

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT
)	OFFICER
COUNTY OF RICHLAND)	CASE NO: 2014-206
)	
In re: Contract Controversy of)	
New Venue Technologies, Inc.,)	
)	
Claimant,)	
)	
vs.)	PRE-HEARING BRIEF OF THE
)	BUDGET AND CONTROL BOARD
South Carolina Budget and)	
Control Board,)	
)	
Respondent.)	
_____)	

TO: NEW VENUE TECHNOLOGIES, INC., BY AND THROUGH THEIR ATTORNEY JOHN E. SCHMIDT, III, ESQUIRE:

The South Carolina, Budget and Control Board (“Board”), subject to its motions to dismiss, clarify and amend, by and through its undersigned Attorneys submits this pre hearing brief pursuant to the Chief Procurement Officer’s consent scheduling order.

I. Introduction and Statement of Facts

This is a contract controversy filed and heard pursuant to §11-35-4230. As such, it addresses the dispute between a governmental body, in this case the South Carolina Budget and Control Board, and a contractor, in this case, New Venue Technologies, Inc. This controversy does not address the rights of other Public Procurement Units or participants in the contract that are not named parties. Those entities have neither been made parties to this action by pleading or service, nor are they otherwise subject to jurisdiction of the CPO.

The claims articulated by the Claimant specifically deal only with alleged breaches of the contract by the Board. The Board’s claims only deal with damages sustained by it.

The Board has not brought this claim on behalf of any injured agency, governmental entity or PPU. It does not seek damages for any claims that agencies might have against New Venue for improper collections or failure to deliver software. Likewise, the Board does not seek to enforce claims that the state contract resellers have against New Venue for the non-payment of their invoices.

In its solicitation, the Board expressed its intent to solicit response for a Software Acquisition Manager. The solicitation defined the manager as “an order fulfillment, distribution and tracking system designed to monitor software licenses, license transfers, license redistribution, software maintenance and renewals, and warranty transactions as well as invoicing and payment from acquisition to end of life cycle.”

The solicitation provided that “Public Procurement Units purchase software from state or agency term contracts or from the retail market. Each Public Procurement Unit is responsible for maintaining its own software inventory.”

The Board intended to award a state term contract to one Offeror for use by all State agencies. This contract would also be optionally available for use by cities, counties, school districts and other political subdivisions. The SAM was to initially track only software purchased on other state term contracts. Amendment #1 to the solicitation makes clear that the initial contract would not address all of the State’s software purchases.

The Board instructed the contractor not to perform any work on the contract prior to the receipt of a purchase order from the using governmental unit. The contract further provided the Board with all of its common law, equitable, and statutory rights of set-off. The contract contains a waiver provision.

The Board advised the contractor that the total quantity of purchases under this contract was not known and made no guaranty that it would buy any specified item or total amount. The initial contract was to be for one year with a maximum of four (4) one year renewals available at the sole discretion of the State.

On August 20, 2010, the Board issued Amendment #1 to the solicitation, which contained several important terms that superseded or clarified the original solicitation. The amendment provided that “end users will only process their Purchase Orders through the SAM, not purchase from the SAM. Purchase orders can be viewed as ‘pass through’.”

Further, the amendment clearly states that it will not be mandatory for all agencies to order items 1-8 on page 20 of the solicitation through the SAM. This clearly contradicts New Venue’s contention that all state software was to be ordered through the SAM. It is clear that only certain software contracts were initially to be part of the SAM and that New Venue understood the scope of the contract. During the term of the contract, New Venue never provided any services outside the identified state contracts for software identified by the Board.

In Section 3.1 of its proposal, New Venue provided a project management plan, which provided *inter alia*, “Project Managers will be required to provide weekly project status reports to all stakeholders”. There is no evidence that any such reports were provided. The section also indicates that “The Program Manager will provide executive level status updates twice a month.” There is no evidence that this promise was fulfilled. Likewise, there is no evidence that the proposed implementation schedule was fulfilled. New Venue advised the Board that it did not plan to outsource services and agreed to obtain approval from the Board prior to outsourcing any subcontracts.

In Section 3.4 of its proposal, New Venue explained how it would operate a live site. None of the activities described ever occurred and there was never training offered to potential users of a live site nor was a live site made active.

In Section 3.4.8 of the proposal, New Venue indicated that it could provide backup copies of the software by placing the code in escrow. There is no evidence that any code was ever placed in escrow.

The Board awarded the contract with a start date of February 15, 2011. The Board was able and willing to perform all of its obligations at that time. As New Venue and all proposers had been advised, the contract was to work with existing state contract providers for certain software including Microsoft, Citrix and Symantec and Microsoft EES as well as IBM Middleware through another contract. As the pass through, New Venue was to collect and place orders with the State's resellers, then bill and collect from the using entities.

New Venue was obliged to remit the funds collected from the using entities to the resellers within three days of receipt of payment from the using entities. Unfortunately, New Venue was unable to establish credit and open accounts to provide this service. It was unable to fulfill its contractual obligations through no fault of the Board's¹. This was an initial breach of the contract.

In an effort to provide the SAM an opportunity to successfully perform its contractual obligations, an effort that the Board made repeatedly throughout the duration of the contract; the Board cancelled existing state contracts for convenience and re-solicited those contracts to compel the new state contract resellers to do business with New Venue. Re-Soliciting the state

¹ The state contract resellers would not do business or open accounts with New Venue based upon their assessment of New Venue's creditworthiness. Their concerns proved prescient. Because New Venue could not open these accounts and the existing state contracts did not compel the contractors to use the SAM, New Venue was unable to take or process orders.

contract cost the Board monies, time and inconvenience. The requirement that new contractors deal with and through New Venue added cost including the administrative fee to New Venue as well as a lower discount structure for the Board as well as other users. These costs were added by the resellers apparently as consideration for the accommodation of the resellers doing business with New Venue.

Just a few months into the contract, New Venue complained that it needed money as it was expending monies to fulfill its obligations and receiving no revenue. In a voluntary effort to assist a small minority contractor, the Board issued Change Order #1 on March 2, 2011 in an effort to add value added options to the contract to enable New Venue to generate revenue during the period of contract resolicitation. On August 2, 2011 in a further effort to assist New Venue, the Board issued Change Order #2. This change order deferred the requirements regarding remittance of the Administrative fee to ITMO which allowed New Venue to retain funds to be paid to the Board for one year, interest free. Once again, this was a gratuitous accommodation made by the Board to New Venue.

Unfortunately despite these and other accommodations by the Board, New Venue utterly failed to perform its obligations under the contract. During the following two years, Board representatives spent an inordinate amount of time dealing with difficulties arising solely from New Venue's actions and inactions. There were repeated complaints that New Venue was not paying the resellers as scheduled. The MySam application was never active. No single state employee was ever able to log into the system over the web and view data as promised by New Venue's contract. New Venue never delivered progress reports. Each inquiry by the Board was met with excuses and explanations, which upon examination, proved largely untrue. New Venue's owner frequently attributed any problems to a mistake by an inadequately trained New

Venue employee. While advising the Board that it was fixing its operation it has become apparent that New Venue simply got further and further behind in its payments to vendors while falsely assuring the Board that it was making payments on time and in conformity with the contractual requirements. Board employees spent considerable time and effort offering and providing assistance of all kinds to New Venue in efforts to make them successful in this endeavor. Despite those efforts, New Venue's performance failed to improve.

The contract was to operate as follows:

Under the agreement, a State agency or political subdivision, referred to in the contract as a public procurement unit (PPU), desiring to buy software from one of the participating statewide term contract software resellers would issue an order to New Venue. Those software resellers were CompuCom Systems, SHI International Corporation, Mythics, Inc., Advantec Global Services, IBM, CDW-G and En Pointe Technologies Sales Inc. New Venue logged the PPU order information and then submitted the order to the software reseller by the next business day (Item 6, Record of Negotiations). The software reseller processed the order and delivered the software to the PPU. The software reseller was responsible for sending software licensing and other relevant information to New Venue. New Venue recorded the information. Upon acceptance of the receipt of the order, the PPU submitted payment to New Venue. New Venue retained an administrative fee and forwarded the remainder of the payment to the software vendor within 3 business days (Item 7, Record of Negotiations). See Attachment B, Software Acquisition Manager (SAM) Business Process/Workflow, a flowchart document provided as part of the Record of Negotiations. Other deliverables of the contract included a web-based application system for the SAM services.

On several occasions Board employees received information that New Venue was severely delinquent making payments to state contract resellers. The Board transmitted these concerns to New Venue. Responding to the Board's concerns relating to its performance, on December 17, 2012 New Venue tendered a document captioned "Process Improvement Plan & Strategy, v1.0. This document analyzed New Venue's opinion of the factors causing New Venue's failure to adequately perform the contract. Nowhere in that document does New Venue allege or identify any failures by the Board in its performance. Despite its alleged implementation of this process, there were no material improvements in New Venue's performance of its contract with the Board.

On January 28, 2013 the Board issued a show cause letter requiring a response by January 31, 2013. Despite this deadline, New Venue failed to respond until February 19, 2013. Once again, in this document New Venue failed to make any claim that the Board had in any way failed to live up to its obligations. To the contrary, New Venue wrote Ms. Hall:

I would like to express our deepest appreciation to you and Debbie Lemmon for truly helping us get this situation resolved. It has been a long road, but we did not travel it alone – the State of South Carolina has been there to help us identify our gaps and close them quickly. Without your constant support, guidance, accountability and oversight, it's very unlikely that we could have turned this situation around as quickly as we have. We are grateful.

Unfortunately despite New Venue's representations to the contrary, the situation was not resolved. New Venue continued to fall further and further behind on payments to resellers and failed to deliver as promised in its proposal and the Record of Negotiations.

On September 30, 2013, the Board tendered New Venue a notice of default. On October 8, 2013, the Board terminated the contract for cause.

New Venue failed to meet its post termination obligations. New Venue was required to tender the data, provide the code for the SAM application and provide the Board with an enumerated list of items relating to the contract. It provided nothing.

Every occasion there was a problem with its performance of the contract New Venue had an excuse or explanation and largely blamed its employees or the accuracy of the reseller's records. However, the data reveals that instead of the claimed internal business difficulties resulting in delay or discrepancy, it seems that New Venue's owners applied substantial sums of the pass through monies to their own use.

This conclusion is based upon the fact that as of October 15, 2013, state contract software resellers reported that New Venue owed them substantial monies. The Board later verified the existence of \$2,702,511.26 in outstanding invoices owed by New Venue for software sales which the participating PPU's had already paid. At that same time, New Venue had just over \$40,000 dollars in the business accounts represented to the Board as all of its operating accounts. New Venue had invoiced and received payments for these sums including administrative fees, but had not passed those payments through to the resellers.

Particularly troubling was a letter Norma Hall, State Information Technology Procurement Officer, received from Mr. Earl Fajikus, Senior Credit Operations Manager of CompuCom Systems. In this letter dated September 27, 2013, addressed to Mr. Earl Fajikus, bearing the signature of Terris Riley of New Venue, New Venue admitted to owing CompuCom over \$2.5 million. The letter states, "In essence, we were paying CompuCom's older invoices as quickly as possible as we continued pursuing financing and other contracts. To date, New Venue Technologies, Inc. owes approximately \$2.5M." The letter proposed a repayment schedule for

an outstanding balance of \$2,591,189.17 to CompuCom with the first payment to be made on October 1, 2013, in the amount of \$40,000. New Venue paid CompuCom \$40,000 on that day.

Additional investigation revealed that New Venue never paid state contract resellers sums due. Upon this realization, the Board was able to setoff over six hundred sixty six thousand dollars and by doing so reduced the amounts owed as follows:

	Amount Outstanding	Less: Stop Payments	Amount
Software Vendors	by NewVenue to Software Vendors	to NewVenue Made by PPUs	Due Software Vendors by NewVenue
CompuCom	\$ 2,665,684.49	\$ 614,669.45	\$ 2,051,015.04
SHI	\$ 462,981.63	\$ 11,245.92	\$ 451,735.71
Enpointe	\$ 316.11	\$ -	\$ 316.11
Mythics	\$ 173,080.59	\$ -	\$ 173,080.59
CDWG	\$ 26,363.81	\$ -	\$ 26,363.81
Advantec	\$ 40,606.50	\$ 40,606.50	\$ -
IBM	\$ -	\$ -	\$ -
	\$ 3,369,033.13	\$ 666,521.87	\$ 2,702,511.26

The Board is informed and believes that New Venue still owes these amounts to the contractors listed.

As the situation developed, the Board availed itself of its statutory and contractual rights to inspect New Venue’s records. New Venue failed to comply with its contractual obligations and state law by providing the requested records and information. The records purportedly provided were woefully inadequate for any party to determine what New Venue’s operations involved.

It appears likely that New Venue’s principals converted these sums to their own use and diverted the payments from the PPUs that were to be passed through to the resellers. New Venue regularly acknowledged that this contract was its only substantial contract².

² New Venue wrote to Norma Hall, “The State of South Carolina is our biggest customer and the revenue we earn from this contract is what sustains our Company”

New Venue's records revealed numerous expenditures that did not appear to be related to the business nor within the means of the business being done. For example, more than \$860,000.00 dollars was spent on the purchase of land and construction of a home in the names of Terris and Jacque Riley. New Venue made church donations in excess of \$165,000.00. More than \$600,000.00 was withdrawn from Company accounts in the form of cash. New Venue transmitted almost \$50,000.00 for purchases using PayPal. Substantial corporate funds were expended on cruises, air travel and resort services. New Venue's principals also used debit cards on the company accounts for Christmas shopping, food, fuel and other obvious personal expenses.

The evidence in the record is clear and compelling. New Venue did not adequately fulfill any of its contractual obligations. It never alleged any breach by the Board until after the contract was cancelled. At that point, in a transparent attempt to justify its failures, New Venue filed this contract controversy attempting to completely recast the contract and allege performance where it failed. New Venue will not be able to adduce evidence either that the Board failed to meet its obligations or that New Venue met any of the obligations incumbent upon it pursuant to the contract.

II. Issues Presented

a. The Board has not breached its contract with New Venue

In both its pleading and its pre-hearing brief New Venue makes factually unsupported conclusory statements which purport that New Venue was entitled to a percentage of all software purchases made by “the State”. In doing so, they conveniently ignore the express language of the contract. The solicitation was amended by Amendment #1. That amendment clearly stated that not all software purchases were to be covered by the contract in answers 5, 6, 17, 24, 25, 26, 27 and others. It is also interesting to note that the SAM never asserted that it was to provide services for software other than the specific state contracts utilized. Moreover, the SAM never provided the solution that would have enabled the contracted-for tracking to occur.

i. New Venue's contemporaneous admissions

Significantly, New Venue made numerous contemporaneous statements in e-mail, reports and correspondence where it clearly indicated that the Board was in compliance with its contractual obligations and was providing exceptional assistance to New Venue in helping New Venue comply with its own obligations. While New Venue complained of a slow start to sales, it clearly understood and acknowledged that the failure to receive early sales and revenues was a function of the existing state contracts and those vendors' rights. New Venue expressed appreciation at the Board's timely cancellation and resolicitation of the contracts in order to mandate that the resellers did business with New Venue. The record will clearly reflect that the Board made herculean efforts to assist New Venue with obtaining business and revenue from the time of New Venue's complaint about difficulties onward. The Board operated in the utmost good faith.

ii. New Venue did not contract for and had no right to guaranteed revenue.

Throughout the contract controversy process New Venue has claimed an entitlement to immediate revenue from the outset of the contract. The contract simply did not provide for immediate revenue to fall into New Venue's bank account. New Venue, like all Board contractors, represents in submitting a proposal that it has the ability to perform the contract. This ability includes sufficient working capital for startup expenses. The record of negotiations clearly expresses that the software solution was to be developed and delivered before the revenue stream commenced from fees. The stated contract value over 5 years was \$1,000,000.00 dollars. New Venue's proposal reflected a cost of over \$715,000.00 over that same five- year term. Under that scenario, it could only expect a gross profit over five years of about \$285,000.00 or just over \$55,000.00 per year. New Venue's claims that the Board breached the contract and "deprived it of revenue that it relied on and needed to perform the contract" is nothing but a specious claim.

iii. The Board properly terminated the contract

A review of the timeline and transgressions of New Venue demonstrates that if anything, the Board waited far too long to either non-renew or terminate the contract. When problems first arose in 2012, it appears that the Board's cancellation of the contract at that time would have resulted in possibly one-half of the current vendor losses and damages to everyone involved. New Venue never delivered the live site software solution that it contracted to provide in May of 2011. It has failed to deliver any evidence of developed software or working code in fulfillment of its post contract obligations to the Board that required New Venue to deliver all software and

data to the Board upon contract termination. Because of the financial improprieties and failure by New Venue to deliver the solution that was the very essence of the contract, termination was required.

iv. *New Venue has offered no evidence that the Board added requirements to the contract*

New Venue alleges that the Board added requirements to the contract that constitute a breach of the contract. The solicitation, as amended, afforded the Board liberal rights to modify the contract. Based upon that factor alone, New Venue has no claim of breach. Furthermore, had the alleged requirements affected cost, the contract provided a mechanism for New Venue to recover funds or additional expenses incurred as a result of any contract change. New Venue failed to pursue this administrative remedy. However, the simple fact is that the documented changes to the contract did not impose any additional requirements upon New Venue. Quite to the contrary, the change orders inured to New Venue's benefit.

New Venue is unable to offer any evidence to support its multiple claims of breach of the contract by the State. Its claims are built upon a foundation of contrived, disingenuous out of context construction of the contract coupled with defensive and misleading allegations of misconduct by dedicated state employees. These are allegations made by a contractor who never delivered the first part of the software solution that it contracted to provide and failed miserably to fulfill its contractual obligations; so much so, that at the termination of the contract after barely 30 months, it could not account for nearly three million dollars which had been paid to it under the contract which it had an obligation to forward to resellers under the contract. Instead,

it appears that New Venue's owners misappropriated these funds and converted the funds to their personal use.

New Venue will fail to prove its claims to the CPO and the CPO should strongly consider the fact that New Venue makes its claims without basis in fact or law, for the apparent purpose of attempting to stave off and deflect from its owners' more nefarious conduct. The CPO should dismiss New Venue's claims with prejudice.

b. New Venue breached its contract with the State

i. New Venue failed to deliver the promised software solution

New Venue proposed and promised to deliver a web-based application to be accessed by the Board and PPU's as a way to monitor and manage software licenses. This was the fundamental purpose of the Solicitation and contract. The application was to be an integral component of the contract as demonstrated by the scope described in the solicitation. The Application was to be delivered in two phases according to the Record of Negotiations. New Venue was to deliver the first feature set during February 2011 and the application was to be fully up and running in May 2011. The MySam Central application was to provide for online submission of software orders through a secure login and validation of software costs against contract prices. The product was required to support encrypted communications, deliver maintenance notifications on software inventory uploaded or ordered through the application and incorporate multiple web reporting tools to do so. The application was intended to help the State of South Carolina and political subdivisions save money by taking advantage of volume discounts for software purchases, allowing a real time review of software license inventories and the ability to avoid fines for license issues. The application was never live or accessible online.

New Venue never delivered an operating system, no state employee was ever able to log on or use any feature of the promised system and the Board received no value for its payments. Ultimately, MySAM was never fully available for use nor is there any evidence to suggest that New Venue ever delivered a working application. New Venue collected administrative fees for allegedly developing and delivering a software package it failed to produce to the State. New Venue defaulted in performing its contract. The Board is entitled to recover the administrative fees paid to New Venue for the software development as well as to a judgment for damages reflecting the cost to the Board to obtain the required product, recreate the data that was to be collected and the additional costs incurred because of the defalcation.

ii. New Venue failed to timely transmit state purchases

The contract required New Venue to transmit purchase orders from the PPUs to resellers. The Record of Negotiations provides that all orders are processed the next business day. For orders received after 5:00 P.M. the order will be processed within the next 2 business days. The evidence will reflect that New Venue failed to transmit orders at times for periods of months. It will further reflect that on a number of occasions, New Venue actually invoiced the PPU and received payment prior to transmitting the purchaser order to the reseller. These failures to timely transmit purchase orders in compliance with the contract constituted breaches of the contract with the Board.

iii. New Venue failed to make timely payments

The contract required New Venue to pass through payments to the software resellers within three (3) business days of receipt of payment. This was a critical function of the contract

and timeliness was important to the Board for numerous reasons, particularly as the resellers were also under state contract and subject to time requirements for their performance of many functions.

The evidence will reveal that, as of October 2013 the average time for New Venue's transmission of these pass through payments to the software resellers, from the time it deposited PPU funds into its accounts until the software resellers was paid, equaled 50 days for CompuCom, 61 days for Advantec, 51 days for SHI and 45 days for Mythics. The evidence will reflect that the last payments to CompuCom, the largest vendor, took more than an average of 120 days. Obviously, the time of payment continues to accrue on the unpaid balance to CompuCom and the other resellers of more than two million dollars.

New Venue repeatedly breached its contractual obligations by failing to make the required pass through payments in a timely manner. It ultimately failed to pass through more than 2.7 million dollars in payments transmitted to it by the PPUs.

New Venue used these funds for its own purposes during the delay in tendering the payments and ultimately misappropriated these pass through funds for its use or the personal use of its owners.

iv. New Venue acted to deceive the Board and Vendors in breaching the contract

Implicit in all contract law and in the Consolidated Procurement Code is the covenant of good faith and fair dealing. The evidence will demonstrate that New Venue through its representatives, primarily Terris Riley, engaged in a pattern of deception and misrepresentation regarding New Venue's performance of its contractual obligations. For example, New Venue

submitted reports to the Board and Vendors where it stated that certain state accounts were delinquent and “in collections” when New Venue had received payment for the purchase orders in question. New Venue appears to have regularly misrepresented its staffing, operations and the status of the contract. When confronted about payments not being made, New Venue provided the Board and vendors false information claiming that accounting mistakes were the reasons for delay in the payment. The records demonstrate that the reason that monies were not being paid was because New Venue was spending the funds being tendered by the PPU's for pass-through to the vendors.

New Venue had a legal right to retain no more than 2.5% of the monies received. It had a legal contractual obligation to remit the remaining 97.5% to the appropriate reseller within 3 days of receiving the funds. Instead, the evidence will show that New Venue used monies that it was obligated to remit for its own purposes and to unjustly enrich its owners.

New Venue repeatedly made material false representations to the Board and vendors, intending for those parties to rely upon its false statements to conceal its misuse of pass through funds and the conversion of those funds to the use of New Venue's owners Terris and Jacque Riley.

The evidence will demonstrate that New Venue's conduct was not only fraudulent, but breached the parties' contract in myriad ways.

v. New Venue never paid more than 2.5 million dollars remitted by the PPU's that it was obligated to “Pass Through” to the resellers

The records demonstrate that in October 2013 New Venue owed more than 2.7 million pass through dollars to state contract resellers. These debts reflected PPU funds that were

deposited into New Venue accounts and never tendered to the resellers. New Venue's owner, Terris Riley, admitted owing CompuCom more than 2.5 million dollars.

vi. New Venue underreported administrative fees due to the Board and failed to make timely and proper remittance of administrative fees.

The records from the Board and vendors reflect that New Venue underreported its sales under the contract to the Board by approximately seven (\$7,000,000.00) million dollars and failed to remit administrative fee commensurate with this sum to the Board. The evidence will also show that New Venue was untimely in reporting and remitting the administrative fees it did remit to the Board in violation of the contract.

vii. New Venue failed to provide agreed upon end of contract information and materials.

Since the termination of the contract, New Venue has failed to provide any of the materials to the Board that it was required to tender at contract termination. The Board has requested this information and received no response from New Venue. This is a direct violation of the contract.

viii. New Venue failed to cooperate with the audit initiated by the Board.

New Venue was asked to provide documents pursuant to the contract for an audit. New Venue failed to provide documentation and failed to cooperate with the audit. As a result, the Board was forced to go to extreme lengths to obtain information necessary to perform the audit at great and excess expense. New Venue is liable to the Board for its additional costs and

expenses incurred in obtaining records that New Venue failed to produce as required by the contract and applicable law.

c. The Board has suffered damages

At the hearing, the Board anticipates proving and asking for an award of damages in the following categories:

- User fees due the Board that were not remitted.
- The substantial sums that the Board will be forced to expend to replicate the online software acquisition manager and missing data collection which was not completed, delivered of, or provided by New Venue as it relates to the contract.
- Sums paid to New Venue as Administrative Fees for services not delivered.
- Excess audit costs incurred by the Board due to New Venue's failure to deliver information as required by the contract and statute.

CONCLUSION

New Venue Technologies, Inc. abjectly failed to perform its obligations under the state contract. It failed to deliver the promised web based solution to the Board and it failed to fulfill its contractual obligations in ordering, tracking, billing and completing payment for applicable state contract software. New Venue failed to properly account for and remit pass through payments to state contract vendors as the contract required. It failed to properly report and pay administrative fees to the Board as required by the contract. New Venue also failed to deliver the information to ITMO required upon contract termination. These failures occurred in spite of

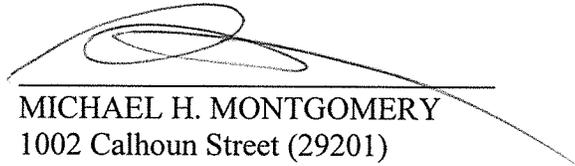
the Board's efforts to assist New Venue and the Board's strict fulfillment of its contractual obligations to New Venue.

The CPO should dismiss New Venue's claims against the Board and should award the Budget and Control Board a judgment against New Venue for the damages to the Board proven during the hearing.

The CPO should further grant the Board's motion to dismiss and clarify the record to reflect that the only parties to this contract controversy are the Budget and Control Board and New Venue Technologies as New Venue never filed a contract controversy claim against any entity other than the Board.

Respectfully Submitted,

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