

Via Hand Delivery

December 18, 2010

Kent Beers
Director/Chief Procurement Officer
Utah Division of Purchasing and General Services
3150 State Office Building
Capitol Hill
Salt Lake City, Utah 84114

Re: Solicitation W90311 State-Wide Learning Management System
Protest of Award to Instructure, Inc.

Dear Mr. Beers:

Please accept this letter as the protest under Utah Code section 63G-6-801 of D2L Ltd. ("D2L"), concerning the award of Solicitation W90311 (the "RFP") to Instructure, Inc. ("Instructure"). D2L understands that the RFP was awarded to Instructure on December 13, 2010.

The RFP solicited proposals to provide a state-wide learning management system ("LMS") for the Utah System of Higher Education. D2L specializes in design and implementation of LMS systems.

It is highly unusual for D2L to protest the result of an unsuccessful proposal submitted in response to a public request for proposals. But D2L has been made aware of circumstances it believes require further review of the head of the purchasing agency. In order to protect its rights, D2L is filing this statutory protest and seeking additional information through the accompanying request under the Utah Government Records Access Management Act.

At present, D2L is aware of at least two grounds for protest. First, as indicated in a letter dated December 14, 2010 from D2L's Ryan LeClaire to Ms. Mary Louise Hughes, the buyer in the University of Utah Purchasing Department who administered the RFP and award, it is difficult for D2L to understand how Instructure could have out-scored D2L's products, services, and proven track record in light of the enumerated and prioritized scoring criteria contained in the RFP. Considering the scope and scale of the work identified in the RFP, D2L is puzzled that the selection committee selected a vendor with very little experience and a small workforce for the project. D2L believes the committee must have either

misapplied the evaluation factors set forth in the RFP or erroneously considered factors or criteria not set forth in the RFP.

Second, it has come to D2L's attention that Kevin Erickson serves as Instructure's Client Services Manager. We understand that Mr. Erickson previously was involved with developing LMS evaluation procedures for the Utah Education Network and the statewide consortium of higher education institutions. Under the procurement policies of both the University of Utah and the Utah System of Higher Education, an individual who has participated in the preparation of a specification contained in a request for proposals is not eligible to participate in or receive a contract award for any procurement using the specification. In light of Mr. Erickson's affiliation with Instructure and his prior affiliation with the Utah Education Network and the statewide consortium of higher education institutions, D2L believes it must consider the possibility that Mr. Erickson participated in preparing the specifications contained in the RFP and protect its rights and file this protest now to avoid being deemed to have waived its rights. D2L respectfully requests that your office determine whether and the extent to which Mr. Erickson participated in drafting any specifications that were contained in the RFP.

Thank you for your attention to this matter.

Sincerely,



Diane M. Lank
General Counsel
D2L Ltd.

Enclosure

cc: Jim T. Parker C.P.M., Director
University of Utah Purchasing Department
(via electronic mail to jparker@purchasing.utah.edu)

Mary Louise Hughes, Buyer
University of Utah Purchasing Department
(via electronic mail mlhughes@purchasing.utah.edu)