

FLORIDA DEPARTMENT OF EDUCATION



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October 30, 2012

Mr. Jon Taylor, President
Infinity Software Development, Inc.
1901 Commonwealth Lane
Tallahassee, Florida 32303

Dear Mr. Taylor:

This letter will serve as notice that on this date, October 30, 2012, Contract No. 12-815, Revise Standards Tutorial (Contract), between Infinity Software Development, Inc. (Infinity) and the Florida Department of Education (Department), is terminated with cause.

On October 17, 2012, the Department delivered to Mr. Jon Taylor, President of Infinity, a Notice of Default (Notice) which is attached and incorporated by reference herein. Default was based on Infinity's failure to perform on the contract as detailed in the Notice. Included in this list of breaches was Infinity's failure to provide acceptable and timely deliverables and a significant delay in performance. Moreover, the Department had requested a revised schedule that demonstrated Infinity's ability to perform which Infinity refused to deliver. Instead, Infinity relied on an outdated schedule dated June 27, 2012. In addition, the Department requested, and did not receive, assurances that Infinity had not abandoned the project and intended to complete its work along with an explanation of how Infinity would provide acceptable deliverables. Other items requested by the Department were also not delivered.

The Notice afforded Infinity 12 days to remedy its default and provide the information requested by the Department. Infinity's sole response was to file suit against the Department. Since Infinity has not remedied the default, and continues to fall further behind on the schedule, the Contract is now terminated.

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The Department is now in the process of re-procuring the services covered by the terminated Contract. The Department anticipates that the re-procurement costs will exceed the amount originally awarded for the terminated Contract. The Department will seek all remedies available to it for the breach by Infinity, including the costs of re-procurement and any price increases due to the need to find a replacement vendor.

In accordance with Rule 60A-1.006, F.A.C., the Department intends to remove Infinity from its vendor list and seek removal from the state vendor list. Further notice of removal will be issued in a separate letter, in which Infinity will be notified of its appeal rights.

Sincerely,



Terry Golden
Project Manager

cc: Daniel J. Woodring
Woodring Law Firm
203 N. Gadsden Street
Suite 1-C, The White House
Tallahassee, FL 3230

Enclosures: Notice of Default

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October 17, 2012

RE: Notice of Default

Mr. Jon Taylor, President
Infinity Software Development, Inc.
1901 Commonwealth Lane
Tallahassee, Florida 32303

Dear Mr. Taylor:

This letter will serve as formal written notice from the Florida Department of Education ("Department") to Infinity Software Development, Inc. ("Infinity") that contract violations by Infinity have caused a material breach and event of default to occur under the terms and conditions of Contract No. 12-815, Revise Standards Tutorial ("Contract"). Pursuant to Article XXX of the Contract and Rule 60A-1.006, F.A.C, Infinity shall have 12 days from receipt of this letter to cure the breaches.

Performance under the Contract is significantly behind schedule.

The project is now at least six months behind schedule. Moreover, Infinity has not completed a full month of acceptable deliverables on the Contract since March 2012. The purpose of the Contract is to provide tutorials and mini-assessments to Florida students to help prepare them for instruction and assessments aligned to the Common Core State Standards (CCSS) and Florida's Next Generation Standards (NG), a more rigorous curriculum than previously followed in Florida schools. The CCSS/NG will be the basis of assessments that will have a significant part in determining student course grades and teacher evaluations. As a result of Infinity's inability to adequately perform on this Contract, this important resource will not be available to Florida students as scheduled. The Contract schedule required Infinity to provide

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tutorials for high school Biology, English Language Arts, and Mathematics on October 9, 2012. This deliverable would have provided live, online access to help students prepare for the high stakes testing on these subjects during the 2012-2013 school year.

Infinity has also failed to perform under the contract by failing to produce timely and acceptable deliverables. For example, the following deliverables were accepted but not completed on time:

- Adaptable HS ELA Tutorial Lesson Specifications (Due 03/12/12)
- HS Biology Mini-Assessment Item Specifications and Blueprints Written at the Level of Cognitive Complexity of the Standard (Due 03/12/12)
- Brand Guide (Due 03/12/12)
- MS Civics Mini-Assessment Item Specifications and Blueprints Written at the Level of Cognitive Complexity of the Standard (Due 03/12/12)
- Alpha Release I (Due 06/11/12)

The following deliverables were rejected or never delivered in acceptable form and are past due:

- HS Biology Tutorial Lesson Blueprints (Due 04/09/12)
- HS MAT Mini-Assessment Item Specifications and Blueprints Written at the Level of Cognitive Complexity of the Standard (Due 05/09/12)
- Adaptable HS Biology Tutorial Content (Due 05/09/12)
- Adaptable MS Civics Tutorial Lesson Blueprints (Due 06/11/12)
- Adaptable HS MAT Tutorial Lesson Blueprints (Due 06/11/12)
- HS Biology Mini- Assessments Written at the Level of Cognitive Complexity of the Standard (Due 07/09/12)
- Adaptable MS Civics Tutorial Content (Due 07/09/12)
- Adaptable MS ELA Tutorial Lesson Specifications (Due 08/09/12)
- Adaptable ES MAT Tutorial Lesson Specifications (Due 08/09/12)
- MS Civics Mini-Assessments Written at the Level of Cognitive Complexity of the Standard (Due 08/09/12)
- Adaptable HS ELA Tutorial Content (Due 08/09/12)
- Alpha Release 2 (Due 08/09/12)
- Adaptable HS Math Tutorial Content (Due 8/09/12)
- HS Math Mini-Assessments Written at the Level of Cognitive Complexity of the Standard (Due 9/10/12)

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- HS ELA Mini-Assessments Written at the Level of Cognitive Complexity of the Standard (Due 9/10/12)
- MS Science Mini-Assessments Written at the Level of Cognitive Complexity of the Standard (Due 9/10/12)
- Adaptable ES Science Tutorial Lesson Blueprints (Due 9/10/12)
- Alpha Release 3 (Due 9/10/12)
- Adaptable ES Science Tutorial Content (Due 10/9/12)

The quality of the deliverables is unacceptable.

An important condition of the Contract is to provide quality deliverables which are aligned to the CCSS/NG. The quality of the deliverables being provided by Infinity under the Contract is inadequate and a disappointment to the Department, particularly given the assurances Infinity provided during contract negotiations that the company had the expertise and ability to deliver a quality product. For the most part, the tutorials and mini-assessments provided by Infinity under the Contract have not only failed to meet these standards but have included significant factual and procedural errors. For example, one proposed civics lesson suggested a discussion on the meaning of “the pursuit of happiness” in the preamble to the Constitution, ignoring or unaware of the fact that “the pursuit of happiness” is found in the Declaration of Independence and not in the U.S. Constitution. In fact, Infinity’s lengthy explanation of this question in its October 15, 2012 letter demonstrates its inability to draft a quality product. Rather than simply admit its mistake, Infinity takes a full paragraph to explain it was drawing in a new concept as part of its questioning on the U.S. Constitution.

Furthermore, the Contract requires Infinity to obtain approval from a panel of experts to ensure the deliverables are of a high quality and are acceptable to the Department. The Department does not believe that Infinity is properly using the experts to ensure a quality deliverable. The Contract requires that the experts identified by Infinity provide final approval of all content deliverables. Considering the many hours of Department time expended in reviewing and providing detailed feedback on unacceptable content, a failure to have the final deliverable reviewed by experts would be inexcusable and constitute an event of default.

Infinity has failed to cooperate with Department efforts to bring contract deliverables current and to mitigate continuing risk.

The Department has made a concerted effort to mitigate damages and to foster an environment of cooperation and support between Infinity and the Department. Unfortunately, Infinity has often thwarted this effort by actions that include, but are not limited to, the following:

- Over the course of the Contract, disagreements arose between the Department and Infinity as to oral communications and discussions during monthly and weekly meetings. In an effort to provide clarity and an irrefutable record, the Department suggested, and Infinity agreed, to record all meetings between the two parties. Recently, and after threats by Infinity's attorney to sue the Department for breach of contract, Infinity personnel have refused to attend meetings that were being recorded.
- In the spring of 2012, the Department formulated a plan to allow Infinity to continue to submit current deliverables while at the same time correcting and resubmitting previously unacceptable deliverables. The Department anticipated that this plan would get the Contract back on track by September 2012. Infinity failed to address the Department plan and instead insisted that the Contract could not be brought current before February 2013.
- The Department suggested that Infinity submit partial content deliverables over time, but prior to the due date, to allow the Department to speed up review and return feedback to Infinity more quickly. Instead, Infinity continued to submit huge 'dumps' of content and insist on a five-day turnaround that was neither practical nor required by the Contract. On one such occasion, Infinity submitted over 2900 pages of content at one time. It is unreasonable to assume that those 2900 pages were all created by Infinity in one day. It would have been more practical and efficient for both parties if Infinity had submitted the content as it was completed, consistent with the Department's suggestion.
- In an attempt to provide Infinity with assistance in improving the quality of content deliverables, the Department implemented meetings to help give Infinity more direction on what was expected content-wise. This was done in an attempt to cut down on unacceptable deliverables and revisions, and to decrease turnaround time. Unfortunately, even though Infinity had complained that it didn't have enough direction, Infinity's attendance at these meetings was meager at best. As an example, on August 6, 2012, at a time when the Contract was already five months behind schedule, the Department assembled all relevant content staff for a meeting with Infinity and Infinity brought one content manager and no content leads to the meeting.
- On October 3, 2012, the Department sent a letter to Infinity detailing its concerns with Infinity's lack of performance under the Contract. The Department also listed items that Infinity would have to provide in order to assure the Department that the Contract work could be performed by Infinity in accordance with the Contract terms and conditions. Specifically, the Department requested:
 - a. A list of deliverables Infinity is currently working on, their percentage of completion, and their expected date of delivery to the Department.

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- b. An acknowledgment by Infinity that it has not abandoned the project and intends to complete its work.
- c. A revised schedule showing new due dates for all remaining deliverables, and deliverables previously rejected, and a final completion date for the entire project.
- d. An explanation of the changes Infinity will make in order to produce acceptable deliverables, or other proof that Infinity can meet the content requirements of the Contract.
- e. An explanation of how Infinity intends to utilize its content experts to review and address the Department's comments on rejected deliverables before resubmitting them to the Department.

Infinity claims in its October 15, 2012 letter that it has provided the information requested. However, that is not the case. The Department does not have an acceptable schedule from Infinity, an acceptable deliverable list, acknowledgement that Infinity has not abandoned the project, or any of the other information requested. In fact, all the Department has received are further accusations, including Infinity's acknowledgement that it threatened the Department with breach of contract more than five months ago.

Infinity has failed to provide the requested information within the 10 days required by the letter of concern. Therefore, the Department is left with no assurance that Infinity can complete the project on time, or at all.

This letter shall serve as written notice to Infinity that these events of default must be fully remedied within twelve (12) calendar days. The 12-day notice to cure for the violation of the Contract as outlined above will expire at midnight on October 29, 2012. Failure to remedy these events of default within the time permitted shall be grounds for termination of the Contract in accordance with Section XXX of the Standard Terms and Conditions and Rule 60A-1.006, F.A.C. In addition, the Department will take all steps necessary to remove Infinity from Department, and State approved vendor lists.

Sincerely,



Terry Golden
Project Manager

cc: Daniel J. Woodring