

MEMORANDUM

TO: Tymica Dunn, Procurement Manager
N.C. Department of Public Instruction

FROM: Patti Bowers, Chief Procurement Officer
N.C. Department of Information Technology
Statewide IT Procurement Office

SUBJECT: Emergency Purchase – RtA Reading Diagnostic Assessment

DATE: January 10, 2020

The Statewide IT Procurement Office (the Office) acknowledges receipt of the notification of an emergency contract (RFQ 40-RQ22539511) between the N.C. Department of Public Instruction (NCDPI) and Istation executed January 7, 2020. NCDPI did not seek approval from the State CIO prior to entering into this contract as is required by state law. It appears that some of the subject services may have been contracted for in the “no cost” Memorandum of Agreement executed on August 27, 2019. This Office cannot approve the award of this RFQ after the fact. This Office, however, retains the authority to review the RFQ and the circumstances surrounding it. In the absence of sufficient justification for the use of emergency purchase authority, the State Chief Information Officer may exercise his statutory authority to suspend or cancel an information technology procurement executed without his approval.

Rule 09 NCAC 06B .1302 states:

- (a) An agency may make purchases of goods or services in the open market in cases of emergency or pressing need.
- (b) When emergency or pressing need action is necessary, and the estimated expenditure is over the purchasing agency’s delegation, prior verbal approval shall be obtained from the State CIO unless the purchase must be made outside of business hours, during holidays, or when state offices are otherwise closed. Subsequently, if the expenditure is over the purchasing agency’s delegation, an explanation of the emergency or pressing need purchase shall be reported in writing to the State CIO.

Mere expiration of the “no cost” Memorandum of Agreement executed August 27, 2019, does not constitute an emergency sufficient to trigger this purchase authority. If every contract signed after business hours constituted an emergency, the term would be rendered meaningless. The Office recognizes that maintaining reading comprehension testing for the state’s children is an urgent matter and that certain statutory obligations exist; however, even the continuation of a vital program does not abrogate the responsibilities of purchasing agencies and the Department of Information Technology. The State Chief Information Officer and the Department must fulfill a statutory duty to review all information technology procurements to ensure cost-effectiveness and compliance with state law and policies.

NCDPI did not seek verbal approval from the State CIO prior to signing the RFQ. Further, NCDPI has not provided adequate justification for an emergency purchase or for the execution of the RFQ outside of business hours. Conducting business outside of normal operating hours necessitates consideration of the timing of communications between DPI and Istation. For these reasons, I have enclosed the following questions about the justification and the “emergency purchase” referenced in your January 7, 2020, notification.

In the absence of a sufficient amended justification fully responsive to this memorandum and the questions below, the State CIO may exercise his authority under N.C.G.S. §143B-1350(a) to cancel or suspend any information technology procurement that occurs without the State CIO’s approval. Please provide an amended justification by 10 a.m. Tuesday, January 14, 2020.

1. Why was prior verbal approval not obtained and why was it necessary to execute the RFQ after business hours? Please supply copies of emails, notes, and native documents together with associated metadata or similar records.
2. What are the specific emergency event(s) that constitute the “recent circumstances endanger[ing] the continuation of Read to Achieve (“RtA”)” as referenced in the “Emergency Purchase-RtA Reading Diagnostic Assessment” dated January 7, 2020?
3. Clarify the costs associated with the RFQ and compare those costs to the costs proposed in the original contract in order to determine if there are any discrepancies.
4. The RFQ presents two payments which appear to be installments and are not aligned with the costs presented. Describe the services and term for Phase I with a payment due date of 1/15/2020 and Phase II with a payment due date of 3/15/2020.
5. Do the costs for either Phase I or Phase II include payment for services rendered under the “no cost” Memorandum of Agreement executed August 27, 2019, and expiring December 31, 2019? Provide documentation that the “no cost” services were received and accepted without further obligation by either party.