

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

STATE OF LOUISIANA, DEPARTMENT
OF HEALTH AND HOSPITALS

VERSUS

WESTCHESTER FIRE INSURANCE
COMPANY

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DOCKET NUMBER:

632268

SECTION

SEC. 25

PETITION FOR FORFEITURE AND/OR PAYMENT OF PERFORMANCE BOND

The petition of the State of Louisiana, Department of Health and Hospitals ("Plaintiff" or "DHH") respectfully represents as follows:

NAMED DEFENDANT

1.

Made defendant herein is **Westchester Fire Insurance Company** ("Westchester"), an insurance company incorporated in the State of Pennsylvania and registered and licensed to do business in the State of Louisiana.

VENUE IS PROPER IN EAST BATON ROUGE PARISH

2.

Venue is proper in the Parish of East Baton Rouge under Louisiana Code of Civil Procedure Articles 76 and/or 76.1.

THE PERFORMANCE BOND ISSUED BY WESTCHESTER

3.

Pursuant to the Louisiana Procurement Code, La. R.S. 39:1551 *et seq.*, the State of Louisiana (the "State"), Division of Administration ("DOA"), Office of State Purchasing ("OSP") issued a Solicitation for Proposal ("SFP") for Medicaid Management Information System Replacement and Fiscal Intermediary Services, Solicitation Number 2242837.

FILED
EAST BATON ROUGE PARISH, LA
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DEPUTY CLERK OF COURT

4.

The purpose of the SFP was to obtain competitive proposals from qualified proposers to provide a Medicaid Management Information System (“MMIS”) to DHH. Duties of the contractor under the MMIS would include processing claims from Medicaid providers, issuing payments to Medicaid providers, enrolling qualified Medicaid providers, managing and operating the Louisiana Medicaid Management Information System (“LMMIS”), and related tasks.

5.

Client Network Services, Inc. (“CNSI”), along with several other proposers, submitted a proposal in response to the SFP. Following the evaluation process, the OSP issued a Notice of Intent to award the contract to CNSI on June 9, 2011.

6.

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 CNSI (the “LMMIS Agreement”). The effective date of the LMMIS Agreement was February 15, 2012. A copy of the LMMIS Agreement is attached as Ex. “A”.

7.

Article I, Section B of the LMMIS Agreement expressly provides that “[t]he SFP and the Contractor’s Proposal, excluding any and all assumptions set forth in the Contractor’s cost proposal, are incorporated into and are made part of the Contract by reference.”

8.

Under the terms of the SFP and the LMMIS Agreement, CNSI was required to secure a performance bond in the amount of Six Million and No/100 (\$6,000,000) Dollars to insure successful performance of the LMMIS Agreement.

9.

The terms of the SFP and the LMMIS Agreement also expressly provide that “[t]he performance bond shall be forfeited under the following circumstances: a. If the Contract is

terminated during the contract term for cause or default.” A copy of the relevant provisions of the SFP and the LMMIS Agreement are attached as Ex. “B” and “C”, respectively.

10.

On February 17, 2012, Westchester issued a Performance Bond, Bond Number K08421900, in the amount of Six Million and No/100 (\$6,000,000) Dollars in accordance with the requirements of the SFP and the LMMIS Agreement. The Performance Bond designates CNSI as the Principal, DHH as the Obligee and Westchester as the Surety. A copy of the Performance Bond is attached as Ex. “D”.

11.

The Performance Bond expressly provides that “the above bounded Principal [CNSI] has entered into a certain written contract with the above named Obligee [DHH], effective the 15th day of February, 2012, for the Medicaid Management Information System Replacement and Fiscal Intermediary Services for the Louisiana Department of Health and Hospitals [the LMMIS Agreement] which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length were attached herein.” Thus, the Performance Bond incorporates and is subject to the provisions of the LMMIS Agreement and the Performance Bond likewise incorporates and is subject to the provisions of the SFP as required by Article I, Section B of the LMMIS Agreement.

12.

The Performance Bond was issued for an initial term beginning February 17, 2012, and ending February 17, 2013. On January 15, 2013, Westchester issued a Continuation Certificate to the Performance Bond, wherein Bond No. K08421900 was continued in force in the sum of Six Million and No/100 (\$6,000,000) Dollars, through February 16, 2014. A copy of the Continuation Certificate is attached as Ex. “E.”

THE LMMIS AGREEMENT IS TERMINATED FOR CAUSE

13.

In early 2013; the State of Louisiana, Division of Administration (“DOA”) was 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,

DOA was also 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.

14.

On March 21, 2013, the State issued written notice to CNSI 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. On April 26, 2013, CNSI was provided with a supplemental letter setting forth therein various reasons why the LMMIS Agreement was terminated. Copies of these letters are attached as Ex. "F" and "G", respectively.

15.

On March 28, 2013, the State provided Westchester with notice that it had terminated the LMMIS Contract with CNSI for cause and/or default. A copy of the notice to Westchester is attached as Ex. "H".

16.

As set forth in the written notices of termination for cause, Plaintiff has 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.

17.

The SFP, which was incorporated into and made part of the LMMIS Agreement pursuant to Article I, Section B of the LMMIS Agreement, 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" (SFP Section 1.7.4, at p. 48). The SFP also provides that the procurement shall "permit fair, impartial, and free competition among all proposers" (SFP Section 1.1.3, at p. 20).

18.

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, were in direct violation and default of the SFP (which was incorporated into the LMMIS Agreement by Article I, Section B of the LMMIS Agreement) and resulted in the termination of the LMMIS Agreement for cause and/or default.

19.

Additionally, 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” (SFP Section 1.1.3, at p. 20) 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” (SFP Section 2.1.1.1.1, at p. 67).

20.

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.

21.

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.

22.

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 to change the SFP to allow for subcontractor experience.

23.

The improper ex parte oral communications initiated by CNSI with Secretary Greenstein 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 actions were in direct violation and constituted a default of the SFP (which was incorporated into the LMMIS Agreement by Article I, Section B of the LMMIS Agreement) and resulted in the termination of the LMMIS Agreement for cause and/or default.

24.

Additionally, 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.

25.

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.

26.

CNSI's failure to include a key component of the SFP as a mandatory requirement, namely the "telephony" portion of EVV, resulted in an unresponsive bid and unfair underbidding of the MMIS project and contributed to CNSI's ability to win the contract award over other bidders. These actions were in direct violation and constituted a default of the SFP (which was incorporated into the LMMIS Agreement by Article I, Section B of the LMMIS Agreement) and resulted in the termination of the LMMIS Agreement for cause and/or default.

27.

Additionally, 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."

28.

CNSI's financial condition and relationship with its lender were not nearly as positive as stated by CNSI in its proposal. In fact, 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.

29.

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.

30.

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 acts and/or omissions were in direct violation and constituted a default of the SFP (which was incorporated into the LMMIS Agreement by Article I, Section B of the LMMIS Agreement) and resulted in the termination of the LMMIS Agreement for cause and/or default.

31.

Finally, 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 nearly 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 nearly identical to those used by CNSI in Washington and had not been significantly revised or tailored to the Louisiana requirements.

32.

CNSI has also failed to provide required systems deliverables under the LMMIS Agreement. Most notably, CNSI did not deliver the EVV component in a timely manner as required under the Agreement. These circumstances are additional reasons why the LMMIS Agreement was terminated for cause and/or default.

33.

The LMMIS Agreement was validly and properly terminated pursuant to the terms of the LMMIS Agreement and La. R.S. 39:1678. 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, CNSI violated its legal duty of good faith and fair dealing under La. Civ. Code arts. 1759 and 1983. Moreover, CNSI's actions in this matter were in bad faith and as such the LMMIS Agreement is null and void pursuant to La. R.S. 39:1678(2).

CLAIM AGAINST WESTCHESTER FOR FORFEITURE OR PAYMENT OF
PERFORMANCE BOND

34.

Paragraphs 1 through 33 are incorporated and are re-alleged in their entirety herein.

35.

As set forth above, the terms of the SFP and the LMMIS Agreement expressly provide that "[t]he performance bond shall be forfeited under the following circumstances: a. If the Contract is terminated during the contract term for cause or default."

36.

Article I, Section B of the LMMIS Agreement provides that "[t]he SFP and the Contractor's Proposal, excluding any and all assumptions set forth in the Contractor's cost proposal, are incorporated into and are made part of the Contract by reference."

37.

The Performance Bond expressly provides that “the above bounded Principal [CNSI] has entered into a certain written contract with the above named Obligee [DHH], effective the 15th day of February, 2012, for the Medicaid Management Information System Replacement and Fiscal Intermediary Services for the Louisiana Department of Health and Hospitals [the LMMIS Agreement] which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length were attached herein.”

38.

Thus, the Performance Bond incorporates and is subject to the provisions of the LMMIS Agreement and the Performance Bond likewise incorporates and is subject to the provision of the SFP as required by Article I, Section B of the LMMIS Agreement.

39.

The acts and/or omissions of CNSI as described herein were in direct violation and constituted a default of the SFP (which was incorporated into the LMMIS Agreement by Article I, Section B of the LMMIS Agreement) and the LMMIS Agreement.

40.

The LMMIS Agreement was validly and properly terminated for cause or default and CNSI and Westchester have been provided with written notification of said cause or default.

41.

Pursuant to the terms of the SFP, the LMMIS Agreement and the Performance Bond, the bond has been forfeited and Westchester is required to pay Plaintiff the full bond amount of Six Million and No/100 (\$6,000,000) Dollars.

42.

Additionally, Plaintiff is entitled to attorney’s fees in the amount of ten (10%) percent of the full amount of the bond as authorized by La. R.S. 9:3902.

REQUEST FOR TRIAL BY JURY

43.

Plaintiff requests a trial by jury as to all matters set forth herein.

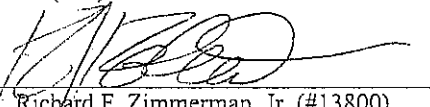
WHEREFORE, Plaintiff prays that defendant, Westchester, be cited and served with this Petition for Forfeiture and/or Payment of Performance Bond and that after due proceedings are had, that there be judgment in favor of Plaintiff for the full amount of the performance bond of Six Million and No/100 (\$6,000,000) Dollars, attorney's fees in the amount of ten (10%) percent of the full amount of the bond as authorized by La. R.S. 9:3902, and all costs, expenses, legal interest and other general or equitable relief which may be appropriate in the premises; and

WHEREFORE, Plaintiff further prays for a trial by jury as to all matters set forth herein.

By Attorneys,

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