



# The Supreme Court of South Carolina

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CHIEF JUSTICE

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**CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION**  
**NOT SUBJECT TO FOIA**

Marcus Manos, Esq.  
Nexsen Pruet Law Firm  
1230 Main St., Suite 700  
Columbia, SC 29201

Re: HP Child Support Enforcement System Contact with SCDSS

Dear Marc:

I am writing to you as a member of the CFS Executive Committee to clarify our discussions on legal strategy and assist you in evaluating the State's case.

As you know, the above-referenced contract is managed by the South Carolina Department of Social Services. Additionally, there is an oversight committee consisting of the following members or their designees - the Governor, the Executive Director of DSS, the Director of DSIT, the Chief Justice and a representative of the SC Clerks of Court - which meets monthly to review the progress of this project. Generally these meetings are also attended by, DSS General Counsel, Project Managers, Quality Control, IV & V, SC Judicial Department IT staff, our attorneys and HP representatives.

We are now involved in litigation with our contractor, HP, which addresses HP's poor quality performance, breaches of contract and other issues. This case is to be tried before a hearing officer beginning July 31, 2013. Representatives of HP have recently approached DSS staff, you as our attorney and Governor Haley to attempt to propose a renegotiation of our contract and negotiation of this litigation.

I am opposed to any further negotiation with HP at this time. The following is an explanation of where I think the project is and why I believe we should move forward with the litigation and cease any further negotiation.

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### Timeline of Contract

- A. Original 36 Month Contract. The Child Support Enforcement System contract was awarded initially to Saber Corporation which began performance in August 2007. The approved schedule was for three years. The contractor's obligation is to develop complex software which 1) provides an automated family court case management system for each of the state's 46 counties 2) manages the Child Support Enforcement System at SCDSS including the generation of all federally required interfaces and reports 3) interfaces with a State Disbursement Unit for the deposit and disbursement of child support collected by employer wage withholdings.

This project is mandated by the federal Office of Child Support Enforcement (OCSE) which funds about two-thirds of the cost of creating the system. OCSE monitors the project through monthly reports from their Independent Validation and Verification (IV&V) consultant supplied on contract with the University of South Carolina. OCSE also reviews and approves the project schedule and any amendments to the contract. OCSE is required by federal law to certify the functionality of the completed system.

- B. Contractor Purchased by EDS. Less than a year after the contract began, Saber was sold to EDS. This was the first amendment to the contract. (RON 2)

- C. Contract Changes after EDS Acquired by HP.

1. HP requests 16 month schedule adjustment. In August 2008, HP acquired EDS and became the contractor on this project. Within months, HP informed the State that it could not produce a federally certifiable system by August 2010. Much negotiation ensued. In November 2009, a contract amendment was signed (RON 3) giving HP an additional 16 months to produce a certifiable system. Other concessions to HP were also made. OCSE approved this amendment and began to intensify its inquiry as to why it had not received a fully resourced schedule for this project. This is a requirement for federal funding. The project completion was now 52 months, due date December 2011.
2. HP requests additional 14 month adjustment. Less than a year after the amendment to 52 months, HP began to complain about the deadline. It fell behind the general outline of its schedule. It had still never submitted a fully resourced schedule. It also requested that the State provide additional subject matter experts skilled in child support, which the state provided. In January 2011, the contract was again amended (RON 5) to increase the schedule by 14 additional months, making it a 66 month contract. New completion date - February 2013. Many other concessions were made by the State. HP agreed to pay some federal penalties.
3. HP is granted an additional 7 month schedule adjustment. HP was cited for poor performance including failure to provide a fully resourced schedule and required to produce a Corrective Action Plan. Bowing again to HP complaints about its inability to meet the schedule, the State agreed to grant HP an additional 7 months. The contract is now a 73 month contract. Completion is scheduled for September 2013 (RON 6).

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4. Schedule and Corrective Action Plan. HP has still not provided a fully resourced schedule for submission to the federal OCSE. HP submitted a CAP in January, 2013, which has been disapproved because it does not come with a detailed schedule and makes assumptions which would require yet another contract amendment.

### **Quality of HP Work**

- A. System Test. These large projects involve testing all the way through. In the early stages, designs are developed and reviewed, then components are designed and tested. We are now at the stage where components are being put together in a system. Testing at this stage involves developing scripts which describe various system functions. These scripts are reviewed by the state. Then the system is tested to see if it can successfully perform the script. HP has been engaged in system testing for one year, since June 29, 2012. HP is now 10 months behind. HP is less than half way through its testing of the required test scripts.
- B. State Expert's Assessment. The State has now hired independent nationally accredited technology system experts to assess HP's current product. The preliminary oral advice of our experts indicates a host of grave problems. The final report will be given to us approximately June 15-30, 2013.
- C. Conversion of Data with the 46 County Clerks' Offices. Part of the task of implementing the new CSES system is the conversion of legacy data from the 46 counties' current systems. Each county has their own system, none interface with each other or the State. The new system will interconnect all county data. Conversion of existing data to a uniform format is an essential part of this contract. Conversion of data is now 10 months behind.
- D. Testing of all Contract Requirements. It is very concerning that HP's current plan is to system test about 81.7 percent of the contract's requirements. This would leave almost 20 percent of the system completely untested by HP before being turned over to the State for its testing. Given HP's big quality problems, this is not an acceptable risk.
- E. HP is Losing Staff. All throughout this project, HP has promised to bring on additional, competent staff to get this project on track. Instead, they have done exactly the opposite. Every month that passes, HP is losing its most capable staff. In January 2011, it terminated its relationship with the subcontractor who designed the Family Court Case Management System (FCCMS) piece of this system. No new contractor has been hired and no new work has been completed on FCCMS. They are simply testing some components of the incomplete system.

### **Money**

- A. Contract Amount. Through amendments, the original \$110 million contract is now a \$125 million contract. We have now paid our vendor around \$25 million. We are withholding another \$12 million payment because of suspension of federal funding.
- B. OCSE Funding for this Fiscal Year. Because of HP's failure to provide an acceptable fully loaded and resourced project schedule for submission to OCSE, the federal

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government is holding funding approval until an acceptable schedule is provided. Simply put, DSS does not have approved federal funding for this fiscal year. HP is directly responsible for the project's loss of OCSE funding approval.

- C. Information our Major Funding Source, OCSE, is receiving from their Independent Validation and Verification Consultant.
1. IV&V Projection for Completed Systems Test. The April report from IV&V indicates they project systems test will not be complete until March 2014. The whole project is currently required to be complete and certified by September 2013.
  2. Conversion. Over 200 conversion incidents have been opened. HP's 8th conversion manager has left the project.
  3. Interfaces with Other Agencies. Interface testing with other agencies, a very important functionality for federal certification, has been suspended.

### Other Issues

- A. Improvement. What little activity HP has generated in negotiation has not resulted in *any* meaningful actions to improve this project.
- B. Clerk's Present Family Court Systems. Each county's stand-alone systems and equipment are aging. For the most part, Clerks have delayed major improvements since August 2008 on the strength of the promise that the new system was coming. A crash of these systems would be a major blow to the collection of child support in South Carolina.
- C. Our Legal Position Impacted. We have given in many times to HP. If we compromise once again in the face of this very deficient performance, we may endanger our ability to insist on our rights under our contract.
- D. Same Old Story. The only time HP ever really takes the State seriously is when we litigate. We can negotiate and/or terminate *after* we try our case.
- E. HP's Corporate Stability. National and global news outlets have for some time painted a very troubled picture of HP's financial stability. They have already taken huge losses on their EDS acquisition of which this contract is a part.

### Conclusion

Marc, I think it is very foolhardy of us to negotiate with HP further at this time. We will not have any leverage to resolve this matter unless we get, at least, a hearing officer's ruling on their performance. We also need to be guided by our independent experts' opinion about what we really have in the way of a system which can be completed. There is plenty of time in the future to resume discussions with HP if circumstances dictate.

Thank you for letting me give you my thoughts on this matter.

Sincerely,



Jean Hoefer Toal

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Cc: ✓ Nikki Haley, Governor, South Carolina  
Lillian Koller, Director, South Carolina Department of Social Services  
Tom Fletcher, Deputy Division Director, Division of State Information Technology  
Beulah Roberts, Clerk of Court, Clarendon County

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