as the use of visual aids to organize schedule Data."
57	Agree	The maximum score possible for Section 5.13.2.3 was 48 points.
58	Agree	
59	Agree	
60	Disagree	<p>The following scoring applied to Section 5.13.2.3:</p> <ul style="list-style-type: none"> • Unsatisfactory/No Response: 0 pts = i • Below Acceptable: 1, 2, or 3 pts = ii • Acceptable: 4, 5, or 6, pts = iii • Above Acceptable: 7, 8, or 9 pts = iv • Excellent: 10, 11 or 12 pts = v <p>No benchmarks were assigned to the 1-3 pt. range.</p> <p>No benchmarks were assigned to the 10-12 pt. range.</p> <p>Evaluators were allowed to score in the ranges that had no assigned benchmarks. See 7/17/2012 memo to Evaluation Committee Members from Karen Aasen in which definitions of Excellent, Above Acceptable, Acceptable, Below Acceptable, and Unacceptable or No Response are listed.</p> <p>The weight of 5.13.2.3 was 4.</p> <p>The maximum score possible for 5.13.2.3 was 48 points.</p> <p>Benchmarks were written in the score sheets, which were given to Evaluation Committee members on July 17, 2012. Again, not all point ranges had benchmarks, but all point ranges were available for Evaluation Committee members to use. In the aforementioned 7/17/2012 memo, Evaluation Committee members were told "Each committee member must assign a score between zero and twelve (0-12) for each of the items listed on the score sheet." Further, "Scoring is based on assigning a specific point score value from the available range of points for each RFP section. Refer below to the definitions and scoring ranges applicable to this RFP."</p>
61	Agree	
62	Disagree	0-12 points were allowed. See #60.

63	Disagree	See #60. Scores were weighted. Evaluator scores were averaged by the # of Evaluation Committee members to arrive at a final score for each of the scored items. The total of all the averaged scores determined the technical score for each Proposer.
64	Disagree	
65	No response required	See #s 53-64 and 65-82.
66	Disagree	The following scoring applied to Section 5: Unsatisfactory/No Response: 0 pts = i Below Acceptable: 1, 2, or 3 pts = ii Acceptable: 4, 5, or 6, pts = iii Above Acceptable: 7, 8, or 9 pts = iv Excellent: 10, 11 or 12 pts = v Evaluators subjectively scored within the ranges. Evaluators were allowed to score in the ranges that had no assigned benchmarks. CAR Report p. 5 "It appeared that the scoring decisions of the members individually, and the collective recommendations of the team were thoughtful and deliberate decisions, based exclusively on the vendor proposals, the benchmarks, and the rules and laws applicable to the evaluation process."
67	Agree	
68	Agree	
69	Agree	The following scoring applied to 5.7.2.19: Unsatisfactory/No Response: 0 pts = i Below Acceptable: 1, 2, or 3 pts = ii Acceptable: 4, 5, or 6, pts = iii Above Acceptable: 7, 8, or 9 pts = iv Excellent: 10, 11 or 12 pts = v No benchmarks were assigned to the 10-12 pt. range. Evaluators could score in the ranges that had no assigned benchmarks. The weight of 5.7.2.19 was 4. The maximum score possible for 5.7.2.19 was 48 points.
70	Agree	See #69.
71	Agree	See #69.
72	Agree	See #69.
73	Agree	See #69.
74	Agree	
75	Agree	It would seem so. Evaluation Committee members used the information presented by Skyward in Skyward's proposal and at Skyward's vendor presentation to evaluate Skyward's proposal.
76	See #s 79-82	This is Skyward's opinion only. CAR Report, page 2, "The selection process was consistent with the RFP criteria, including an exhaustive qualitative review of the proposals submitted against pre-written benchmarks and an objective cost component."
77	Agree	

78	See #s 76-81	This is Skyward's opinion. CAR Report, page 2, "The selection process was consistent with the RFP criteria, including an exhaustive qualitative review of the proposals submitted against pre-written benchmarks and an objective cost component." CAR Report, page 6, "During those conversations, each person confirmed that the proposals were scored exclusively upon an evaluation of the proposals against the benchmarks and nothing else."
79	No further response required	Skyward's numbers are based on Skyward's calculations and are not supported by the State's market basket calculation. <i>See #44.</i> CAR Report, page 2, "The selection process was consistent with the RFP criteria, including an exhaustive qualitative review of the proposals submitted against pre-written benchmarks and an objective cost component."
80	Disagree	Re-computing scores based on criteria other than that specified in the RFP or in the market basket developed before proposals were evaluated is inappropriate. CAR Report, page 2, "The selection process was consistent with the RFP criteria, including an exhaustive qualitative review of the proposals submitted against pre-written benchmarks and an objective cost component."
81	Disagree	Re-computing scores based on criteria other than that proposed in the RFP or the market basket developed before proposals evaluated is inappropriate. CAR Report, page 2, "The selection process was consistent with the RFP criteria, including an exhaustive qualitative review of the proposals submitted against pre-written benchmarks and an objective cost component."
82	Disagree	
83	Agree	
84	Disagree	<i>See all of the above.</i>

REC'D APR 29 2013

REC'D APR 26 2013

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Fellow of the American College of
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Dr. Tony Evers
State Superintendent of Schools
Wisconsin Department of Public Instruction
P.O. Box 7841
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April 25, 2013

Re: Department of Public Instruction ("DPI") Review of Skyward, Inc.
("Skyward") Protest Dated February 15, 2013

Dear Dr. Evers,

Pursuant to your request I oversaw the review process of Skyward's protest to DPI's intent to award a contract to Infinite Campus pursuant to Request for Proposal #PA1150422. I read the written record of the RFP/selection process as well as having had conversations with your three person review team: Ms. Suzanne Linton, Ms. Elizabeth Bucaida and Attorney Janet Jenkins. I reviewed Skyward's protest document and analyzed those arguments in light of the record, including Attorney Cari Anne Renlund's report. I suggested to your three person review team that it address each paragraph of Skyward's protest document so the DPI's position on each allegation would be clear to everyone who read its review. The team did use that approach. I now have also seen your proposed letter to Skyward's counsel addressing their client's protest document.

In my professional opinion, the three person team's review process, responses and conclusions are reasonable, based upon the record in the case. There clearly was a professionally handled process for reviewing the proposals from Skyward and Infinite Campus. The three person's careful and thoughtful review of Skyward's protest was a fair one. Its conclusion (along with yours) that Skyward did not establish any of the criteria contained in Wisconsin Admin. Code Sec. 10.08(7)(a)-(e) is rationally based upon this record. Based upon my analysis of the documents in this case, I find no criticism of the process used by the DPI to review Skyward's protest of the intent to award the contract to Infinite Campus.

Respectfully submitted,


Janine P. Geske