



JUSTIN P. WILSON
Comptroller

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June 19, 2018

The Honorable Beth Harwell
Speaker of the House
Tennessee General Assembly
425 5th Avenue North, Suite 600
Nashville, TN 37243

The Honorable Jeremy Faison
Chairman, House Government Operations Committee
425 5th Avenue North, Suite 622
Nashville, TN 37243

Re: Request for Review of TNReady Contract with Questar

Dear Madam Speaker and Chairman Faison,

I am writing in response to [your letter of April 24, 2018](#), in which you requested “a review of the TNReady contract with Questar, related to the recent cyber-attack during the assessment period.” We offer below responses to the specific questions in the April 24 letter. Please note that our review of the contract is ongoing, but we wanted to answer the specific questions asked at this time. A copy of the contract can be found [here](#) and a copy of the contract amendment can be found [here](#).

1. Are there clawback provisions available, financial or otherwise, for failures in testing procedures?

We have interpreted the term “clawback” as the recovery of money already disbursed to the contractor, which is allowed under this contract as described below. In addition, there are steps the Department of Education (“the department”) can take to reduce a payment for failures before the payment is sent, thus negating the need to clawback any payments already made to the contractor.

According to the contract, compensation to Questar by the state is contingent on satisfactory provision of goods and services set forth in Section A. According to the contract’s warranty clause (paragraph A.15), “[t]he goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period.” If the department is not satisfied with goods or services delivered, including any poor provision of TNReady online testing for

Tennessee's students, Questar is required to correct the problems at no additional charge, as long as the department notifies the vendor within 30 days of delivery. (If the department fails to notify Questar of any defects, the contract states that the goods and services delivered are considered accepted by the department.) The warranty clause also states, "[i]f Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services." See also Paragraphs C.3, A.15, and A.16.

In a later paragraph, the contract allows the department to reduce the amount of a payment before it is made if it determines that the payment does not constitute proper compensation for the goods and services Questar provided. See Paragraph C.7.

In addition, the department can use liquidated damages against Questar as a penalty for its failure to meet contract requirements or for inadequate performance. See Paragraph E.13 and Attachment B, which breaks down product descriptions, including references to contract paragraphs and damage amounts per state work day.

2. Is Questar required through the contract to act in full faith and fidelity in ensuring testing problems are solved?

Yes, the contract requires Questar to act in full faith and fidelity in providing smooth, problem-free student online assessment testing. Both parties negotiated the terms of condition and scope of services for the agreed-upon compensation. Questar agreed to provide all goods, services, and deliverables as required and as detailed in the contract and to meet all service and delivery timelines. See Paragraph A.1.

Although the phrase "full faith and fidelity" does not appear in the contract, its spirit is detailed throughout the contract. To ensure Questar performs as required, the terms include developing an annual work plan; holding weekly meetings with department staff; performing extensive testing of the computer-based testing platform; and providing technical support during assessment windows. See Sections A.4, A.5, and A.10. Listed below are some additional examples of Questar's responsibilities and actions:

- **Error Correction** – Questar shall correct any errors in work products at Questar's expense including print errors and program functions. (Paragraph A.5.f)
- **Fairness** – Questar shall provide documentation in the Technical Report to verify that item development, test form construction, program implementation, assessment administration, and report information are monitored to ensure that no impediments are created which systematically limit opportunities for success by members of various student populations including: gender, race, ethnicity, nationality, culture, age, physical, visual, or hearing impairments, socioeconomic status, or rural/urban environments, as well as special populations including: special Education, LEP, and Section 504. (Paragraph A.6.n)

- **Fault Tolerance** – Questar shall deliver an end to end solution, inclusive of client software, server and architectural components that is highly fault tolerant, thoroughly tested and hardened over time to the real world conditions that occur when conducting computer-based testing statewide. (Paragraph A.10.d)
- **Service Availability** – Questar shall implement systems and processes to ensure the continuous availability of computer-based testing services throughout critical testing periods. (Paragraph A.10.i)
- **Performance** – Questar shall provide a computer-based testing platform that is responsive to user interactions without excessive wait times ... with specific emphasis placed on time critical user interactions, such as live student testing and proctoring. (Paragraph A.10.k)
- **Penetration Testing** – Questar agrees to submit to penetration testing conducted by a third party at the cost of the State for all end points associated with the computer-based testing platform. (Paragraph A.10.p)

Questar must also have a plan in place to address problems that arise during actual student testing.

3. Is Questar contractually required to protect all student testing data?

Yes, the contract has several provisions to ensure protection of student testing data for both Questar and its data center vendor, including requiring compliance with state and federal laws. Specifically, the computer-based testing platform is required to be closely aligned with the rigorous standards outlined in the Family Educational Rights and Privacy Act (FERPA), which applies to all schools that receive U.S. Department of Education grant funds. See Paragraphs A.9.a, A.9.e, A.10.f, A.10.g, A.10.l, A.14.e, and E.7.

In addition, the data center facilities must conform with information technology standards, such as ISO27001, SOC2 Type 2 or FEDRAMP. See Paragraph A.10.f.

Even though the contract does provide some key protections, the department did not include in the contract the requirement that Questar and its data center vendor provide the department with a SOC2 Type 2 audit that adequately describes both Questar's and the data center vendor's internal controls and an auditor's opinion regarding effectiveness of controls.

A SOC2 Type 2 audit report is a report on controls at a service organization (like Questar and its data center vendor) relevant to security, availability, processing integrity, confidentiality or privacy. Questar has not had a SOC2 audit, however, the data center vendor has. We strongly recommend that the department include the SOC2 audit requirement in any future contracts with service organizations such as Questar and related vendors.

If so, what remedies are available for any personal information accessed or lost during the system's cyber-attack?

The incident response vendor reported on June 13, 2018, that none of the series of events were consistent with a cyber-attack. Pursuant to the terms of Tenn. Code Ann. § 10-7-504(i), that report is confidential and not open for public inspection.

As a matter of emphasis, in the event of lost personal information for any reason, the department can assess liquidated damages or cancel the contract. See Paragraph D.6.

As you requested, we plan to report these findings to the House Government Operations Committee at its meeting on June 20, 2018.

Sincerely,

A handwritten signature in black ink that reads "Justin P. Wilson". The signature is written in a cursive style with a large, prominent "J" and "W".

Justin P. Wilson
Comptroller of the Treasury