

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CLIENT NETWORK SERVICES, INC. * DOCKET NUMBER: 621,271
*
VERSUS *
*
STATE OF LOUISIANA, ET AL * SECTION: 22
*

**ANSWER AND AFFIRMATIVE DEFENSES FILED BY DEFENDANTS:
THE STATE OF LOUISIANA; STATE OF LOUISIANA, DIVISION OF
ADMINISTRATION; STATE OF LOUISIANA, DIVISION OF ADMINISTRATION,
OFFICE OF STATE PURCHASING; KRISTY NICHOLS, IN HER CAPACITY AS
COMMISSIONER OF ADMINISTRATION; AND SANDRA GILLEN, IN HER
CAPACITY AS DIRECTOR OF STATE PURCHASING, AND RECONVENTIONAL
DEMAND BY THE STATE OF LOUISIANA, STATE OF LOUISIANA, DIVISION OF
ADMINISTRATION AND STATE OF LOUISIANA, DIVISION OF
ADMINISTRATION, OFFICE OF STATE PURCHASING**

NOW INTO COURT, through undersigned counsel, come defendants, the State of Louisiana; the State of Louisiana, Division of Administration; the State of Louisiana, Division of Administration, Office of State Purchasing; Kristy Nichols, in her capacity as Commissioner of Administration; and Sandra Gillen, in her capacity as Director of State Purchasing (collectively the "DOA Defendants"), appearing herein for the purpose of filing an Answer and Affirmative Defenses to the Petition for Bad Faith Breach of Contract, Declaratory Judgment and Damages (the "Petition") of Client Network Services, Inc. ("CNSI"), and for answer to the Petition, the DOA Defendants deny each and every allegation contained therein except those, if any, which are specifically admitted hereinbelow. The State of Louisiana, State of Louisiana, Division of Administration and State of Louisiana, Division of Administration, Office of State Purchasing are also appearing herein for the purpose of filing a reconventional demand against CNSI.

Further answering each allegation of the Petition, paragraph by paragraph, the DOA Defendants show that:

ANSWER TO THE PETITION

1.

For answer to Paragraph 1 of the Petition, the DOA Defendants admit that the LMMIS Agreement was terminated, but deny the remaining allegations of Paragraph 1 of the Petition.

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2.

For answer to Paragraph 2 of the Petition, the DOA Defendants admit that CNSI is a Maryland corporation registered in Louisiana with its principal place of business in Gaithersburg, Maryland and its principal business establishment in Louisiana located in East Baton Rouge Parish.

3.

For answer to Paragraph 3 of the Petition, the DOA Defendants admit their names and status.

4.

The DOA Defendants show that the allegations of Paragraph 4 set forth legal conclusions to which no answer is required. However, if an answer is required, the DOA Defendants deny the allegations of Paragraph 4 and show that venue is not proper because the district court does not have original subject matter jurisdiction over this matter. CNSI is required to file its complaint originally with the proper administrative agency in accordance with the provisions of the Louisiana Procurement Code and under the terms of the LMMIS Agreement.

5.

The DOA Defendants adopt and incorporate their answer to Paragraph 4 above in answer to Paragraph 5 of the Petition.

6.

For answer to Paragraph 6 of the Petition, the DOA Defendants deny the allegations for lack of information sufficient to justify a belief.

7.

For answer to Paragraph 7 of the Petition, the DOA Defendants deny the allegations for lack of information sufficient to justify a belief.

8.

The DOA Defendants admit the allegations of Paragraph 8 of the Petition.

9.

For answer to Paragraph 9 of the Petition, the DOA Defendants admit that the allegations therein generally describe the SFP and the work or services sought therein. However, the DOA

Defendants show the SFP is a written document that contains many terms and conditions and the DOA Defendants adopt and incorporate all provisions of the SFP in its response as if pleaded herein in its entirety.

10.

For answer to Paragraph 10 of the Petition, the DOA Defendants admit that the allegations accurately quote a small portion of the SFP, but deny that “encourage competition” meant making special concessions to CNSI so that it could bid even though it did not meet the published requirements of the SFP. The DOA Defendants further deny that “encourage competition” meant that CNSI could ignore the express SFP provisions requiring potential bidders to submit questions in writing, rather than engaging in numerous and repeated direct oral communications and text messages with former Secretary Greenstein. The DOA Defendants also show that the SFP is a written document that contains many terms and conditions and the DOA Defendants adopt and incorporate all provisions of the SFP in its response as if pleaded herein in its entirety. The DOA Defendants deny all remaining allegations for lack of information sufficient to justify a belief and show that Paragraph 10 of the Petition fails to reasonably identify the “Officials within DHH and elsewhere” to whom the various alleged statements are being attributed.

11.

For answer to Paragraph 11 of the Petition, the DOA defendants generally admit the allegations contained therein, but deny that “DHH also, for the first time in history, posted a draft version of the SFP for public comment.”

12.

The DOA Defendants admit the allegations of Paragraph 12 of the Petition, but further show that there were seven (7) potential bidders who submitted documentation indicating an intention to bid prior to the deadline of November 15, 2010.

13.

The DOA Defendants admit the allegations of Paragraph 13 of the Petition.

14.

The DOA Defendants admit the allegations of Paragraph 14 of the Petition.

15.

The DOA Defendants admit the allegations of Paragraph 15 of the Petition.

16.

The DOA Defendants admit the allegations of Paragraph 16 of the Petition.

17.

For answer to Paragraph 17 of the Petition, the DOA Defendants deny the allegation that “then DHH Secretary Bruce Greenstein ... played no role in the evaluation process.” The DOA Defendants specifically show that, in violation of the requirements of the SFP and Louisiana law, representatives of CNSI contacted former Secretary Greenstein by telephone and requested that he intervene in the procurement process by reconsidering the experience requirements for bidders set forth in the SFP and confirmed in the written responses to bidder questions issued on January 7, 2011. Following this improper communication by CNSI in violation of the SFP, the experience requirements were broadened to count subcontractor experience so that CNSI would qualify to bid and the requirement was changed through Addendum #2 of the SFP which allowed CNSI to qualify and bid on the proposal. The DOA Defendants admit the remaining allegations of Paragraph 17 of the Petition.

18.

The DOA Defendants admit the allegations of Paragraph 18 of the Petition.

19.

The DOA Defendants admit the allegations of Paragraph 19 of the Petition.

20.

For answer to Paragraph 20 of the Petition, the DOA Defendants admit that the then-Director of State Purchasing denied the protests of ACS and Molina and admit that neither ACS nor Molina sought further review, but further show that neither the Director of State Purchasing nor the other bidders knew at the time that a CNSI representative had improperly contacted Secretary Greenstein on the telephone and asked for him to intervene in the procurement process by reconsidering the experience requirements of the SFP and CNSI did not disclose this contact. The remaining allegations of Paragraph 20 of the Petition are denied for lack of information sufficient to justify a belief.

21.

The DOA Defendants admit that CNSI and DHH entered into the LMMIS Agreement on February 15, 2012, and deny that CNSI immediately began diligently and fully performing its work under the LMMIS Agreement. The remaining allegations of Paragraph 21 of the Petition are denied as written.

22.

For answer to Paragraph 22 of the Petition, the DOA Defendants admit that CNSI leased office space in Baton Rouge, but deny all remaining allegations of Paragraph 22 for lack of information sufficient to justify a belief.

23.

For answer to Paragraph 23 of the Petition, the DOA Defendants deny that “CNSI successfully performed under the LMMIS Agreement.” The DOA Defendants also deny all other allegations of Paragraph 23 of the Petition for lack of information sufficient to justify a belief.

24.

For answer to Paragraph 24 of the Petition, the DOA Defendants admit that Jerry Phillips signed the letter dated February 14, 2013, and that a portion of said letter is accurately quoted in Paragraph 24 of the Petition. However, the DOA Defendants show that the letter described by CNSI in Paragraph 24 was actually written in its entirety by Creighton Carroll, an employee of CNSI and was prepared by Mr. Carroll for former Secretary Greenstein’s signature. Mr. Carroll provided this letter to DHH advising that Bruce Greenstein had approved the letter and directing DHH to sign it and return it to Mr. Carroll for further handling.

25.

For answer to Paragraph 25 of the Petition, the DOA Defendants admit that CNSI provided the PE Portal on time, but deny the remaining allegations as written. The DOA Defendants deny the allegation that “Undersecretary Phillips provided his letter of recommendation” and adopt and incorporate the DOA Defendants’ answer to Paragraph 24 above. The DOA Defendants also deny the allegation that the PE Portal “received excellent reviews from DHH staff and medical providers across the State” for lack of information

sufficient to justify a belief and show that the allegation does not identify the DHH staff or medical providers to whom the alleged excellent reviews are attributed.

26.

The DOA Defendants deny the allegations of Paragraph 26 of the Petition because they have no direct knowledge as to how CNSI learned of the termination of the LMMIS Agreement. The DOA Defendants further show that Sandra Gillen, the Director of State Purchasing, sent a letter to CNSI dated March 21, 2013, notifying CNSI of the termination of the LMMIS Agreement.

27.

For answer to Paragraph 27 of the Petition, the DOA Defendants admit that the Division received a federal grand jury subpoena in January 2013 and the allegations correctly set forth matters sought by that subpoena. The DOA Defendants deny the remaining allegations for lack of information sufficient to justify a belief and show that Paragraph 27 fails to reasonably identify the "Division's representatives" with whom contacts were allegedly made and to whom statements are attributed.

28.

For answer to Paragraph 28 of the Petition, the DOA Defendants deny the allegations for lack of information sufficient to justify a belief.

29.

The DOA Defendants admit that a letter was sent to CNSI dated March 21, 2013, and signed by Sandra Gillen. The DOA Defendants further admit that Paragraph 29 accurately restates a portion of the subject letter, but shows that the letter is a written document which speaks for itself and is the best evidence of its contents. The DOA Defendants deny the remaining allegations, and specifically the referenced call between CNSI's general counsel and unnamed Division representatives, for lack of information sufficient to justify a belief.

30.

For answer to Paragraph 30 of the Petition, the DOA Defendants admit that CNSI correctly quotes a portion of Article III of the LMMIS Agreement, but show that Article III and the other provisions of the LMMIS Agreement is a written document which contains many terms

and provisions, all of which are pleaded herein in response to this paragraph. The DOA Defendants further show that Article III of the LMMIS Agreement also provides that “[i]f within thirty (30) days after receipt of such Notice, the Contractor shall not have corrected such failure or, in the case of failure which cannot be corrected in (30) days, ... then, the State may, at its option, place the Contractor in default by written Notice specifying the date thereof, and the contract shall terminate on the date specified in such Notice.” The DOA Defendants further show that the failures by CNSI were failures that cannot be corrected in thirty (30) days and thus the DOA Defendants were not required to give Notice specifying the Contractor’s failure and there is no thirty (30) day cure period under such circumstances.

31.

The DOA Defendants deny the allegations of Paragraph 31 of the Petition.

32.

For answer to Paragraph 32 of the Petition, the DOA Defendants admit that the allegations generally set forth matters found in Article XIX of the LMMIS Agreement, but show that the LMMIS Agreement is a written document which contains many terms and conditions all of which are pleaded herein in response to this paragraph.

33.

For answer to Paragraph 33 of the Petition, the DOA Defendants admit that CNSI provided a performance bond, that the Surety has been notified of a claim with respect to the bond, and that the Surety has not made any payments to date with respect to the bond claim. The DOA Defendants deny all remaining allegations of Paragraph 33 of the Petition as written.

34.

The DOA Defendants deny the allegations of Paragraph 34 of the Petition.

35.

The allegations of Paragraph 35 of the Petition include a quotation of a portion of La. R.S. 39:1678 and various other statements and/or conclusions of law for which no answer is required by the DOA Defendants. However, if an answer is required, the DOA Defendants admit the allegations of Paragraph 35.

36.

The DOA Defendants deny the allegations of Paragraph 36 of the Petition and show that CNSI was given reasons for termination in the letter from Sandra Gillen to CNSI dated April 26, 2013, and further show that CNSI is well aware of its improper contacts with former Secretary Greenstein including, but not limited to, the telephone call(s) referenced in the DOA Defendants' response to Paragraph 17 above. With regard to allegations relating to the bid protests, the DOA Defendants adopt and incorporate herein their answers to Paragraphs 19 and 20 above. The DOA Defendants deny any remaining allegations of Paragraph 36 for lack of information sufficient to justify a belief, and show that CNSI fails to reasonably identify the "representatives of the state government" to whom the alleged statements are being attributed.

37.

For answer to Paragraph 37 of the Petition, the DOA Defendants admit that one or more requests were made by CNSI for reasons for termination. The DOA Defendants further show that CNSI was provided with a letter dated April 26, 2013, setting forth reasons for termination, and that CNSI was well aware of its improper contacts with former Secretary Greenstein.

38.

For answer to Paragraph 38 of the Petition, the DOA Defendants admit that counsel for CNSI made public records requests, but denies the remaining allegations. The DOA Defendants show that they provided counsel for CNSI with over ten thousand pages of documents in response to the public records request. The DOA Defendants further show that they were prepared to produce additional documents when they were instructed by the Louisiana Attorney General not to provide further responses because the Attorney General was asserting the law enforcement exception to the Louisiana Public Records Law.

39.

For answer to Paragraph 39 of the Petition, the DOA Defendants admit that CNSI proposed to meet and that DHH agreed to such a meeting. The DOA Defendants further admit that CNSI and DHH had multiple communications regarding proposed dates for a meeting and submit that those written communications speak for themselves and are the best evidence of their contents. DOA Defendants also admit that a meeting was set for Monday, April 29, 2013.

40.

For answer to Paragraph 40 of the Petition, the DOA Defendants admit that a letter signed by Sandra Gillen and dated April 26, 2013, was sent to CNSI and that this letter set forth various specific reasons for termination of the LMMIS Agreement and further elaborated on the prior letter sent to CNSI dated March 21, 2013. The DOA Defendants deny any other allegations in this paragraph for lack of information sufficient to justify a belief.

41.

For answer to Paragraph 41 of the Petition, the DOA Defendants admit that the April 26, 2013 letter elaborates on the grounds for the termination but show that the letter is a written document which speaks for itself and is pleaded herein in its entirety in response to the allegations of this paragraph. The DOA Defendants deny any allegations by CNSI which attempt to paraphrase or interpret the April 26, 2013 letter beyond what is set forth in the written document.

42.

For answer to Paragraph 42 of the Petition, the DOA Defendants show that the allegations contained therein are statements of CNSI's purported interpretation of the April 26, 2013 letter and are not allegations of fact, and therefore, no answer is required by the DOA Defendants. However, if an answer is required, the DOA Defendants deny the paragraph as written and show that the April 26, 2013 letter is a written document which speaks for itself and is the best evidence of its contents. The DOA Defendants further show that CNSI is well aware of its improper contacts with former Secretary Greenstein including, but not limited to, the telephone call(s) referenced in the DOA Defendants' response to Paragraph 17 above. If not for CNSI's improper contact and the resulting changes in the experience requirements of the SFP, CNSI would not have qualified to bid.

43.

The DOA Defendants deny the allegations of Paragraph 43 of the Petition and show that the SFP is a written document and the testimony of Phillips and Greenstein at the 2011 confirmation hearing was recorded and these documents and records speak for themselves and are the best evidence of their contents. The DOA Defendants further show that: (i) CNSI's

contacts with former Secretary Greenstein violated the SFP and gave CNSI an unfair advantage and, (ii) former Secretary Greenstein failed to disclose at his confirmation hearing that CNSI had called him and requested that he intervene in the procurement process by reconsidering the experience requirement.

44.

For answer to Paragraph 44 of the Petition, the DOA Defendants deny that former Secretary Greenstein played no role in CNSI being awarded the bid for the MMIS system and show that CNSI made a request to former Secretary Greenstein, in violation of the SFP, asking him to change the experience requirements so that CNSI could qualify to bid on the MMIS system. The DOA Defendants admit that the evaluation process involved eleven different teams and sixty individuals, but deny that Greenstein “was not involved in the process of evaluating proposals.” The DOA Defendants also admit that Greenstein testified during this confirmation hearing about minimal contacts with CNSI, but show that he did not disclose many of his contacts with CNSI representatives, including that he received a call from CNSI asking him to change the requirements of the SFP. The DOA Defendants deny the remaining allegations and show that the confirmation hearing was recorded and is the best evidence of its actual contents. Additionally, the DOA Defendants show that, until recently, they were unaware of the nature and extent of Greenstein’s communications with CNSI representatives, including, over one thousand (1000) telephone calls and text messages with CNSI during the blackout period, a period in which DHH Employees were prohibited from having oral communications with vendors who were bidding on the SFP. Additionally, the DOA Defendants show that, until recently, they were wholly unaware that Greenstein had ex parte oral communications with CNSI representatives, which were initiated by the CNSI representatives, and which resulted in Greenstein causing to be issued Addendum No. 2 to the SFP, an addendum that benefited only one bidder, CNSI.

45.

For answer to Paragraph 45 of the Petition, the DOA Defendants deny that CNSI was unaware that it was improper for it to call former Secretary Greenstein and request that he intervene in the procurement process and change the experience requirements of the SFP so CNSI could qualify to bid on the MMIS system. The DOA Defendants also specifically deny

CNSI's allegation that contacts between CNSI and Secretary Greenstein would not have created an unfair advantage to CNSI and the DOA Defendants adopt and incorporate herein their answer to Paragraph 44 above.

46.

For answer to Paragraph 46 of the Petition, the DOA Defendants show that CNSI was well aware that it was required to have experience as a fiscal agent or fiscal intermediary as it had made a written inquiry regarding whether the experience of a subcontractor would satisfy the requirement and had received a written response on January 7, 2011, that CNSI, not a subcontractor, must have the required experience. After being advised that CNSI (not a subcontractor) must have the required experience, CNSI then improperly contacted former Secretary Greenstein and requested him to intervene in the procurement process and change the experience requirement so that CNSI could bid and Secretary Greenstein thereafter implemented the change requested by CNSI. The DOA Defendants also show that the SFP is a written document that contains many terms and conditions, all of which are pleaded in response to this paragraph. Further, the DOA Defendants deny the allegations of Paragraph 46 and specifically deny any allegation by CNSI that the revision of the SFP requirements regarding experience as a fiscal agent (i.e. Addendum No. 2) does not support cancellation of the LMMIS Agreement.

47.

For answer to Paragraph 47 of the Petition, the DOA Defendants show that the revision, which was precipitated by improper ex parte oral communications initiated by CNSI to former Secretary Greenstein, opened the SFP process up to and benefited only one potential bidder, CNSI. The DOA Defendants also show that the SFP is a written document that contains many terms and conditions, all of which are pleaded in response to this paragraph. Further, the DOA Defendants deny the allegations of Paragraph 47 of the Petition and specifically deny the allegation that "Amendment No. 2" (*sic* Addendum No. 2) opened "the SFP process up to more potential bidders who could offer a wider range of solutions." And finally, the DOA Defendants aver that CNSI has omitted material facts from its allegations regarding Addendum No. 2 by not mentioning its written inquiry regarding the experience requirement, the written response by DHH, and CNSI's improper call to former Secretary Greenstein requesting that he intervene in

the procurement process and the subsequent change of the requirement. Contrary to CNSI's allegations, it is certainly not "absurd" to suggest that CNSI's actions violated the requirements of the SFP and Louisiana law and created an unfair advantage in favor of CNSI.

48.

The DOA Defendants deny the allegations of paragraph 48 of the Petition and further adopt and incorporate the DOA Defendants' answers to Paragraphs 44 - 47 above. The DOA Defendants also show that contrary to CNSI's allegations, it was improper and violated the requirements of the SFP and Louisiana law for CNSI to call former Secretary Greenstein and request that he intervene in the procurement process and change the experience requirements for CNSI.

49.

For answer to Paragraph 49 of the Petition, the DOA Defendants deny CNSI's allegation that "without Amendment No. 2 CNSI would have been 'effectively eliminated' as an eligible bidder is itself inaccurate." The DOA Defendants show that CNSI would not have qualified to bid if it had not improperly called former Secretary Greenstein and the experience requirement had not been changed. The remainder of Paragraph 49 sets forth hypothetical circumstances rather than allegations of fact and therefore no answer is required by the DOA Defendants. However, if an answer is required, the DOA Defendants deny the remaining allegations about what CNSI would have done if Addendum No. 2 had not been issued for lack of information sufficient to justify a belief.

50.

For answer to Paragraph 50 of the Petition, the DOA Defendants deny that Undersecretary Phillips "wrote a glowing letter of recommendation endorsing CNSI" and adopt and incorporate herein the DOA Defendants' answer to Paragraph 24 above. The DOA Defendants deny the remaining allegations of Paragraph 50 of the Petition for lack of information sufficient to justify a belief.

51.

For answer to Paragraph 51 of the Petition, the DOA Defendants show that at the time of the denial of the protests, they were not aware of the nature and extent of former Secretary

Greenstein's communications with CNSI representatives, including over one thousand (1000) calls and text messages with CNSI during the blackout period, a period in which DHH employees were prohibited from having oral communications with prospective bidders. Additionally, the DOA Defendants show that, until recently, they were unaware that former Secretary Greenstein had ex parte oral communications with CNSI representatives, which were initiated by CNSI representatives, and which resulted in former Secretary Greenstein initiating the issuance Addendum No. 2 to the SFP, an addendum that benefited only one bidder, CNSI. The DOA Defendants show that if this information had been known at the time that the protests were lodged and considered, this information would have had a significant impact on the consideration and result of said protests. The DOA Defendants also show that the allegations regarding ACS and Molina protests, the response by DHH to the protests, and the SFP (and specifically Section 1.74) all pertain to written documents which speak for themselves and are the best evidence of their contents. Further answering, the DOA Defendants admit that the then Director of State Purchasing denied the protests, but deny any and all allegations which attempt to interpret the meaning, thought process or intent of the then Director of State Purchasing in denying the protests.

52.

For answer to Paragraph 52 of the Petition, as set forth above, CNSI initiated improper ex parte oral communications with former Secretary Greenstein regarding the matters reflected in Addendum No. 2, which resulted in former Secretary Greenstein initiating the issuance of this addendum which benefitted only one bidder, CNSI. Telephone records show that former Secretary Greenstein had multiple calls with two CNSI representatives and CNSI's lobbyist on January 7, 2013, the date that former Secretary Greenstein directed that the addendum be issued. Former Secretary Greenstein has admitted in sworn testimony that one or more CNSI representatives contacted him regarding the matters reflected in Addendum No. 2 and requested the change. CNSI's allegations to the contrary in Paragraph 52 of the Petition are false. The DOA Defendants also show that the April 26, 2013 letter is a written document which speaks for itself and is pleaded herein in its entirety in response to this paragraph. Further answering, the DOA Defendants deny all remaining allegations of Paragraph 52 and specifically deny any

allegations or implications that CNSI did not have *ex parte* communications regarding Amendment 2 (*sic* Addendum No. 2) and/or did not influence the issuance of the addendum.

53.

For answer to Paragraph 53 of the Petition, the DOA Defendants show that the allegations of Paragraph 53 are nothing more than statements by CNSI as to the purported reasons why CNSI failed to comply with the SFP requirements and submitted an unresponsive bid which significantly underbid the EVV component of the SFP. This purported explanation by CNSI requires no answer by the DOA Defendants, but if an answer is required, the DOA Defendants deny these allegations for lack of information sufficient to justify a belief. The DOA Defendants also show that the April 26, 2013 letter is a written document which speaks for itself and pleaded herein in its entirety in response to this paragraph.

54.

For answer to Paragraph 54 of the Petition, the DOA Defendants admit that they requested CNSI to verify that the costs included in its proposal were “realistic, complete, and final” and also admit that DHH took the position that CNSI was bound “to deliver the EVV services at the price bid, with no increase in the contract price.” The DOA Defendants deny the remaining allegations and show that the EVV component was one of the earliest deliverables under the LMMIS Agreement, and CNSI failed to provide this deliverable on time and as required by the SFP and the LMMIS Agreement. Instead, CNSI understaffed the EVV component and took little or no action toward its implementation. The DOA Defendants further show that CNSI’s failure to provide the EVV component on time and as required by the SFP and the LMMIS Agreement was, if not an explicit refusal, at least an implicit refusal to abide by its bid and to provide the EVV component for the price bid.

55.

The DOA Defendants deny the allegations of Paragraph 55 of the Petition and adopt and incorporate herein the DOA Defendants’ answer to Paragraph 54 above.

56.

For answer to Paragraph 56 of the Petition, the DOA Defendants show that the allegations of this paragraph set forth hypothetical circumstances rather than allegations of fact

and therefore no answer is required. If an answer is required, the DOA Defendants deny the allegations of this paragraph for lack of information sufficient to justify a belief.

57.

The DOA Defendants deny the allegations of Paragraph 57 of the Petition for lack of information sufficient to justify a belief.

58.

The DOA Defendants deny the allegations of Paragraph 58 of the Petition and further show that any decision to put design and development of the EVV system into abeyance was, in part, a result of CNSI's failure to deliver the EVV Component on time and as required by the SFP and in accordance with the SFP and the LMMIS Agreement.

59.

For answer to Paragraph 59 of the Petition, the DOA Defendants admit that CNSI posted a bond and that the DOA Defendants have notified the surety of a claim on the bond. The DOA Defendants deny the remaining allegations of this paragraph and show that CNSI requested and received special concessions with respect to the posting of the bond which undermined the fairness of the procurement process.

60.

For answer to Paragraph 60 of the Petition, the DOA Defendants show that the April 26, 2013 letter is a written document which speaks for itself and is pleaded in its entirety in response to this paragraph. Further answering, the DOA Defendants deny CNSI's allegation that it "fully performed under the LMMIS Agreement" and deny all other allegations of this paragraph as written.

61.

For answer to Paragraph 61 of the Petition, the DOA Defendants show that the allegations regarding the ACS and Molina protests, the response by DHH to the protests, and the testimony by "DHH representatives" at the confirmation hearings involved written and/or recorded documents which speak for themselves and are pleaded in their entirety in response to this paragraph. The DOA Defendants deny any allegations by CNSI which attempt to interpret or explain these written and/or recorded documents. Additionally, the DOA Defendants deny all

references to matters pertaining to CNSI's lawsuit and/or negotiations with the State of South Dakota for lack of information sufficient to justify a belief.

62.

For answer to Paragraph 62 of the Petition, the DOA Defendants admit that the SFP included a PI/SURS component and show that the provisions regarding this component are included in the SFP which is a written document and which is pleaded herein in its entirety in response to this paragraph. Further answering, the DOA Defendants admit that DHH, through former Secretary Greenstein, notified CNSI that they no longer wanted to use Thomas Reuters. The DOA Defendants also admit that DHH sought to add analytics for early fraud detection, but show that it sought analytics in addition to and were not "avoiding" the current "pay and chase" process. The DOA Defendants further admit that DHH entered into discussions with CNSI on a proposal for a new solution that was accepted by DHH. The DOA Defendants deny all remaining allegations of Paragraph 62 of the Petition as written.

63.

For answer to Paragraph 63 of the Petition, the DOA Defendants admit that DHH added to the scope of work and admit that DHH originally directed Molina to implement the analytics component. The DOA Defendants also admit that Molina submitted a letter to DHH in which it raised concerns about providing additional scope. The DOA Defendants deny the remaining allegations of Paragraph 63 of the Petition as written.

64.

For answer to Paragraph 64 of the Petition, the DOA Defendants admit that Amendment No. 2 had been approved by DHH and had not received final approval from OSP at the time that the LMMIS Agreement was cancelled. The DOA Defendants deny the remaining allegations of Paragraph 64 of the Petition as written.

65.

For answer to Paragraph 65 of the Petition, the DOA Defendants show that the April 26, 2013 letter is a written document that speaks for itself and is pleaded herein in its entirety in response to this paragraph. Further answering the DOA Defendants admit that DHH received an opinion from the Louisiana Board of Ethics, dated July 25, 2012, which found that the hiring of

Ms. Hughes would not violate the ethics code. The DOA Defendants deny the remaining allegations of Paragraph 65 as written.

66.

For answer to Paragraph 66 of the Petition, the DOA Defendants show that the April 26, 2013 letter is a written document that speaks for itself and is pleaded herein in its entirety. Further answering, the DOA Defendants deny that the DOA Defendants failed to provide CNSI with notice of its failures and shows that the DOA Defendant0s gave notice to CNSI by letters dated March 21, 2013, and April 26, 2013. The DOA Defendants also deny CNSI's allegation that "an opportunity to cure the alleged failure clearly applies" and in this regard adopt and incorporate their answer to Paragraph 30 above.

67.

The DOA Defendants deny the allegations of Paragraph 67 of the Petition as written and further adopt and incorporate Paragraph 128 of the DOA's Reconventional Demand below as if set forth herein in its entirety.

68.

For answer to Paragraph 68 of the Petition, the DOA Defendants admit that DHH entered into discussions with CNSI regarding a possible early takeover of the LMMIS System which was proposed by CNSI representatives but was ultimately rejected by DHH. The DOA Defendants deny the remaining allegations of Paragraph 68 of the Petition as written.

69.

The DOA Defendants deny the allegations of Paragraph 69 of the Petition and further adopt and incorporate the DOA Defendants' answer to Paragraphs 54 and 58 above.

70.

For answer to Paragraph 70 of the Petition, the DOA Defendants admit that they met with CNSI about the termination of the LMMIS Agreement on April 29, 2013. The DOA Defendants also admit that CNSI agreed to make a written offer to DHH and the Division and the substance of the proposed offer is accurately set forth in this paragraph. The DOA Defendants also admit that CNSI made a written offer and it was agreed that CNSI would hold its outstanding public records request in abeyance for a few days while DHH and the Division considered and

responded to the offer. The remaining allegations are denied for lack of information sufficient to justify a belief.

71.

For answer to Paragraph 71 of the Petition, the DOA Defendants admit that they rejected CNSI's offer by letter dated May 2, 2013. Further answering, the DOA Defendants deny all remaining allegations of Paragraph 71. The DOA Defendants further show that its actions in terminating the LMMIS Agreement were proper and said actions were necessary to protect the integrity of the Louisiana procurement process and were in the best interests of the State of Louisiana and its citizens.

72.

The DOA Defendants deny the allegations of Paragraph 72 of the Petition as written and show that although CNSI has at times indicated a willingness to turn over information relating to its work on the MMIS System, which information is owned by DHH under the LMMIS Agreement, CNSI has failed to date to fully cooperate in the turnover of information and to provide DHH with all documents and electronic files that are due DHH.

73.

For answer to Paragraph 73 of the Petition, the DOA Defendants adopt and incorporate their answers to Paragraphs 1 through 72 of the Petition as if fully set forth herein.

74.

The DOA Defendants deny the allegations of Paragraph 74 of the Petition.

75.

The DOA Defendants deny the allegations of Paragraph 75 of the Petition.

76.

For answer to Paragraph 76 of the Petition, the DOA Defendants adopt and incorporate their answers to Paragraphs 1 through 75 of the Petition as if fully set forth herein.

77.

The DOA Defendants deny the allegations of Paragraph 77 of the Petition.

78.

The DOA Defendants deny the allegations of Paragraph 78 of the Petition.

79.

The DOA Defendants deny the allegations of Paragraph 79 of the Petition.

80.

The DOA Defendants deny the allegations of Paragraph 80 of the Petition.

81.

The DOA Defendants deny the allegations of Paragraph 81 of the Petition. The DOA Defendants further show that any such damages are prohibited or limited by La. R.S. 39:1678.1 and/or the express terms of the LMMIS Agreement.

82.

For answer to Paragraph 82 of the Petition, the DOA Defendants adopt and incorporate their answers to Paragraphs 1 through 81 of the Petition as if fully set forth herein.

83.

The DOA Defendants admit the allegations of Paragraph 83 of the Petition.

84.

For answer to Paragraph 84 of the Petition, the DOA Defendants admit that CNSI accurately quotes a portion of the LMMIS Agreement, but shows that the LMMIS Agreement is a written document which speaks for itself and is pleaded herein in its entirety. Further answering, the DOA Defendants show that the LMMIS Agreement was properly terminated for cause and therefore deny that CNSI is entitled to any expenses or other payments based upon a termination for convenience.

85.

For answer to Paragraph 85 of the Petition, the DOA Defendants show that if sufficient cause does not exist for cancellation of the LMMIS Agreement, then the DOA Defendants are entitled to terminate for convenience as allowed under the LMMIS Agreement. The DOA Defendants deny any allegation by CNSI that the DOA Defendants did not properly terminate the LMMIS Agreement for convenience and/or that the DOA Defendants were in bad faith in terminating the LMMIS Agreement. Finally, the DOA Defendants admit that if it is ultimately

determined as a matter of fact and law that the DOA Defendants did not have sufficient cause to terminate the LMMIS Agreement (which is denied), then, in that event, CNSI would be entitled to certain costs and expenses as provided under the LMMIS Agreement.

86.

For answer to Paragraph 86 of the Petition, the DOA Defendants adopt and incorporate their answers to Paragraphs 1 through 85 of the Petition as if fully set forth herein.

87.

For answer to Paragraph 87 of the Petition, the DOA Defendants show that La. R.S. 39:1678 is a written statute that speaks for itself and the DOA Defendants need not answer CNSI's allegations of legal conclusions pertaining to La. R.S. 39:1678. However, if an answer is required, the DOA Defendants deny that CNSI is entitled to ratification of the LMMIS Agreement and/or payment for any expenses under the referenced statute.

88.

The DOA Defendants deny the allegations of Paragraph 88 of the Petition.

89.

The DOA Defendants deny the allegations of Paragraph 89 of the Petition.

90.

For answer to Paragraph 90 of the Petition, the DOA Defendants adopt and incorporate their answers to Paragraphs 1 through 89 of the Petition as if fully set forth herein.

91.

The DOA Defendants deny the allegations of Paragraph 91 of the Petition.

92.

The paragraph entitled "WHEREFORE" which immediately follows Paragraph 91 of the Petition contains a prayer for relief and/or purported legal conclusions to which no answer is required by the DOA Defendants. However, if an answer is required to this "WHEREFORE" paragraph, the DOA Defendants deny any and all allegations contained in this paragraph.

AFFIRMATIVE DEFENSES

AND NOW, further answering the Petition, the DOA Defendants assert the following affirmative defenses:

93.

CNSI has failed to comply with the administrative process required under the Louisiana Procurement Code and the provisions of the LMMIS Agreement.

94.

Due to CNSI's failure to comply with the administrative process required under the Louisiana Procurement Code and the LMMIS Agreement, the district court lacks original jurisdiction over this matter and/or CNSI's suit herein is premature.

95.

The Petition fails to state a cause of action upon which relief can be granted.

96.

The DOA Defendants had just and reasonable cause to terminate the LMMIS Agreement.

97.

Alternatively, if it is ultimately determined as a matter of fact and law that the DOA Defendants did not have sufficient cause to terminate the LMMIS Agreement, then in that event, the DOA Defendants properly terminated the LMMIS Agreement for convenience.

98.

The DOA Defendants further show that any loss or damage occasioned by CNSI was the result of CNSI's own violation of the SFP, violation of Louisiana law and/or CNSI's breach of the LMMIS Agreement and said violations and breaches by CNSI caused the LMMIS Agreement to be null and void from its inception pursuant to La. R.S. 39:1678(2).

99.

The DOA Defendants further show that CNSI's damage claims are prohibited and/or limited by La. R.S. 39:1678.1 and/or the express terms of the LMMIS Agreement.

100.

The DOA Defendants affirmatively aver that, at all times pertinent herein, they dealt with CNSI in good faith and in a reasonable manner.

101.

The LMMIS Agreement is void and absolutely null due to a failure of cause or consideration pursuant to La. Civ. Code arts. 1966, *et seq.*

102.

The LMMIS Agreement is void and absolutely null because the object of said contract was illicit or immoral under La. Civ. Code arts. 2029, *et seq.*

103.

The LMMIS Agreement is vitiated by error pursuant to La. Civ. Code arts. 1949, *et seq.*

RECONVENTIONAL DEMAND

104.

The reconventional demand of the State of Louisiana, State of Louisiana, Division of Administration and State of Louisiana, Division of Administration, Office of State Purchasing (the “DOA” or “Plaintiffs in Reconvention”), respectfully represents as follows:

105.

Made defendant in reconvention herein is Client Network Services, Inc. (“CNSI” or “Defendant in Reconvention”), a Maryland corporation registered in Louisiana with its principal business establishment in Louisiana located in East Baton Rouge Parish.

106.

On November 1, 2010, the Office of State Purchasing (“OSP”) issued a Solicitation for Proposal (“SFP”) for Medicaid Management Information System Replacement and Fiscal Intermediary Services for the Department of Health & Hospitals (the “SFP”). The purpose of the SFP was to obtain competitive proposals from qualified proposers to provide a Medicaid Management Information System (“MMIS”) to the State of Louisiana, Department of Health and Hospitals (“DHH”).

107.

CNSI, along with several other proposers, submitted a proposal in response to the SFP. Following the evaluation process, on June 9, 2011, the OSP issued a Notice of Intent to award the contract to CNSI.

108.

Pursuant to its authority under La. R.S. 39:198(D) and the Louisiana Procurement Code, La. R.S. 39:1551, *et seq.*, DHH entered into an Agreement for the Operation and Enhancement of the Louisiana Medicaid Management Information System through a Fiscal Intermediary Type

Arrangement with Plaintiff (the “LMMIS Agreement”). The effective date of the LMMIS Agreement was February 15, 2012.

109.

After execution of the LMMIS Agreement, CNSI began the work under the LMMIS agreement and billed Plaintiffs in Reconvention for various services purportedly performed in connection with the agreement. Plaintiffs in Reconvention paid to CNSI \$17,024,979.43 in connection with the LMMIS Agreement.

110.

In early 2013, Plaintiffs in Reconvention were served with a federal grand jury subpoena seeking documents and information relating to CNSI and its dealings and activities with respect to the SFP and/or the LMMIS Agreement. In March 2013, Plaintiffs in Reconvention were informed by the Louisiana Attorney General that an investigation of CNSI was being conducted and that it had discovered various improper activities involving CNSI in connection with its bid proposal in response to the SFP and thereafter.

111.

On March 21, 2013, Plaintiffs in Reconvention sent CNSI written notice that the LMMIS Agreement was being terminated immediately pursuant to authority granted under La. R.S. 39:1678 and Articles III and XIX of the LMMIS Agreement. By letter dated April 26, 2013, Plaintiffs in Reconvention supplemented the prior March 21, 2013, letter and set forth therein various reasons why the LMMIS Agreement was terminated.

Improper contacts between CNSI and former DHH Secretary Greenstein

112.

Plaintiffs in Reconvention have become aware of numerous and repeated telephone and text message contacts between former DHH Secretary Bruce Greenstein (“former Secretary Greenstein”) and officers, employees, representatives, and/or management of CNSI (“CNSI Management”). These contacts and communications include hundreds of telephone calls and thousands of text messages which took place from the time that former Secretary Greenstein became DHH Secretary and continued throughout the entire bid and award process.

113.

The SFP expressly prohibited any “open-ended inquiry period” and expressly required “written inquiries” and that “[w]ithout exception, all inquiries SHALL be submitted in electronic Excel format.” The SFP further provides that the procurement shall “permit fair, impartial, and free competition among all proposers.”

114.

The hundreds of telephone calls and thousands of text messages between former Secretary Greenstein and CNSI Management throughout the entire process created an unfair advantage to CNSI and prevented the fair, impartial and free competition among all proposers required under the SFP. These numerous and repeated communications tainted the entire process and caused Plaintiffs in Reconviction to terminate the LMMIS Agreement.

Improper contacts between CNSI and Greenstein resulted in Addendum No. 2

115.

The SFP provides that “proposers responding to this SFP shall be expected to have extensive, current experience as a fiscal agent or intermediary for Medicaid or a similar large health care claims processing entity” and “the Department anticipates that the Contractors responding to this SFP for the implementation of a certifiable MMIS would have extensive experience in the MMIS or other large health care claims arena.”

116.

CNSI submitted a written question to DHH asking if this requirement could be met through the use of experienced subcontractors. In January 2011, DHH responded in writing that “it is the Department’s intent that the Proposer (the entity’s name in which the proposal is submitted) would be the one expected to have the experience” This written response from DHH effectively eliminated CNSI as an eligible bidder on the project.

117.

Shortly after DHH rejected CNSI’s request to use subcontractor experience, DHH issued Addendum No. 2 which reversed the original response and provided that “the experience may be that of the primary contractor or subcontractor’s corporate experience.” The only proposer who benefitted from this change was CNSI.

118.

Addendum No. 2, which reversed the prior DHH position, was the result of an oral request by CNSI to former Secretary Greenstein to circumvent the procurement process and direct actions by former Secretary Greenstein to change the SFP to allow for subcontractor experience.

119.

At or around January 2011, there were numerous telephone calls and text messages between Greenstein and CNSI Management, including 16 communications on the day that Greenstein caused the reversal of the original DHH position and ordered that subcontractor experience be permitted. Specifically, on January 7, 2011, the date that former Secretary Greenstein caused the revision of the SFP to benefit CNSI, he had communications with two CNSI representatives as well as a lobbyist working for CNSI. These improper ex parte oral communications were initiated by CNSI in a direct effort to influence the procurement process and to cause former Secretary Greenstein to order a revision of the SFP which would benefit only one bidder, CNSI.

120.

These numerous improper ex parte oral communications between former Secretary Greenstein and CNSI Management and lobbyist tainted any semblance of a fair and impartial process and created an unfair advantage for CNSI who would have otherwise been eliminated as an eligible bidder with respect to the project. These circumstances were another reason why Plaintiffs in Reconviction terminated the LMMIS Agreement.

CNSI failed to fully include a key component of the SFP in its bid proposal

121.

A key component of the SFP was the requirement that the vendor provide Electronic Visit Verification (“EVV”) as part of the MMIS system. CNSI significantly underbid the EVV portion of the MMIS which contributed to CNSI’s ability to submit a bid which was substantially lower than the other bidders.

122.

After CNSI was selected to provide the MMIS system, it advised DHH that it made an error in its pricing of the EVV component and later sought additional funding to provide the EVV component. CNSI incorrectly included an amount for the "telephony" portion of EVV in the "optional function" portion of its proposal, even though this was a mandatory requirement of the SFP.

123.

CNSI's failure to fully include a key component of the SFP resulted in an unresponsive bid and unfair underbidding of the MMIS project which caused CNSI to win the contract award over other bidders. These circumstances were another reason why Plaintiffs in Reconviction terminated the LMMIS Agreement.

CNSI's financial status and performance bond

124.

The SFP requires the proposer to submit a written statement regarding its financial resources and condition. CNSI provided a positive statement of its financial outlook and its relationship with its lenders and stated in its proposal that "our financial institution, Bank of America, is supportive of CNSI's business pursuits, and will accommodate any necessary contract financing requirements associated with this growth. As such, CNSI's banking relationship is conducive to successful financial performance."

125.

CNSI's financial condition and relationship with its lender were not nearly as positive as stated by CNSI in its proposal. In fact, it appears that CNSI had significant financial problems and difficulty posting the minimal \$6 million performance bond required by the Agreement. CNSI advised the then DHH project manager that it was unable to post the bond and sought delays to resolve the matter.

126.

CNSI's requests were denied by the DHH project manager, but CNSI was ultimately given additional time to work out its problems with the performance bond. On information and belief, CNSI was given improper concessions with respect to its posting of a performance bond

due to CNSI Management's influential relationship with former Secretary Greenstein.

127.

Also, on information and belief, CNSI's loan with Bank of America (the "Bank") was placed in the Strategic Assets Division of the Bank, and the Bank had placed certain restrictions on CNSI, which information was not disclosed by CNSI. These circumstances are additional reasons why Plaintiffs in Reconviction terminated the LMMIS Agreement.

Proposed Amendment No. 2 adding \$40 million to the LMMIS Agreement

128.

Proposed Amendment 2 to the Agreement, which was requested by CNSI, relates to the PI/SURS Component of the MMIS project. Amendment 2, if approved, would have added approximately \$40 million to the original amount of the Agreement.

129.

Plaintiffs in Reconviction have become aware of irregularities with respect to the creation and submission of Amendment 2. Additionally, a significant portion of the additional cost included in Amendment 2 was contemplated by and should have been included in CNSI's original proposal. These circumstances are additional reasons why Plaintiffs in Reconviction terminated the LMMIS Agreement.

Failure to complete document and systems deliverables in a quality and timely manner

130.

CNSI's performance of the Agreement has been deficient and was not in accordance with the requirements of the LMMIS Agreement. Document deliverables have been untimely and are not of sufficient quality. CNSI has on multiple occasions submitted to DHH planning and other documents identical to those submitted by CNSI in connection with its operations in the State of Washington (the "Washington Documents"). The Washington Documents were submitted to DHH as deliverables under the LMMIS Agreement. However, it was obvious that the documents were identical to those used by CNSI in Washington and were not even revised or tailored to the Louisiana requirements.

131.

Additionally, CNSI has failed to provide required systems deliverables under the LMMIS Agreement. Most notably, CNSI has not delivered the EVV component in a timely manner as required under the Agreement. These circumstances are additional reasons why Plaintiffs in Reconvention terminated the LMMIS Agreement.

132.

Plaintiffs in Reconvention show that they validly and properly terminated the LMMIS Agreement pursuant to La. R.S. 39:1678. Plaintiffs in Reconvention aver that CNSI violated the provisions of the SFP and the Procurement Code, La. R.S. 39:1551, et seq., and its conduct violated the purposes and policies of the Procurement Code (La. R.S. 39:1552(B)) and the obligation of good faith required by the Procurement Code (La. R.S. 39:1553). Additionally, the Plaintiffs in Reconvention aver that CNSI violated its legal duty of good faith and fair dealing under La. Civ. Code arts. 1759 and 1983.

133.

Plaintiffs in Reconvention further aver that CNSI's actions in this matter were in bad faith and as such the LMMIS Agreement is null and void from its inception pursuant to La. R.S. 39:1678(2).

134.

Plaintiffs in Reconvention further aver that they have been damaged by CNSI's bad faith actions which have caused the LMMIS Agreement to be null and void from its inception pursuant to La. R.S. 39:1678(2). Specifically, Plaintiffs in Reconvention show that they have paid CNSI a total of \$17,024,979.43 in connection with the LMMIS Agreement which is null and void. Most, if not all, of the work or services provided by CNSI in connection with the payments totaling \$17,024,979.43 is of no value to Plaintiffs in Reconvention and cannot be used in connection with any future MMIS System to be created once this procurement has been rebid and another vendor is awarded the contract. Thus, Plaintiffs in Reconvention are entitled to reimbursement of most, if not all, of the payments totaling \$17,024,979.43 made to CNSI pursuant to a LMMIS Agreement that is null and void from its inception pursuant to La. R.S. 39:1678(2).

REQUEST FOR TRIAL BY JURY

135.

DOA Defendants and Plaintiffs in Reconvension request a trial by jury as to all issues in the main demand and the reconventional demand.

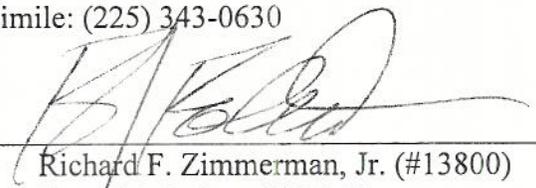
WHEREFORE, the DOA Defendants pray that this Answer and Affirmative Defenses be deemed good and sufficient and that after due delays and proceedings are had, that there be judgment in the DOA Defendants' favor dismissing the Petition with prejudice, at Plaintiff's costs; and

WHEREFORE, Plaintiffs in Reconvension pray that Defendant in Reconvension, CNSI, be cited and served with this Reconventional Demand and that after due proceedings are had, that there be judgment in favor of Plaintiffs in Reconvension for such damages to be proven at trial, including but not limited to all or some portion of the payments totaling \$17,024,979.43 made to CNSI pursuant to a LMMIS Agreement that is null and void from its inception pursuant to La. R.S. 39:1678(2), and all costs, expenses, legal interest and other general or equitable relief which may be appropriate in the premises; and

WHEREFORE, the DOA Defendants and Plaintiffs in Reconvension pray for a trial by jury as to all issues in the main demand and reconventional demand.

By Attorneys,

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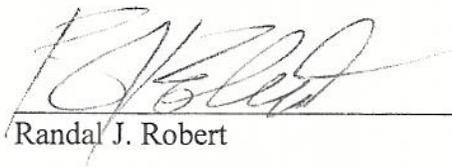
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Commissioner of Administration, the State through
the Office of State Purchasing and Sandra Gillen, in
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PLEASE SERVE:

Client Network Services, Inc.
Through its counsel of record
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CERTIFICATE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record by email and by placing same in the United States mail, postage prepaid and properly addressed, this 25th day of November, 2013.



Randal J. Robert

#301353