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Indiana wants \$1.3B from IBM in welfare contract suit

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The Associated Press

INDIANAPOLIS - Indiana and its former partner in welfare privatization, IBM Corp. (NYSE: IBM), sued each other Thursday over the technology giant's canceled 10-year, \$1.34 billion contract to automate the state's intake for food stamps, Medicaid and other benefits.

Both lawsuits were filed in Marion County Superior Court.

In its lawsuit, the Indiana Family and Social Services Administration is seeking to recover the \$437.6 million it paid IBM through Jan. 31, plus the costs of any third-party lawsuits, federal penalties, and state employee overtime that it incurs as a result of its association with the Armonk, N.Y.-based company.

The state is seeking triple damages, or more than \$1.3 billion, as it's entitled to do under state law. It accused IBM of intentionally denying benefits to clients to make its performance appear better and giving the state agency false and misleading information.

"IBM's performance was in breach of the (contract) from the start - indeed, IBM does not appear to have ever intended to comply with its performance standards," Indiana's lawsuit states.

The FSSA wants a request by IBM for \$85.4 million in cancellation penalties, which it is entitled to under the terms of the contract, thrown out as unenforceable under state law.

IBM spokesman Clint Roswell called the state's allegations unfounded and said the contracting process was flawed from the start because of the FSSA failed to allow for the economic downturn that added thousands to Indiana's welfare rolls.

"This was never smooth sailing from the beginning," Roswell said in a telephone interview. "There were a number of assumptions made by the state in setting up this contract. One of them was that the economy would not lag. Ha ha."

In its lawsuit, IBM contends the state owes it nearly \$53 million in fees and equipment expenses, plus interest, under the terms of the 2006 contract. Gov. Mitch Daniels cancelled the contract in October because he wasn't satisfied with its results.

The state's complaint revealed for the first time that the cost of the IBM contract had grown to \$1.37 billion under change orders submitted by IBM. The Associated Press reported in August that the original \$1.16 billion deal had grown to \$1.34 billion under amendments to the contract.

Indiana's lawsuit showed that it expects the U.S. Food and Nutrition Service to fine the FSSA \$1 million to \$2 million next month for making too many errors in calculating food stamp benefits.

On Wednesday, FSSA Secretary Anne Murphy told the State Budget Committee that the state had rejected some invoices submitted by IBM and had asked for the return of undisclosed amount of money.

"IBM's failure to help our most vulnerable Hoosiers and fix Indiana's welfare system set us back in time and money, for which we'd like compensation," Murphy said in a statement Thursday.

"Our new contractors are achieving far better results than either Indiana's previous system or the system IBM attempted to install. That is evidence the job of repair and reform could have been done much better," she said.

Murphy told the Budget Committee that IBM had collected \$2.64 million in disengagement costs from the state and federal government from December through March. She said she expected those payments to IBM, for items such as equipment and technology, would continue through the end of June.

IBM acknowledged the contract gave the state the right to cancel but also requires it to reimburse IBM for deferred fees and equipment costs. Its complaint said the full costs from its technology upgrade were deferred under the contract because Indiana wanted to spread out high upfront costs from the deal, one of the most expensive in state history.

"To date, the State has made no Deferred Fees payment to IBM," the company's lawsuit said.

After IBM's dismissal, the FSSA rolled out what it has called a "hybrid" welfare intake solution that adds more local case workers and face-to-face contact to supplement the call centers, document imaging and other technology that IBM introduced but left clients, their advocates and lawmakers complaining of improperly denied benefits, lost documents, dropped calls and other problems.

Murphy said the hybrid solution is working so well in 10 southwestern Indiana counties that she wants to

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expand it to the remaining 49 counties where welfare intake was automated by the end of the year and to the state's remaining 33 counties next year.

However, IBM said the hybrid's use of the company's technology, infrastructure, applications, automated processes and systems underscored "IBM's contributions to an improved welfare eligibility system in the State."

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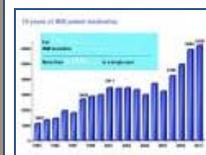
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