

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

JIM ZEIGLER, in his official )  
 capacity as State Auditor )  
 and individually and )  
 on behalf of a class of )  
 all taxpayers whose taxes are )  
 funding payment for the illegal )  
 STAARS Contract and the )  
 Amendments thereto, )

Plaintiffs, )

vs. )

ROBERT J. BENTLEY, in his )  
 official capacity as Governor )  
 of the State of Alabama, )  
 BILL NEWTON, in his capacity as )  
 Acting Director of Finance for )  
 the State of Alabama, LUTHER )  
 STRANGE, in his official )  
 capacity as Attorney General of )  
 the State of Alabama, and CGI )  
 Technology and Solutions, Inc., )

Defendants. )

**COMPLAINT**

PARTIES

1. Jim Zeigler is over the age of 19 and is a resident of the State of Alabama. Zeigler brings this action in his official capacity as the Alabama State Auditor. Zeigler has standing to bring this action as his office is invoiced quarterly to pay for its cost of the STAARS Contract and the amendments thereto. Zeigler also brings

this case individually and on behalf of a class of all taxpayers whose taxes are funding payment of the illegal STAARS Contract and the amendments thereto. Zeigler has standing to bring this action in his individual capacity pursuant to §41-16-31, Code of Alabama 1975.

2. Robert J. Bentley is over the age of 19 and is a resident of the State of Alabama. He is being sued in his official capacity as the Governor of the State of Alabama.
3. Bill Newton is over the age of 19 and is a resident of the State of Alabama. He is being sued in his official capacity as the Acting Finance Director for the State of Alabama.
4. Luther Strange is over the age of 19 and is a resident of the State of Alabama. He is being sued in his official capacity as the Attorney General of the State of Alabama.
5. CGI Technology and Solutions, Inc. is a Virginia corporation which does business in the State of Alabama.

#### CLASS ACTION ALLEGATIONS

6. The Plaintiff brings this action in his official capacity as State Auditor. He also brings this action

individually and as a class action under Rule 23, Ala. R. Civ. P.

7. The Class is defined as all taxpayers of the State of Alabama whose taxes are funding payment for the illegal STAARS contract and the amendments thereto.
8. The Plaintiff seeks to be appointed as the class representative.
9. The exact size of the class is not known but Plaintiffs estimates that there are hundreds of thousands, if not millions, who meet the definition of the class.
10. The members of the class are sufficiently numerous in that joinder of all members is impractical.
11. Common questions of law exist.
12. The interest of the class will be fairly and adequately protected. The interests of the Plaintiff are consistent with those members of the class.
13. The class will be represented by experienced and able counsel knowledgeable with respect to Class Actions, and who have represented Plaintiff Classes on numerous occasions.
14. Certification of a class is appropriate under the provisions of Rule 23(b)(1), Ala. R. Civ. P., as the

prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the parties opposing the classes, or adjudication with respect to individual members of the class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impeded their ability to protect their interests.

15. Certification of the class is also appropriate under the provisions of Rule 23(b)(2), Ala. R. Civ. P., in that the Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with regard to the class as a whole.

16. Plaintiff seeks to be designated as the representative of the class with J. Doyle Fuller, Susan G. Copeland, Andrew P. Campbell, John Guin, and Yawanna McDonald as class counsel.

FACTUAL ALLEGATIONS

17. On September 20, 1982, the Alabama Department of Finance was granted a license by American Management Systems, Inc. to install the Local Government Financial System Package for the "OS on-line CICS version, Fixed Assets, Performance measurement, and Investment management" on four (4) computers. The software license was for a period of fifteen (15) years. The contract provided that the license could be renewed for an additional fifteen years upon notification to American Management Systems prior to the end of the month preceding the month in which the license ends. The license could be renewed again with American Management System's approval for one more additional fifteen year term. However, the license is limited to two additional renewal terms.
18. The maintenance contract was for a period of twelve (12) months and could be renewed yearly. The maintenance contract was renewed yearly until 1994 when the State and American Management Systems, Inc. entered into Amendment 10 to the 1982 contract.
19. The 1982 contract was competitively bid. In 1982, contracts for personal property and contractual services

had to be competitively bid and these types of contracts could not exceed one year. However, at that time, the Alabama Supreme Court had determined that software is not tangible personal property. *State v. Central Computing Services, Inc.*, 349 So. 2d 1160 (Ala. 1977). However, prior to the end of the initial term of the 1982 contract, the Alabama Supreme Court overruled *Central Computing Services* and held that computer software was tangible personal property. Thus, after 1996, contracts for the purchase of computer software would be subject to the competitive bid law. In 1990, the Competitive Bid Law was amended so that contracts for personal property and contractual services that are competitively bid could not exceed a period of three years. In 2006, the law was further amended to all so that contracts for personal property and contractual services that are competitively bid could not exceed five years. However, current "contracts existing on February 28, 2006, may be extended or renewed for an additional two years with a 90-day notice of such extension or renewal given to the Legislative Council."

20. In 2004, GCI Technology and Solutions, Inc.

(hereinafter CGI) acquired American Management Systems, Inc.

21. Sometime during the administration of Governor Bob

Riley, the Finance Department began an "effort to transform government through the design, development and implementation of an ERP (Enterprise Resource Planning) solution." In a May 20, 2008 memorandum from Robert Childree, the State Comptroller, to "ERP Vendors, System Integrators and Associated Interested Vendors," Childree wrote that "The Steering Committee has been advised by legal counsel that the law in Alabama requires the use of a competitive bid process for the procurement of software when acquiring an 'off-the-shelf' product." Childree emphasized that the State's goal was to purchase an "off-the-shelf" software program. He stated that as soon as the software program was acquired by the State through a "competitive bid process," the State would release a Request for Proposal "for implementation services related to the further development and implementation of the ERP solution." On information and

belief, acquisition of an ERP solution was not accomplished during the Riley administration.

22. Robert Bentley took office in January of 2011. On November 1, 2012, the State and CGI entered into a purported Amendment 11 of the 1982 contract with GCI, formerly American Management Systems, Inc. This was the time the 1982 Contract had been amended since 1994. The American Management license expired by its own terms in 1997 if it was not renewed before its expiration. The American Management maintenance contract was not renewed after 1994 and before 1997. Thus, the 1982 Contract was fully executed, at the latest by 1997.

23. The purported amendment to the 1982 Contract was signed by Assistant Finance Director Rex McDowell. Paragraph 2 of the Amendment states: "License, Term of License. The license terms for Advantage 2 Software is hereby extended fifteen (15) years. This terms expires September 30, 2027."

24. On January 1, 2013, GCI and the State entered into Amendment 12 which states that in 1982, a contract was entered into by the parties for "a group of CGI products collectively described as the 'Packaged System.'" "

Paragraph 2 of the Amendment states that "The State may contract with CGI for other enhancements to the components of the Packaged System and for Advantage-related services for the installation, implementation, and maintenance thereof by entering into one or more mutually agreed upon statement(s) of work identifying the enhancements and the services to be performed and specifying the terms and conditions governing performance and payment."

25. On September 30, 2013, CGI and the State entered into Amendment 13 to 1982 Contract. Since that time the 1982 Contract had purportedly been amended an additional four times. None of the purported amendments have been competitively bid.

26. According to [staars.alabama.gov](http://staars.alabama.gov), "In December of 2013, the State of Alabama embarked on a project that will implement a single software solution to modernize the State's accounting, procurement, personnel, payroll, budget and reporting functions across all state agencies. The first challenge was to name this new system. After a lively naming contest, the system was named State of Alabama Accounting and Resource System (STAARS). STAARS is

based on CGI's Advantage ERP software, which is designed and built specifically for state and local governments."

27. Under the frequently asked questions section of [staars.alabama.gov](http://staars.alabama.gov), the question is asked "Why is the State implementing a new system?" The answer provided in response to this question is as follows:

"The State's current Central Accounting System (CAS) and many of the agency accounting systems were implemented over 20 years ago. The current mainframe software is no longer supported by CGI, which means it is at risk in the event of a catastrophe or large-scale system failure. Our current processes are also inefficient and costly to the State of Alabama. Based on these concerns, the Governor decided that a new state-wide software platform was the best solution to reduce risks and cost. His decision to replace aging systems and improve processes was supported by feedback from many accounting, budgeting, and information technology professionals as well as a large number of agencies."

28. Upon information and belief, the cost of the STAARS system is approximately \$47,000,000. The cost is allegedly prorated among all the state departments and agencies that use the STAARS system. The Department of Finance invoices each of these departments and agencies quarterly for their prorated shares.

29. Upon information and belief, the STAARS Contracts for the purchase of the ERP software with CGI were signed by the Governor and the Acting Finance Director.

## COUNT ONE - DECLARATORY JUDGMENT

30. Plaintiff hereby incorporates and restates all allegations set forth above as though set forth in full herein.
31. A justiciable controversy exists between the Plaintiffs and the Defendants with regard to the parties' rights, duties and liabilities by virtue of §41-16-20, Code of Alabama 1975.
32. Section 41-16-20 provides that,
- With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, **all contracts of whatever nature for labor, services, work, or for the purchase of materials, equipments, supplies, other personal property or other nonprofessional services, involving fifteen thousand dollars (\$15,000) or more, made by or on behalf of any state department, board, bureau, commission, committee, institution, corporation, authority, or office shall, except as provided in this article, be let by free and open competitive bidding on sealed bids, to the lowest responsible bidder.**
33. It is undisputed that the STAARS contract and the amendments thereto were entered into by the State of Alabama with GCI without following the requirements of the Competitive Bid Law.
34. The Competitive Bid law in Alabama was enacted for the benefit of the public.

35. A contract that violates the Competitive Bid law is void. Ala. Code, §41-16-77 (1975).

36. The Attorney General is the Chief Law Enforcement Officer of the State of Alabama and has failed to enforce the Competitive Bid Law with regard to the STAARS Contract and the amendments thereto.

COUNT TWO - RESCISSION, RESTITUTION

37. Plaintiff hereby incorporates and restates all allegations set forth above as though set forth in full herein.

38. Because the STAARS Contract and the amendments thereto violate the Competitive Bid Law and are void, the Plaintiff seeks rescission of the contracts.

39. Upon information and belief, the parties knew full well the requirements of the Competitive Bid Law when they entered into the STAARS contract and the amendments thereto and they had been advised the Competitive Bid Law had to be followed when purchasing ERP software. Instead, the parties chose to enter into the STAARS Contract and the amendments thereto despite legal advice to the contrary.

40. In addition, the Plaintiff seeks restitution from GCI of all amounts paid to it for the cost of the STAARS Contract and any amendments thereto.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays this Court to take jurisdiction of this cause, and upon final hearing to:

- 1) Declare the rights, duties, and liabilities of the parties;
- 2) Certify this as a Class Action under Rule 23, Ala. R. Civ. P.;
- 3) Declare that the STAARS Contract and the amendments thereto violate the Competitive Bid Law and is void *ab initio*;
- 4) Enjoin the further execution of the STAARS Contract and the amendments thereto;
- 5) Enjoin the Director of Finance from collecting payments from all State Departments and Agencies for the costs of the STAARS Contract and the amendments thereto;
- 6) Order the Governor and the Finance Department to rescind the STAARS Contract and the amendments thereto;
- 7) Order CGI to pay restitution to the State of Alabama for all moneys that have been paid by the State of Alabama

for the cost of the STAARS Contract and the amendments thereto;

8) Award to the classes and their counsel such attorney fees and costs as may be appropriate in this case; and

9) Enter such orders, judgments, and decrees as may be necessary and proper to give effect to the rights, duties, and liabilities of the parties as determined and declared by the Court.

Respectfully submitted this the 21<sup>st</sup> day of July, 2016.

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