

19TH JUDICIAL DISTRICT COURT  
FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO.

621271

SEC. 22

CLIENT NETWORK SERVICES, INC.

VERSUS

STATE OF LOUISIANA; STATE, DEPARTMENT OF HEALTH AND HOSPITALS;  
KATHY H. KLIEBERT, in Her Capacity as Interim Secretary, Department of Health and  
Hospitals; STATE, DIVISION OF ADMINISTRATION; STATE, DIVISION OF  
ADMINISTRATION, OFFICE OF STATE PURCHASING; KRISTY H. NICHOLS, in Her  
Capacity as Commissioner of Administration; SANDRA G. GILLEN, in Her Capacity as  
Director of State Purchasing; THE HONORABLE BOBBY JINDAL, in his Capacity as  
Governor, State of Louisiana

FILED: \_\_\_\_\_

DEPUTY CLERK

**PETITION FOR BAD FAITH BREACH  
OF CONTRACT, DECLARATORY JUDGMENT AND DAMAGES**

Petitioner Client Network Services, Inc. ("CNSI") respectfully submits the  
following as its Petition for Bad Faith Breach of Contract, Declaratory Judgment, and Damages,  
representing as follows:

1.

This lawsuit arises out of the sudden, precipitous, unilateral, and unjustifiable  
termination by Defendants of the Agreement for the Operation and Enhancement of the  
Louisiana Medicaid Management Information System (LMMIS) through a Fiscal Intermediary  
Type Arrangement between the Louisiana Department of Health and Hospitals and CNSI (the  
"LMMIS Agreement").

**Parties and Venue**

2.

Petitioner CNSI is a business corporation formed under the laws of Maryland with  
its principal place of business in Gaithersburg, Maryland. CNSI is registered to conduct business

in Louisiana. Its principal business establishment in Louisiana is located in the Parish of East Baton Rouge.

3.

Made Defendants herein are:

- A. The State of Louisiana;
- B. The State of Louisiana, Department of Health and Hospitals ("DHH")- DHH is a department within the executive branch of the state government. DHH was a party to the LMMIS Agreement with CNSI.
- C. Kathy H. Kliebert- Ms. Kliebert is an individual of the full age of majority and a resident and domiciliary of this state. Ms. Kliebert is named in her official capacity as Interim Secretary of DHH.
- D. The State of Louisiana, Division of Administration- The Division of Administration (the "Division") is a department of the executive branch of the state government. It is described on its public website as the "central management and administrative support agency for the state of Louisiana."
- E. The State of Louisiana, Division of Administration, Office of State Purchasing- The Office of State Purchasing ("OSP") is one of the 25 sections within the Division and is charged with "[s]tandardizing, procuring, or supervising the procurement of all goods, services, and major repairs required by state agencies."
- F. Kristy H. Nichols- Ms. Nichols is an individual of the full age of majority and a resident and domiciliary of this state. Ms. Nichols is named in her official capacity as Commissioner of Administration. As Commissioner of Administration, Ms. Nichols is the head of the Division.
- G. Sandra G. Gillen- Ms. Gillen is an individual of the full age of majority and a resident and domiciliary of this state. She is named in her official capacity as Director of State Purchasing.
- H. The Honorable Bobby Jindal- Governor Jindal is an individual of the full age of majority and a resident and domiciliary of this state. He is named in his official capacity as Governor of Louisiana and head of the executive branch.

4.

Venue is proper in this judicial district under La. R.S. 13:5104(A), as this is a lawsuit against the state of Louisiana or state agencies, and against officers and employees of the state or state agencies for conduct arising out of the discharge of their official duties or within the course and scope of their employment.

5.

Venue is also proper in this parish under Louisiana Code of Civil Procedure article 76.1 because this is an action on a contract and the contract was executed in East Baton Rouge Parish and work under the contract was to be performed in East Baton Rouge Parish.

#### **Factual Background**

6.

CNSI was founded in 1994 in Maryland. It won its first Medicaid Management Information System ("MMIS") contract, with the State of Maine, in 2001. It grew steadily over the years and, by 2008, employed over 800 professionals serving many federal agencies such as Department of Defense, Federal Aviation Administration, Department of Homeland Security, Bureau of Census, Department of Agriculture as well as several states, including Washington, Michigan, Georgia, and Maryland.

7.

CNSI developed the "eCAMS" MMIS platform, which is currently the platform for several states' MMIS systems, including systems in Michigan and Washington that are fully certified by the federal Centers for Medicare & Medicaid Services ("CMS"), resulting in important benefits to those states in terms of federal matching dollars.

8.

On November 1, 2010, pursuant to La. R.S. 39:198(D) and the Louisiana Procurement Code, La. R.S. 39:1551 *et seq.*, OSP issued a "Solicitation for Proposal for Medicaid Management Information System Replacement and Fiscal Intermediary Services," File Number R 27931 EP, Solicitation Number 2242837 (the "SFP"). OSP subsequently issued six addenda to the Solicitation for Proposal.

9.

As its name would indicate, the SFP sought a replacement Medicaid Management Information System ("MMIS") and Fiscal Intermediary for Louisiana's Medicaid system. The MMIS is the automated system that processes claims from Medicaid providers and issues payments to providers based on current state and federal guidelines and agreed upon rates. The Fiscal Intermediary operates the MMIS and enrolls qualified Medicaid providers.

10.

Officials within DHH and elsewhere have stated that a key goal of the SFP was to encourage competition and thereby spur innovation to ensure that Louisiana would have the most technologically advanced, "best-in-breed" MMIS system possible to better serve Louisiana's health care community and the citizens of this state who rely on the Medicaid system. It was widely acknowledged that the existing system was antiquated and subject to numerous inefficiencies. As the SFP stated:

The current Louisiana MMIS, initially launched in 1990, has over forty (40) components comprised of a mixture of mainframe hardware, coding, and software applications residing on client servers, computers, or web-based servers. This mixture of coding and applications has limited Medicaid's ability to respond in times of crisis as well as complying with regulatory changes.

11.

Prior to the issuance of the SFP, DHH took steps to advance its goals of fostering competition and spurring innovation. For example, DHH sent "Requests for Innovation" ("RFIs") to companies that might potentially respond to the SFP to solicit ideas as to how the SFP could be crafted to encourage innovative solutions. CNSI responded to the RFIs, as did other potential proposers. DHH also, for the first time in history, posted a draft version of the SFP for public comment.

12.

When the SFP was actually posted, it attracted four proposers: CNSI, Molina Medicaid Solutions ("Molina") (which was the incumbent Fiscal Intermediary), ACS State Health Care, LLC (now part of Xerox Corporation) ("ACS"), and HP Enterprise Services, LLC ("HP").

13.

Proposals were evaluated by way of a detailed procedure involving a total of sixty evaluators on eleven evaluation teams. Proposers were to submit separate technical proposals and cost proposals. OSP conducted an initial review of each proposal before forwarding the proposals to DHH for review. Then a DHH Evaluation Management Team conducted an initial review of each technical proposal for compliance with mandatory proposal requirements.

14.

After the initial review, the technical proposals were reviewed by ten Technical Evaluation Teams. Each of the ten Technical Evaluation Teams was charged with reviewing specific technical requirement reference areas in the proposals with which that particular team had expertise or familiarity. Each Technical Evaluation Team reviewed the same areas for all proposers. After the individual team members scored each proposal, the Technical Evaluation Teams met to form a consensus score for each reference area in the technical proposals. Then, following the consensus scoring, DHH applied previously approved weight factors for each reference area to calculate a total weighted score for each reference area and, ultimately, a total weighted technical score for each proposal.

15.

The technical review process also included opportunities to obtain clarifications from proposers, oral presentations by the proposers, interviews of the proposers' key personnel, and checks of the proposers' corporate references.

16.

The cost proposals were reviewed by a Cost Evaluation Team. Cost proposals were to be packaged and sealed separately from the technical proposals to ensure that cost considerations did not affect evaluation of the technical proposals.

17.

At the end of this process, DHH combined the scores from the technical proposal and the cost proposal to compute each proposal's total score. A maximum score of 5000 points was possible for the evaluation: 4000 for the technical proposal and 1000 for the cost proposal. For a proposal to proceed to the cost proposal evaluation stage, the proposer was required to

achieve a minimum of 3000 points on its technical proposal. The Evaluation Management Team was responsible for ranking each proposal and preparing a report of its findings. It should be noted that, on information and belief, then-DHH Secretary Bruce Greenstein was not part of any of the evaluation teams and played no role in the evaluation process.

18.

The result of this intricate process was that CNSI was the highest ranked bidder, followed by ACS and HP. Molina's proposal was eliminated before the cost proposal evaluation stage because it did not achieve the minimum technical proposal score of 3000. Consequently, on June 9, 2011, OSP sent CNSI a Notice of Intent to award the MMIS Agreement to CNSI.

19.

After OSP issued the Notice of Intent, two proposers — ACS and Molina — submitted protests, pursuant to La. R.S. 39:1671, to the then-Director of State Purchasing, of the intent to award the MMIS Agreement to CNSI. The intent to award issued to CNSI was stayed pursuant to law pending the outcome of the protest.

20.

On August 5, 2011, after the completion of the full protest process, and after considering the submissions of ACS, Molina, and DHH, the then-Director of State Purchasing overruled the protests and informed ACS and Molina of their right to administrative and judicial review under the Louisiana Procurement Code. Neither ACS nor Molina sought further review of the intent to award issued to CNSI.

21.

After negotiating the final contract details (as contemplated by the SFP), CNSI and DHH entered into the \$197.4 million LMMIS Agreement on February 15, 2012. CNSI immediately began diligently and fully performing its work under the LMMIS Agreement.

22.

In order to carry out its obligations under the LMMIS Agreement, CNSI undertook numerous commitments. For example, as part of the LMMIS Agreement, CNSI was required to lease office space in Baton Rouge. CNSI also purchased or leased equipment such as data servers, telecommunications lines, and data center space. It also undertook commitments

such as hardware and software acquisition and maintenance agreements, relocation of staff, and facility buildout. It entered into numerous contracts with subcontractors and vendors. CNSI, together with its subcontractors, also employed nearly 100 Louisiana residents at its Baton Rouge location.

23.

During the implementation process, Molina, (the incumbent Fiscal Intermediary) was often uncooperative and disruptive to CNSI's efforts to perform under its Agreement with DHH. These issues were exacerbated by DHH employees who had developed working relationships with Molina. On more than one occasion, CNSI had to reach out to DHH for assistance. Nevertheless, CNSI successfully performed under the LMMIS Agreement.

24.

In fact, CNSI's efforts were so well-received by DHH that on February 14, 2013, DHH Undersecretary Jerry Phillips provided a letter for the Arkansas Department of Human Services in which he gave CNSI a glowing endorsement. In that letter, Mr. Phillips stated that "CNSI's proven project methodology and Centers for Medicare and Medicaid Services (CMS) certified health care platform is the model MMIS solution available in the country today." He further stated that:

CNSI has shown the commitment, investment in resources, and tenacity needed to implement such a complex system. Most importantly, CNSI has done an excellent job interacting with all the different state stakeholders and external stakeholders such as the incumbent MMIS vendor and the provider community, which is essential to the success for a project of this magnitude.

25.

Shortly after Undersecretary Phillips provided his letter of recommendation for the Arkansas Department of Human Services, on February 28, 2013, CNSI introduced the new MMIS Provider Enrollment System and Portal (the "PE Portal") on time and on budget. The PE Portal was fully operational and received excellent reviews from DHH staff and medical providers across the State.

26.

Less than one month later, however, on March 21, 2013, CNSI learned through media reports that the State of Louisiana was terminating the LMMIS Agreement.

27.

Upon reviewing the media reports regarding the termination, CNSI's general counsel contacted the Division to verify the reports. The Division's representatives confirmed that the LMMIS Agreement had been terminated, but refused to provide CNSI with any bases for the termination. The Division's representatives only referred to a federal investigation into the award of the LMMIS Agreement. Apparently, sometime in January, 2013, the Division had received a federal grand jury subpoena seeking:

With respect to the Solicitation for Proposal for Medicaid Management Information System Replacement and Fiscal Intermediary Services, File Number R 27931 EP, Solicitation Number 2242837 (the "Proposal") . . .

1. All documents submitted by (1) ACS State Healthcare, LLC, (2) Client Network Services, Inc., (3) HP Enterprise Services, LLC, and (4) Molina Medicaid Solutions in response to the Proposal;
2. All financial information (including but not limited to financial statements, income statements, balance sheets, and statements of profit and loss) submitted by (1) ACS State Healthcare, LLC, (2) Client Network Services, Inc., (3) HP Enterprise Services, LLC, and (4) Molina Medicaid Solutions in connection with or in response to the Proposal; and
3. Documents sufficient to show the date and time at which each response to the Proposal was received by the State of Louisiana.

28.

It is unclear how the mere existence of the subpoena would be a proper basis for the cancellation of the LMMIS Agreement. A CNSI representative became aware of the subpoena only a few days before Defendants took their unwarranted cancellation action, through an informal conversation with a DHH representative, who simply asked whether CNSI knew anything about the subpoena. Prior to that conversation, nobody affiliated with CNSI was aware of the subpoena or the federal investigation. To the best of CNSI's knowledge, information, and belief, neither CNSI nor any of its representatives is a target of the federal investigation referenced by the Division's representatives. Furthermore, to the best of CNSI's knowledge, information and belief, federal investigators have not made any finding of actual wrongdoing by anybody in connection with the award. Indeed federal authorities to this day have never contacted CNSI about any investigation of the award of the MMIS Agreement.



29.

During the call between CNSI's general counsel and the Division's representatives, CNSI received by email a letter signed by Ms. Gillen. In that March 21, 2013 letter, Ms. Gillen stated as follows:

Pursuant to the authority granted under La. R.S. 39:1678, Articles III and XIX of the "Agreement for The Operation and Enhancement of the Louisiana Medicaid Management Information System (LMMIS) through a Fiscal Intermediary Type Arrangement" between your company, Client Network Services, Inc. ("CNSI") and the Louisiana Department of Health and Hospitals (the "Agreement") and after consultation with the Attorney General's office, I hereby terminate immediately the Agreement for cause.

Aside from the vague references to La. R.S. 39:1678 and Articles III and XIX of the LMMIS Agreement, Ms. Gillen's letter provided no reasons for the termination.

30.

Article III of the LMMIS Agreement, which is referenced in Ms. Gillen's March 21, 2013 letter as a provision pursuant to which the LMMIS Agreement was terminated for cause, allows DHH to terminate the LMMIS Agreement for cause "based upon the failure of the Contractor to comply with the terms and/or conditions of the Contract, or failure to fulfill its performance obligations pursuant to [the] Contract, *provided that the Department shall give the Contractor written notice specifying the Contractor's failure.*" (Emphasis added). Article III also provides that CNSI, as the Contractor, is entitled to a thirty-day period after notice to correct any alleged failure.

31.

Neither Ms. Gillen nor any other representative of OSP, the Division, DHH or the State has given CNSI any notice that it has failed to comply with any term or condition of the LMMIS Agreement, or that it has failed to fulfill any of its performance obligations pursuant to the Agreement. To the contrary, all reviews of CNSI's performance under the LMMIS Agreement have been excellent insofar as CNSI is aware.

32.

Article XIX of the LMMIS Agreement, which is the other provision referenced in Ms. Gillen's March 21, 2013 letter, obligates CNSI to provide a performance bond to secure its

performance under the LMMIS Agreement, which bond is forfeited if the LMMIS Agreement is terminated for cause. It also sets forth several warranties.

33.

Neither Ms. Gillen nor any other representative of OSP, the Division, DHH or the State has alleged that CNSI failed to comply with its obligation to provide the performance bond, and CNSI did in fact provide the bond. Indeed, following their unjustified termination of the LMMIS Agreement, Defendants asserted a claim against the performance bond. To date, the surety on the bond has not paid on the bond claim.

34.

Furthermore, neither Ms. Gillen nor any other representative of OSP, the Division, DHH or the State has identified any warranty set forth in Article XIX with which CNSI allegedly failed to comply. CNSI has in fact complied with each of the warranties set forth in Article XIX.

35.

The statute cited by Ms. Gillen in her March 21, 2013 letter, La. R.S. 39:1678, provides for remedies in the event it is determined after an award that a solicitation or award of a contract is in violation of law. It provides that the contract shall be declared null and void "[i]f the person awarded the contract has acted fraudulently or in bad faith." Otherwise, the contract may, depending on the circumstances, be (1) ratified and affirmed if doing so is in the best interest of the state and the law violation had no significant effect on the outcome of the contract award, or (2) terminated, with the person awarded the contract to be compensated for actual expenses reasonably incurred under the contract prior to termination.

36.

CNSI has yet to be made aware of what laws the award of the LMMIS Agreement purportedly violated. To the contrary, in July 2011, OSP overruled the two protests of the award by disappointed proposers after following the protest procedure provided for under state law. Furthermore, CNSI has been told by representatives of the state government that the state's current investigation is "ongoing" — i.e., not complete. CNSI certainly has not been made aware of any finding that it acted fraudulently or in bad faith.

37.

After learning of the termination of the LMMIS Agreement, CNSI repeatedly asked OSP, the Division, and DHH to explain the reasons for the termination. For more than one month, CNSI received absolutely no further explanation.

38.

On April 5, 2013, in an effort to obtain more information regarding the precipitous and unexplained termination of the LMMIS Agreement, counsel for CNSI made formal public records requests to the Division, DHH, the Attorney General's Office, and the Office of the Governor pursuant to La. R.S. 44:1 *et seq.* Counsel has received little to no information in response to the requests.

39.

After learning of the termination, CNSI also proposed to meet with DHH pursuant to Article VIII, § H of the LMMIS Agreement, which calls for good faith negotiation to attempt to resolve disputes. DHH notified CNSI by letter from Ms. Kliebert dated Friday, April 5, 2013 that DHH would agree to such a meeting. On Monday, April 8, 2013, CNSI proposed several potential meeting dates, including April 9, 10, 15, 16, or 17. DHH responded by letter from Ms. Kliebert dated Friday, April 12, 2013 stating that DHH was unable to meet on any of CNSI's proposed dates and proposing alternative dates. CNSI responded on Monday, April 15, 2013 and set up a meeting on Monday, April 29, 2013, which was one of the dates proposed in DHH's April 12 letter.

#### **The Meritless Purported Grounds for Cancellation**

40.

At 5:36 p.m. on April 26, 2013 — after close of business on the last business day before the scheduled meeting between DHH and CNSI — counsel for CNSI received via email a letter signed by Ms. Gillen that, for the first time, provided CNSI with purported reasons for the abrupt cancellation of the LMMIS Agreement. It appears that the letter was released to the press before it was sent to CNSI, as CNSI received a press inquiry before CNSI's counsel received the email attaching the letter.

Ms. Gillen's April 26, 2013 letter for the first time set forth six purported grounds for terminating the LMMIS Agreement:

- Allegedly "improper contacts" between former DHH Secretary Bruce Greenstein and CNSI representatives that allegedly violated express prohibitions in the SFP on an "open-ended inquiry period" and an express requirement under the SFP that "all inquiries SHALL be submitted in electronic Excel format." According to the letter, these contacts "created an unfair advantage to CNSI and prevented the fair, impartial and free competition among all proposers required under the SFP."
- Revision of the SFP to expressly provide that the "expected" experience as a fiscal agent or fiscal intermediary for Medicaid or similar large health care claims processing entity may be that of the primary contractor or a subcontractor. According to the letter, this supposed change "created an unfair advantage for CNSI who would otherwise have been eliminated as an eligible bidder."
- Alleged failure to include a key component of the SFP resulting in "CNSI's unfair underbidding of the MMIS project." According to the letter, CNSI incorrectly included an amount for the "telephony" portion of the "Electronic Voice Verification" ("EVV") requirement in the "optional function portion of its proposal, which supposedly "resulted in an unresponsive bid and unfair underbidding of the MMIS project which caused CNSI to win the contract award over other bidders."
- Alleged financial problems and difficulty posting the required performance bond. The letter contains claims that CNSI had difficulty posting the required performance bond and had to obtain additional time to work out problems with the bond. The letter also alleges that CNSI's statement of its financial outlook in its proposal was overly positive, and that CNSI's lender "placed certain restrictions on CNSI."
- Proposed Amendment 2 to the LMMIS Agreement relating to the Program Integrity ("PI")/Surveillance and Utilization Review ("SURS") component, which

would have added approximately \$40 million to the original amount of the LMMIS Agreement. According to the letter, Defendants have "become aware of irregularities with respect to the creation and submission of Amendment 2, including but not limited to the existence of possible conflicts of interest between DHH and CNSI employees." The letter also contains claims that a significant portion of the costs included in Amendment 2 was contemplated by and should have been included in CNSI's original proposal.

- Alleged failure to complete document and system deliverables in a timely and quality manner. The letter contains complaints that CNSI provided documents required pursuant to the LMMIS Agreement in an untimely manner, and that CNSI adapted documents it had submitted in connection with its operations in Washington State that "were not even revised or tailored to the Louisiana requirements." The letter also states that CNSI has not delivered the EVV component in a timely manner.

42.

Ms. Gillen's April 26, 2013 letter implies that the contacts between CNSI representatives and Secretary Greenstein violated a purported prohibition in the SFP on any "open-ended inquiry period" and required that inquiries be submitted in Excel format. There is no allegation, however, that the communications at issue were "inquiries" regarding the SFP, or pertained at all to the SFP.

43.

The SFP does not contain any blanket prohibition on contacts between proposers and DHH officials. While Secretary Greenstein and Undersecretary Jerry Phillips testified at Secretary Greenstein's 2011 confirmation hearings about memoranda sent to DHH staff reminding them of the importance of minimizing contact with potential proposers and instructing them that they should not discuss the SFP in any contacts they did have with potential proposers, they made it very clear that those memoranda applied only to staff who might potentially be members of an evaluation team. Those memoranda did not apply to the secretary or undersecretaries, who would not be members of an evaluation team. Even at the staff level, the

DHH memoranda did not prohibit all contact with potential proposers. Secretary Greenstein and Undersecretary Phillips stated that it would be impossible to prohibit all contact with potential proposers, as the proposers are involved in many facets of the health care field and deal with DHH and its staff on numerous issues beyond the SFP and the MMIS system.

44.

As the above indicates, the assertion in the letter that the contacts created an unfair advantage to CNSI and prevented impartial and free competition among all proposers is also unfounded. Defendants have long known that there were contacts between CNSI and Secretary Greenstein, giving rise to serious questions as to why Defendants are suddenly terminating a \$197.4 million contract and citing contacts between CNSI and Secretary Greenstein as the basis. Months before the LMMIS Agreement was signed on February 15, 2012, Secretary Greenstein was questioned during his confirmation hearing about contact with CNSI representatives, and admitted having such contact. He also testified that he had contact with the other companies that submitted proposals responsive to the SFP, undermining any assertion that the contacts resulted in an unfair advantage to CNSI or undermined competition among proposers. Moreover, on information and belief, Secretary Greenstein was not involved in the process of evaluating proposals, which, as noted above, involved eleven different teams comprised of sixty individuals.

45.

CNSI also is not aware of any statute, regulation or other rule that would prohibit CNSI or any other proposer from communicating with Secretary Greenstein during the SFP process. Indeed, on information and belief, lobbyists for every proposer contacted Secretary Greenstein and others within DHH and State government during the SFP process. In light of these facts, the contacts between CNSI and Secretary Greenstein would not have created an unfair advantage to CNSI over other proposers, particularly if the contacts did not pertain to the SFP.

46.

The purported revision to the SFP requirements regarding experience as a fiscal agent or fiscal intermediary also do not support cancellation of the LMMIS Agreement. First, it

is not clear that there was ever a mandatory requirement that proposers possess experience as a fiscal agent or fiscal intermediary. The relevant provisions of the SFP stated that proposers "shall be *expected*" to have such experience, and that DHH "*anticipate[d]*" that contractors responding to the SFP would have fiscal agent/fiscal intermediary experience. The most sensible reading of these provisions is that DHH "expected" or "anticipated" that responsible bidders would be companies that had fiscal agent or fiscal intermediary experience, and not necessarily that such experience was an absolute necessity.

47.

Amendment No. 2 to the SFP, which clarified that the expected experience may be that of the primary contractor or a subcontractor, was consistent with the goals of the LMMIS Agreement. Section 1.1.3 of the SFP, the very same provision that contained the purported fiscal agent/fiscal intermediary experience requirement, also states that DHH "encourages the Proposer to form partnerships with business entities that are business leaders in their industry." In other words, the SFP always encouraged proposers to form alliances with other business entities to build on their strengths. The SFP went so far to encourage the use of subcontractors that it expressly prohibited proposers from requiring a subcontractor to enter into an exclusive arrangement with that proposer. Moreover, the April 26, 2013 letter itself emphasizes the notion that a purpose of the SFP was to "permit fair, impartial and free competition." DHH also stated its goal of seeking innovative solutions. Amendment No. 2 served those goals by opening the SFP process up to more potential bidders who could offer a wider range of potential solutions to meet Louisiana's needs. It borders on the absurd to suggest that an amendment that opened the SFP process up to more bidders somehow hindered the goals of encouraging competition and seeking innovative solutions.

48.

It is also nonsensical to suggest that Amendment No. 2 resulted in "an unfair advantage for CNSI." Even assuming it is correct to assert that Amendment No. 2 allowed CNSI to bid as a prime contractor when it otherwise would not have qualified, CNSI still had to assemble a bid that was attractive enough to allow CNSI to prevail in an independent evaluation process involving eleven teams and sixty individuals. Furthermore, nothing prevented other

proposers from using subcontractor arrangements if they thought doing so would improve their proposals.

49.

The contention in the letter that, without Amendment No. 2 CNSI would have been "effectively eliminated" as an eligible bidder is itself inaccurate. It is not even accurate to suggest that CNSI requested to use subcontractor experience. CNSI's intent in sending the question that preceded Amendment No. 2 was to ascertain what form its bid should take. CNSI was prepared to participate in an alternative proposal wherein Noridian Administrative Services (a key subcontractor in the proposal CNSI ultimately submitted), an entity that did have corporate experience as a fiscal agent/fiscal intermediary in 2011, would have been the prime contractor with CNSI as a key subcontractor. While bidding as the prime contractor gave CNSI the potential for higher revenues, it also exposed CNSI to increased risk (as Defendants' precipitous and unjustified actions demonstrate). Thus, CNSI would still have participated in a proposal even if Amendment No. 2 had not been issued.

50.

Any implication that CNSI was somehow underqualified to perform the LMMIS Agreement has no foundation in fact. As noted above, CNSI's eCAMS platform is the platform for the MMIS systems in several states, including the fully certified systems in Washington and Michigan. In 2012, shortly after CNSI won the LMMIS Agreement, CNSI also won the MMIS contract for the State of Utah. Like Undersecretary Phillips in Louisiana, the Project Director for Utah's MMIS Replacement project wrote a glowing letter of recommendation endorsing CNSI to the Arkansas Department of Human Services. Notably, the Utah official provided this letter on April 11, 2013, even after Defendants took their unjustified and damaging actions against CNSI.

51.

Like the allegations regarding contacts between CNSI representatives and Greenstein, Amendment No. 2 was well known to Defendants long before they acted to cancel the LMMIS Agreement. Indeed, Amendment No. 2 was specifically cited in the protests submitted by ACS and Molina, with ACS contending that Amendment No. 2 "tainted any semblance of a fair and impartial process and created an unfair advantage for CNSI." DHH



responded in part by noting that "[i]t is extremely common and totally acceptable to amend an RFP during the procurement process," and that "[a]ll potential proposers had the same right under the SFP to subcontract with experienced entities." Ms. Gillen's predecessor as Director of State Purchasing ostensibly agreed, as she overruled both protests. Further, SFP Section 1.74 provided all proposers with the opportunity to protest the solicitation in accordance with La. R.S. 39:1671 no less than two days prior to proposal submission. The fact that they did not do so is indicative of their own acknowledgement that they did not feel aggrieved by an impartial process.

52.

Finally, while the letter notes that some of the communications between CNSI representatives and Secretary Greenstein coincided with the timeframe during which Amendment No. 2 was issued, clearly implying that CNSI influenced Greenstein to issue the amendment, that implication has no basis in fact. The April 26, 2013 letter cites no evidence showing that any of the communications had anything to do with the subject of the amendment. Greenstein's testimony at his confirmation hearing was that his purpose in calling for the amendment was to expand competition and encourage innovation — both key goals of the SFP — and that he did not call for the amendment with CNSI in mind. Moreover, as noted above, there was no prohibition in the SFP of any such contact and there is no known statute or regulation prohibiting such contact.

53.

The third justification for cancellation cited in the April 26, 2013 letter is the alleged underbidding of EVV, purportedly resulting in an unresponsive bid and unfair underbidding that "caused CNSI to win the contract award over other bidders." The EVV issue came about when, due to its reading of one of the seven cost schedules in the SFP, CNSI included telephonic EVV transaction costs in the cost schedule entitled "Visit Verification Devices and Other Options," rather than the firm fixed price cost schedule for required items. (EVV is referred to as "Visit Verification System" or "VVS" in the SFP.) CNSI later learned that DHH intended for telephonic EVV transaction costs to be a required element of the base proposal for the LMMIS Agreement and included on a different cost schedule.

54.

The manner in which CNSI bid the EVV costs did not result in a bid that was nonresponsive or unfair to any party, with the possible exception of CNSI itself. Before the LMMIS Agreement was awarded to CNSI, Defendants required CNSI to verify the costs included in its cost proposal were "realistic, complete, and final if none of the assumptions of your cost proposal are valid or acceptable" to DHH. During the parties' contract negotiations, DHH made it a point to raise the manner in which CNSI bid EVV costs. DHH took the position that CNSI was bound by that verification to deliver the EVV services at the price bid, with no increase in the contract price, despite the fact that DHH was aware that the costs were not included in CNSI's bid where DHH expected them to be. CNSI did not refuse to abide by the verification, and did not refuse to provide the EVV services for the price as bid. Thus, any implication in the April 26, 2013 letter that CNSI intentionally underbid EVV in order to undercut other proposers is completely unfounded.

55.

Defendants' contentions with respect to the EVV bid are nonsensical. CNSI was willing to provide the services DHH required at the price CNSI originally bid. In effect, Defendants are asserting that they are entitled to cancel the LMMIS Agreement because CNSI committed to providing services at a lower price than the State of Louisiana would otherwise have incurred. Such a position would be absurd, particularly in light of the budgetary problems this State has experienced in the last several years.

56.

Furthermore, on information and belief, even if CNSI's bid had been adjusted to account for the EVV costs as a required element, CNSI's score would still have been the highest score, and CNSI would have been awarded the LMMIS Agreement.

57.

CNSI also was not the only proposer to interpret the SFP as allowing the EVV component to be bid as an optional component. On information and belief, ACS, which was the second place proposer, put every dollar associated with regular EVV operations (as opposed to early operations) in the "optional" column of its bid form, thus excluding five years' worth of

EVV costs from the evaluated price. This further undermines the implication that CNSI intentionally underbid the EVV component.

58.

Finally, any remaining credibility in Defendants' citation of the EVV component as grounds for cancellation is further undermined by the fact that, *in January 2013, DHH unilaterally decided to put design and development of the EVV system into abeyance*. This action was taken while the State assessed responses to the Long Term Care Request for Information issued by the State as part of its Managed Care initiative, under which DHH would no longer be responsible for EVV. In effect, EVV was no longer part of the LMMIS Agreement as the result of a decision made by DHH well before the contract termination.

59.

Defendants also cannot justifiably rely on CNSI's alleged financial difficulty or the bond requirement as justification for cancelling the LMMIS Agreement. With respect to the bond, Defendants cannot dispute that CNSI complied with its contractual obligation to put a performance bond in place. Indeed, Defendants have made a claim against the bond. Defendants cannot validly terminate the LMMIS Agreement based on an obligation with which CNSI is in full compliance.

60.

Moreover, although the April 26, 2013 letter contains an assertion that CNSI's financial circumstances provide sufficient cause for cancellation of the Agreement, it does not explain why. There is no contention that CNSI's allegedly weak financial condition has prevented it from performing its obligations under the LMMIS Agreement, and CNSI did in fact fully perform under the LMMIS Agreement. And, while the April 26, 2013 letter refers to the written statement CNSI submitted regarding its financial resources and condition and claims that CNSI's financial resources and condition were not as positive as CNSI indicated in that statement, Defendants have not pointed to anything in the statement that was untrue at the time the statement was made — i.e., before Defendants took the unjustified action at issue in this lawsuit. In fact, as part of its proposal, CNSI (like all proposers) was required to provide proof of its

financial condition, including financial statements and its Dun & Bradstreet report. This information was assessed as part of the scored evaluation criteria.

61.

Finally, CNSI's supposed financial problems were previously raised by ACS and Molina in their bid protests, albeit in a slightly different form. ACS and Molina pointed to CNSI's Dun & Bradstreet rating of 4 (moderate to high risk) and to a then-pending \$34 million counterclaim by the State of South Dakota. DHH dismissed these issues, noting that they "did not cause deep concern amongst the evaluators." As DHH representatives testified during Secretary Greenstein's confirmation hearings, CNSI freely disclosed its dispute with South Dakota during the SFP process. The South Dakota dispute involved issues of "scope creep," whereby the state gradually expanded the scope of its MMIS contract with CNSI without making corresponding adjustments to the contract price. The DHH representatives testified that "scope creep" is a common problem with respect to MMIS contracts, and is one that DHH took active measures to avoid in this state. It should be noted that the lawsuit between CNSI and the State of South Dakota was dismissed with prejudice following mediation, which resulted in reinstatement of the contract. CNSI is currently negotiating with the State of South Dakota to complete the work required for the MMIS project in that state. In any event, as previously noted, the Louisiana Director of State Purchasing overruled the protests by ACS and Molina after considering their contentions concerning CNSI's financial condition.

62.

The allegations regarding proposed Amendment 2 to the LMMIS Agreement, relating to the PI/SURS component, are also unfounded. The PI/SURS component as originally set forth in the SFP was based on a Thompson Reuters "or like" solution, which allowed for post-payment review of claims. CNSI and, on information and belief, the other bidders proposed Thompson Reuters as the PI/SURS subcontractor. Within a few months after CNSI's commencement of the work under the LMMIS Agreement, DHH notified CNSI in writing that it no longer wanted to use the Thompson Reuters solution. DHH later sought to add a new requirement to add analytics for early fraud detection, which would potentially save the State millions of dollars over the incumbent system by avoiding the current "pay and chase" process,

pursuant to which the State often paid fraudulent claims and had to "chase" repayment. It took DHH over nine months to decide what solution it ultimately wanted. DHH ultimately entered into discussions with CNSI on a proposal for a new solution, which was provided and accepted by DHH.

63.

As the foregoing indicates, Amendment 2 to the LMMIS Agreement came about not because CNSI underbid a requirement spelled out in the SFP, but because DHH added to the scope of work contemplated in the SFP and the LMMIS Agreement. Notably, DHH originally directed the incumbent Fiscal Intermediary and MMIS administrator, Molina, to implement the new solution. On August 28, 2012, however, Molina submitted a letter to DHH in which it objected to doing so, citing financial risks that, as the out-going contractor, it would not have the opportunity to capitalize over the life of a long-term contract.

64.

Furthermore, as the April 26, 2013 letter indicates, while Amendment 2 to the LMMIS Agreement had been approved by DHH, it had not received final approval from OSP at the time it was decided to pull Amendment 2 from CNSI and issue a separate RFP for the work. Defendants cannot justify cancelling the LMMIS Agreement based on an amendment that was never actually implemented. That is especially true where the very department that took the official action to cancel the LMMIS Agreement, OSP, had the authority to accept or reject the proposed amendment. If Defendants truly objected to Amendment 2, the proper course of action would have been to reject, or demand modifications to, Amendment 2, not cancel the LMMIS Agreement.

65.

Finally, while the April 26, 2013 letter refers to "possible conflicts of interest between DHH and CNSI employees," it provides no elaboration on the nature of the alleged "possible conflicts of interest," making it impossible for CNSI to respond beyond noting that Defendants never advised it of any possible conflicts of interest between CNSI employees and DHH, and CNSI is not aware of any such possible conflicts of interest. To the best of CNSI's knowledge, information and belief, the only potential conflict of interest that was ever

considered involved Jina Hughes, a DHH employee whose husband was working as a contractor on unrelated matters for CNSI. DHH received an opinion from the Louisiana Board of Ethics, dated July 25, 2012, which found that DHH's hiring of Ms. Hughes would not violate the Code of Governmental Ethics.

66.

The final purported grounds for cancellation cited in the April 26, 2013 letter, CNSI's alleged failure to complete document and system deliverables in a timely manner, is also meritless. This is the only purported ground that has anything to do with CNSI's actual performance under the LMMIS Agreement. As such, Article III of the LMMIS Agreement, which requires DHH to give CNSI written notice specifying any alleged failure to comply with the agreement's terms and an opportunity to cure the alleged failure clearly applies. As noted above, neither DHH nor any other Defendant provided CNSI with written notice of any alleged failure to comply with the LMMIS Agreement's terms, including the alleged failures identified in the April 26, 2013 letter.

67.

While Defendants purport to object to CNSI's use of documents it adapted from its work in Washington State, they have never previously made any such objection. Notably, although Defendants assert that the adapted documents "were not even revised or tailored to the Louisiana requirements," they fail to specify any respect in which the documents fell short of Louisiana requirements. In fact, Defendants knew and accepted that CNSI proposed and was implementing a "transfer system" (meaning an existing system that had been certified by CMS in another state and would be customized and adapted to meet Louisiana's specific needs). The practice of adapting documents that had successfully been used in other states results in efficiencies that CNSI is able to pass on to Louisiana and reduces project risk to the State. Additionally, Defendants only paid for deliverables upon State acceptance. If the deliverable was such that the State was unable to accept or even review it, the responsibility fell to CNSI to revise and provide acceptable documents meeting the agreed upon Acceptance Criteria. In other words, Defendants controlled the decision of whether to accept deliverables and, as noted above,

they did not inform CNSI that its document deliverables fell short of Louisiana requirements at any time before April 26, 2013.

68.

Due to the challenges caused by the failure of the current incumbent, Molina to fully cooperate with and assist CNSI during performance of its work, DHH actually entered into discussions with CNSI that would have resulted in CNSI taking over the responsibility for operating Louisiana's MMIS system earlier than contemplated by the LMMIS Agreement. The fact that DHH was interested in the possibility of having CNSI operate the system sooner than originally contemplated further undermines Defendants' contentions that CNSI's performance under the LMMIS Agreement was unsatisfactory.

69.

The allegation that CNSI has not delivered the EVV component in a timely manner is inexplicable in view of the fact that DHH directed CNSI to put any further design and development of the EVV system into abeyance. The fact that OSP was not even aware of this instruction is emblematic of the invalidity of Defendants' proffered justifications for canceling the LMMIS Agreement.

70.

On Monday, April 26, 2013, the next business day after receiving Ms. Gillen's April 29, 2013 letter, CNSI met with at DHH headquarters with representatives of DHH and the Division about the termination of the LMMIS Agreement. At the meeting, it was agreed that CNSI would make the following offer in writing to DHH and the Division:

- A. The parties agree to the termination of the Contract for convenience rather than for cause;
- B. Upon such agreement, CNSI will provide an itemized list of its costs and expense resulting from the termination of the Contract within one (1) day of the agreement;
- C. The parties will negotiate in good faith for a period not to exceed two (2) weeks toward an agreed-upon cost and expense payment to CNSI; and
- D. Should an agreement on the cost and expenses figure not be reached within a two (2) week period, the parties will then enter into binding arbitration before a three (3) person AAA panel regarding said cost and expense payment.

The offer was made in writing to DHH and the Division that same day. As part of the discussions, DHH and the Division requested that CNSI hold its outstanding public records requests in abeyance while DHH and the Division considered the offer. In the spirit of seeking a reasonable and business-like solution, CNSI agreed.

71.

On May 2, 2013 at approximately 4:30 p.m., Defendants rejected CNSI's offer. CNSI therefore had no choice but to file this lawsuit to seek redress in an impartial forum. In addition to exposing the State to liability to CNSI for many millions of dollars, Defendants' actions have caused a real and substantial loss to the citizens of the State. In particular, Molina, the incumbent Fiscal Intermediary and operator of Louisiana's MMIS system *that failed to meet the minimum technical score required pursuant to the SFP*, will remain in position as Fiscal Intermediary and operator of the MMIS system indefinitely, continuing (for example) to operate a fraud identification unit that costs the citizens of this State more money to operate than it saves the State by preventing fraud. The State will also continue to have an antiquated MMIS system that is inefficient and costs the State more to operate than the state-of-the-art system CNSI was building for the State.

72.

Despite all of the foregoing facts, including the fact that CNSI has not been paid for work actually performed before termination, CNSI has agreed to work with Defendants to turn over information that the State needs to facilitate ongoing operation of Louisiana's MMIS system.

**First Cause of Action: Declaratory Judgment**

73.

CNSI re-alleges and incorporates paragraphs 1 through 72 of this Petition as if fully set forth herein.

74.

An actual, present, and existing controversy exists between CNSI and Defendants over (1) whether valid grounds existed to terminate the LMMIS Agreement for cause pursuant the terms of the LMMIS Agreement and/or state law, (2) whether the award of the LMMIS



Agreement was in violation of law; and (3) assuming *arguendo* that the award of the LMMIS Agreement was in violation of law, whether CNSI acted fraudulently or in bad faith.

75.

Pursuant to Louisiana Code of Civil Procedure articles 1871 *et seq.*, CNSI is entitled to a judgment from this Court recognizing and declaring that:

(1) Defendants did not have valid grounds to terminate the LMMIS Agreement for cause pursuant to the terms of the LMMIS Agreement or state law;

(2) The award of the LMMIS Agreement was not in violation of law; and/or

(3) Assuming, *arguendo*, that the award of the LMMIS Agreement was in violation of law, CNSI did not act fraudulently or in bad faith.

**Second Cause of Action: Bad Faith Breach of Contract**

76.

CNSI re-alleges and incorporates paragraphs 1 through 75 of this Petition as if fully set forth herein.

77.

Defendants breached the LMMIS Agreement by suddenly and precipitously terminating the LMMIS Agreement and refusing to perform their obligations under that agreement without valid cause and despite the fact that CNSI had fully complied with the terms and conditions of the LMMIS Agreement and had fulfilled all of its performance obligations under the agreement.

78.

Defendants knew that they lacked valid cause to terminate the LMMIS Agreement, and their actions in breach of the LMMIS Agreement were intentional, malicious, and in bad faith, as evidenced by, *inter alia*, DHH's glowing recommendation of CNSI to the Arkansas Department of Human Services barely one month before Defendants acted to terminate the LMMIS Agreement and their refusal to provide any explanation of the reasons for the termination.

79.

CNSI was severely damaged by Defendants' bad faith breach of contract. In order to perform its obligations under the LMMIS Agreement, CNSI incurred long-term contractual obligations to vendors, lessors and subcontractors for which it remains liable. CNSI has also suffered damage to its business and reputation. In fact, CNSI has already lost a federal government bidding opportunity with CMS, with Defendants' actions in terminating the LMMIS Agreement specifically cited as the reason.

80.

Not only has CNSI been severely damaged, but the taxpayers of this state have been as well. OSP and DHH will have to restart the solicitation for proposal process and — in light of the fact that CNSI's was the lowest cost proposal during the last solicitation for proposal process — award the solicitation at a significantly higher cost to the State. This is not to mention the costs of the procurement process itself.

81.

CNSI is entitled to recover the damages it incurs — whether foreseeable or unforeseeable — as a result of Defendants' bad faith breach of contract. These damages include, but are not limited to, unpaid invoices, loss of anticipated profits, costs incurred in terminating subcontracts, vendor contracts and leases, lost bidding opportunities and damage to business reputation.

**Third Cause of Action: Alternative Cause of Action  
for Award of Costs Pursuant to the LMMIS Agreement**

82.

CNSI re-alleges and incorporates paragraphs 1 through 81 of this Petition as if fully set forth herein.

83.

Article III, § C of the LMMIS Agreement provides that DHH may terminate for convenience by giving CNSI thirty days written notice of such termination or negotiating with CNSI an effective date.

84.

Article IV, § B of the LMMIS Agreement provides that, in the event the LMMIS Agreement is terminated for convenience by DHH, DHH must pay CNSI all amounts due for provider claims paid prior to the effective date of such termination, and

its reasonable and allowable termination costs determined in accordance with the principles of Title 45 CFR Part 74, which costs shall include, without limiting the generality of the foregoing, the reasonable costs of terminating orders, subcontracts, employment contracts, and the remaining rental or termination costs under unexpired leases reasonably necessary to the Contractor's performance under the Contract.

In addition, CNSI is entitled to recover amounts due for all work already performed under the LMMIS Agreement.

85.

In the April 26, 2013 letter, Defendants state that if it is determined that sufficient cause does not exist for cancellation of the LMMIS Agreement, they will terminate for convenience. Defendants did not properly terminate the LMMIS Agreement for convenience, and their bad faith attempts to terminate the LMMIS Agreement are entirely wrongful. If, however, the Court finds that they are entitled to do so, CNSI is, at minimum, entitled to an award of the costs provided for under Article IV, § B of the LMMIS Agreement.

**Fourth Cause of Action: Alternative Cause of Action  
for Award of Costs Pursuant to the Louisiana Procurement Code**

86.

CNSI re-alleges and incorporates paragraphs 1 through 85 of this Petition as if fully set forth herein.

87.

As noted above, La. R.S. 39:1678, the statute that Ms. Gillen cited in her March 21, 2013 letter as purportedly providing authority for Defendants' decision to terminate the LMMIS Agreement, provides that if it is determined after an award that the award of a contract is in violation of law, and the person awarded the contract has not acted fraudulently or in bad faith, the contract may be (a) ratified and affirmed provided that doing so is in the best interest of the state and the law violation had no significant effect on the outcome of the contract or award, or (b) terminated, and the person awarded the contract shall be compensated for the actual

expenses reasonably incurred under the contract prior to the termination. See La. R.S. 39:1678(1).

88.

La. R.S. 39:1678 does not apply because there has been no determination that the LMMIS Agreement was awarded in violation of law. Indeed, the State has admitted that its own investigation is "ongoing." Moreover, the LMMIS Agreement was not, in fact, awarded in violation of law. If, however, the Court finds that it has been determined that the LMMIS Agreement was awarded in violation of law, CNSI did not act fraudulently or in bad faith and therefore is entitled to one of the two remedies spelled out in La. R.S. 39:1678(1).

89.

If the Court finds that La. R.S. 39:1678 applies, however, CNSI is entitled to an award of its actual expenses reasonably incurred under the LMMIS Agreement prior to the termination pursuant to La. R.S. 39:1678(1)(b).

**Fifth Cause of Action: Payment for Work Already Performed**

90.

CNSI re-alleges and incorporates paragraphs 1 through 89 of this Petition as if fully set forth herein.

91.

CNSI is entitled to payment for all work already performed before Defendants' sudden and unjustified termination decision, including delinquent payment penalties authorized under La. R.S. 39:1965 and other applicable laws and regulations.

**Prayer for Relief**

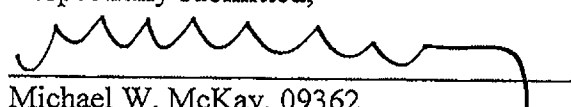
**WHEREFORE**, in light of the foregoing, Petitioner Client Network Services, Inc. respectfully prays that, after due proceedings are had, Judgment be entered in favor of Petitioner and against Defendants:

**A. Recognizing and declaring that:**

- (1) Defendants did not have valid grounds to terminate the LMMIS Agreement for cause pursuant to the terms of the LMMIS Agreement or state law;
- (2) The award of the LMMIS Agreement was not in violation of law; and/or

- (3) Assuming, *arguendo*, that the award of the LMMIS Agreement was in violation of law, CNSI did not act fraudulently or in bad faith; and
- B. Holding Defendants liable for bad faith breach of contract and awarding CNSI all damages, whether or not foreseeable, incurred as a result of Defendants' breach, in an amount to be proven at trial; or
- C. In the alternative, ordering Defendants to pay CNSI its costs pursuant to Article IV, § B of the LMMIS Agreement; or
- D. In the further alternative, ordering Defendants to pay CNSI its costs pursuant to La. R.S. 39:1678(1)(b);
- E. Awarding CNSI the amount due for all work performed before Defendants terminated the LMMIS Agreement, with applicable penalties; and
- F. Awarding CNSI its costs and such other relief as may be deemed just and proper.

Respectfully submitted,

  
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