

BOARD OF COUNTY COMMISSIONERS, PASCO COUNTY, FLORIDA

**ADDENDUM  
TO  
AGENDA**

January 12, 2010

10:00 a.m. - Historic Pasco County Courthouse, Board Room, 2<sup>nd</sup> Floor  
37918 Meridian Avenue, Dade City, Florida 33525

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COUNTY COMMISSIONERS

Chairman Pat Mulieri, Ed.D., District 2  
Vice-Chairman Michael Cox, CFP<sup>®</sup>, District 4  
Ted J. Schrader, District 1  
Ann Hildebrand, District 3  
Jack Mariano, District 5

John J. Gallagher, County Administrator  
Jeffrey N. Steinsnyder, County Attorney  
Paula S. O'Neil, Clerk & Comptroller

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Regular:

Office of Management and Budget

Notice to Stop Work - Cogsdale Corporation - Customer Care & Billing Software (CCBS)  
Memorandum OMB10-10080  
Recommendation: Approve  
Comm. Dists. All

PASCO COUNTY, FLORIDA  
INTEROFFICE MEMORANDUM

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TO: Honorable Chairman and Members of the  
Board of County Commissioners

DATE: 1/08/10 FILE: OMB10-10080

SUBJECT: Cogsdale Corporation Notice to Stop  
Work and Proposed Contract Modification

FROM: Michael Nurrenbrock  
OMB Director

REFERENCES: All Commission Districts

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It is recommended the data herein presented be given formal consideration by the Board of County Commissioners.

DESCRIPTION AND CONDITIONS:

On December 22, 2009 a letter was sent to Cogsdale Corporation (CC) instructing them to stop work on the utility billing system also known as Customer Care & Billing Software (CCBS). A copy of that letter is attached for your reference. The major points of the letter include:

- CC's inability to meet several mutually agreed upon "go live" dates for a complete system.
- CC's inability to resolve ongoing and persistent operational issues.
- CC's inability to produce a complete and workable system that complies with the contract constitutes a material breach of the contract.
- On March 6, 2009 in an effort to impress upon CC the need to address these situations the County had issued a notice of default (copy attached) and had formally exercised our right to impose liquidated damages. CC had not resolved all of the issues outstanding at that time.
- CC had not produced, as promised, the latest "system build" by the agreed upon delivery date of December 15, 2009.
- Staff was prepared to recommend to the Board of County Commissioners to terminate the contract with CC.
- The County's request to meet with CC to work out an amicable resolution of the claims against CC related to the project.
- The County would be seeking reimbursement of all public funds previously paid to CC in connection with the CCBS project.

Yesterday, January 7, 2010, we met with two representatives from CC: Darren MacKay, Vice President of Professional Services and Duncan Shaw, Co-President. Mr. MacKay and Mr. Shaw represent two of the three partners who own CC. The County was represented at the meeting by OMB, Information Technology, County Attorney's Office, and Utilities. From our standpoint, as stated above, the County was interested in reaching an amicable resolution of the claims against CC related to the project. Mr. MacKay and Mr. Shaw asked for one last chance to deliver a system by April 1 of this year with all issues classified "high" and "normal" resolved. County representatives were very candid about our lack of confidence and our frustration with the various "software builds" or versions we had received for testing, the delays and missed deadlines, and our belief that we were stuck in a cycle that kept repeating with no perceptible forward progress. After several hours of discussion we took a short break so that both groups could discuss their options.

After the break Pasco County made the following proposal which would be formalized as an amendment to the current contract based on CC's commitment to finalize the Utility billing system by a date certain and in light of the additional delay and expense that the County could incur if it had to re-start the project with another vendor:

1. CC to deliver a fully functional final Phase 1A build that resolves all "High", "Normal", and "**Low**" issues and eliminates all "workarounds" by date certain. Date certain to be provided by CC after determining how much additional time they need to clear the "low" issues.
2. Once delivered, Pasco will have 30 days to test Phase 1A final build and determine if it is acceptable.
3. During the period between now and the end of the testing period, Pasco County is free, and CC shall not object, to the County exploring other utility billing software vendors and technologies to replace the CC solution.
4. If the new Phase 1A build is not delivered by the agreed upon date or if the new build is found to be not acceptable by Pasco County, Cogsdale will refund all payments made to Cogsdale in connection with this project, Pasco County will uninstall and return any software provided by Cogsdale, and the contract will be terminated with no further negotiation.
5. All other terms and conditions in the contract will remain in effect up to and during the testing period.

Pasco County's last payment to Cogsdale was over a year ago in December 2008. The amount Pasco County believes to be due if the contact were to be terminated would be \$1,226,829.80 (subject to verification).

I realize that there are several features members of the Board of County Commissioners have requested in recent years that would increase customer service and satisfaction with the utility billing process. Information Technology staff, in conjunction with contract services IT vendors, have provided the first of these by providing the option for customers to pay their Pasco utility bill online with a credit card. I have asked

Information Technology staff to provide a timetable to provide some of the other requested enhancements independent of the Cogsdale project. Here is their response:

The enhancements would be provided in the following order:

1. Add to the Credit Card Payment the online ability to request by the customer "turn on" and "turn off" services. 1 to 2 months available March 2010.
2. Collections module to improve collections on **delinquent** accounts with option to use outside service to collect on the \$1,000,000 in past due payments. 1 to 2 months available March 2010.
3. Over the counter and phone credit card payments, requires PCI Assessment for customer security, 4 months, estimated April 2010. Will require some contract service IT support.
4. Electronic statement option for customers. 7 to 8 months, estimated August 2010. Will require contract service IT support estimated at \$59,000.
5. "Round Up" option. 10 months, estimated November 2010. Will require contract service IT support, dollar value to be determined.

All of these items need to happen in order to ensure success.

#### ALTERNATIVES AND ANALYSIS:

1. Authorize the Chairman to sign an amendment to the existing contract with the conditions as proposed by Pasco County as outlined above.
2. Begin termination procedures as contained in the contract and begin proceedings to collect liquidated damages as provided.
3. Authorize staff to continue to negotiate a financial resolution to the termination.

#### RECOMMENDATION AND FUNDING:

OMB recommends the Board of County Commissioners approve option 1. No funds will be required for this option.

#### ATTACHMENTS:

1. March 6, 2009 Letter to Cogsdale, Notice of Default
2. December 22, 2009 Letter to Cogsdale, Notice to Stop Work
3. DRAFT Fifth Modification to the Agreement Between Pasco County and Cogsdale Corporation to Implement a Customer Care and Billing System



# PASCO COUNTY, FLORIDA

DADE CITY (352) 521-4274  
LAND O'LAKES (813) 996-7431  
NEW PORT RICHEY (727) 847-8129

OFFICE OF MANAGEMENT AND BUDGET  
WEST PASCO GOVERNMENT CENTER  
7530 LITTLE ROAD, SUITE 340  
NEW PORT RICHEY, FL 34654-5598

March 6, 2009

VIA HAND DELIVERY

Darren MacKay  
Vice President of Professional Services  
Cogsdale Corporation  
14 MacAleer Drive, Suite 5  
Charlottetown, PE, Canada C1E 2A1

Re: Cogsdale Contract with Pasco County, Florida:  
Notice of Default

Dear Mr. MacKay:

As you are aware, the County has for some time had serious concerns about the extended length of time it has been taking Cogsdale to provide the deliverables and to perform the work necessary to complete the implementation of the project agreed upon by the parties. The County in the past has modified the delivery milestones and schedule to address any change in the work plan or delays caused by the County's own actions and has even accelerated payments to Cogsdale to minimize any resulting impact on Cogsdale. Cogsdale's performance, however, has continued to lag behind and to fail to meet compliance with the Board approved schedule currently in effect. The delays in question have been both acknowledged and documented by Cogsdale itself in the Executive Committee Meeting documents and project meeting minutes it has provided to the County.

On several previous occasions throughout this contract process, Cogsdale has been advised both orally and in writing that these continuing delays are not acceptable to the County. In particular, the County's most recent requests for an increased work effort on Cogsdale's part including but not limited to, the dedication of additional resources to the project team have to date been rebuffed. Cogsdale's continued failure to comply with its contractual obligations and its ongoing unwillingness to provide a cure for its continued inability to both complete and proceed beyond Phase 1A of the overall project can no longer be ignored or tolerated by the County.

Y700 317

Page Two  
Darren MacKay  
March 6, 2009

The Agreement between the parties specifically includes an acknowledgement that time is of the essence in completing the work to be provided under the terms specified therein. In addition, as stated in the "Completion Schedule" section on page 7 of the Agreement between the parties, Cogsdale also specifically agreed to perform all its duties and obligations within the timeframe defined in the Agreement. More particularly, this section further provides that failure on the part of Cogsdale to provide, perform or complete any of the services or work required under the Agreement in a timely and diligent manner or within the timeframe specified in the Project Plan may serve as the basis for the County to impose liquidated damages or in the alternative to terminate the Agreement. Rather than exercise the option to terminate the contract at this point, the County is willing to give Cogsdale an opportunity to cure its material breach of the Agreement resulting from its failure to both provide and perform the work specified in the Project Plan in a timely manner.

Accordingly, Cogsdale has ten (10) days from the date of receipt of this letter to provide an updated project schedule acceptable to the County reflecting a new accelerated work plan that will address all the remaining milestones still outstanding in this project. The County also herein exercises its right to assess liquidated damages in the amount of \$1000 per day as permitted under the "Completion Schedule" and "Liquidated Damages" sections of the Agreement for each of the individual milestones outstanding in Phase 1 of the Project Plan from the date of this notice forward. In addition, the County further reserves the right to deduct or withhold such damages from any amount now due or which may become due to Cogsdale under this Agreement and to claim additional liquidated damages for the remaining phases included in the Project plan should Cogsdale fail to provide a recovery plan within the timeframe specified in this notice of default.

Your immediate attention to this matter is required. We look forward to working together to reach an expedient resolution of this dispute in the near future.

Sincerely,



Michael Nurrenbrock  
OMB Director

cc: Jim Cerny, Chief Information Officer, Pasco County Information Technology Dept.  
Todd Gaudin, CFO, Cogsdale Corporation



 FILE COPY

# PASCO COUNTY, FLORIDA

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*"Bringing Opportunities Home"*

DADE CITY (352) 523-2411  
LAND O'LAKES (813) 996-2411  
NEW PORT RICHEY (727) 847-8129  
NPR FAX (727) 847-8168

OFFICE OF MANAGEMENT AND BUDGET  
WEST PASCO GOVERNMENT CENTER  
7530 LITTLE ROAD, SUITE 340  
NEW PORT RICHEY, FL 34654-5598

December 22, 2009

Via Facsimile and Mail

Darren MacKay  
Vice President of Professional Services  
Cogsdale Corporation  
14 MacAleer Drive, Suite 5  
Charlottetown, PE, Canada C1E 2A1

Re: Notice To Stop Work  
Cogsdale Contract with Pasco County, FL

Dear Mr. MacKay

As you know, the County has expressed concerns, on numerous occasions since, the Third Modification of the Contract dated April 15, 2008, regarding Cogsdale's continuing inability to meet several mutually agreed upon "go live" dates and to resolve the system's ongoing and persistent operational issues. To date, Cogsdale has failed to produce a complete and workable system that complies with the requirements of the Contract. This inability, on the part of Cogsdale, constitutes a material breach of the Contract.

In an effort to impress upon Cogsdale the necessity to timely address this situation, the County had previously provided Cogsdale with a notice of default on March 6, 2009. In this notice, the County also formally exercised its right to impose liquidated damages. While the damages of \$1000 per day have continued to accrue since that time, the County has not seen any material improvement in the quality of Cogsdale's deliverables. Cogsdale's failure to produce a new system build, as promised, by December 15, 2009 is the most recent example of Cogsdale's inability to deliver. The County has expended a significant amount of staff time on this project and cannot continue especially since no believable project completion timeline appears to be in sight. Therefore, after careful consideration, the County believes it will be in everyone's best interest to halt all further activities on this project. Please treat this correspondence as the County's Notice to Stop Work immediately effective upon the date of receipt of this letter.

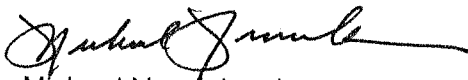
The County is also prepared at this point to make an official recommendation to its Board to terminate the Contract with Cogsdale for cause as provided under the "Termination" section of the Contract. Before taking this formal action, however, the County is willing to meet with the appropriate

representative of Cogsdale to work out an amicable resolution of the County's claims against Cogsdale relating to this project. We would like to set up such a meeting as soon as possible in the New Year for this purpose. Since Cogsdale has not provided the County with any acceptable product, we will be specifically seeking reimbursement for the public funds previously expended for this project.

Please be advised, that if an amicable resolution on this matter cannot be reached in a reasonable amount of time, County staff will move forward to seek official Board action to authorize the termination of the Contract and to pursue any and all legal remedies, damages and claims available to it. Please contact my assistant Sonia Hernandez (727) 847-8129 with your availability for this meeting.

Your immediate attention to this matter is required.

Sincerely,



Michael Nurrenbrock  
Director of Office of Management & Budget

cc: Jim Cerny, Chief Information Officer, Pasco County Information Technology Dept.  
Todd Gaudin, CFO, Cogsdale Corporation

FIFTH MODIFICATION TO THE  
AGREEMENT BETWEEN PASCO COUNTY AND  
COGSDALE CORPORATION TO  
IMPLEMENT A CUSTOMER CARE AND BILLING SYSTEM

THIS Fifth Modification to the Contractual Agreement (hereinafter Agreement) is made and entered into by and between PASCO COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereinafter referred to as the “COUNTY”) and COGSDALE CORPORATION (hereinafter referred to as the “CONSULTANT”), whose business address is 14 MacAleer Drive, Suite 5, Charlottetown, PE, Canada C1E 2A1.

**WITNESSETH:**

WHEREAS, at its regular meeting on November 8, 2005, the Board of County Commissioners approved an Agreement with Cogsdale Corporation to provide such services at the County’s request upon the issuance of a Notice To Proceed over the sixteen (16) month term of the Agreement; and

WHEREAS, the Agreement was later ratified on December 6, 2005 retroactive to the original date of the Agreement; and

WHEREAS, the COUNTY subsequently approved a First Modification to the Agreement on September 26, 2006 for the purpose of further clarifying the timelines and milestone delivery dates expressed in the Project Plan; and

WHEREAS, the COUNTY subsequently approved a Second Modification to the Agreement on July 24, 2007 and a corrected agenda memo for the second modification on

September 11, 2007 for the purpose of further modifying the scope of work and the related timelines and milestone delivery dates expressed in the Project Plan; and

WHEREAS, the COUNTY subsequently approved a Third Modification to the Agreement on April 15, 2008 for the purpose of allowing sufficient time for User Acceptance Testing, implementation of a new County metering system and coordinate DSS and CCBS cashiering timelines; and

WHEREAS, the COUNTY subsequently approved a Fourth Modification to the Agreement on February 24, 2009 for the purpose of clarifying the language related to the term of the Agreement and the timelines set forth in the Project Plan; and

WHEREAS, as a result of continuing delays in the CONSULTANT reaching Project milestones, the County provided the CONSULTANT a notice of default on March 6, 2009 in which it also exercised its right to assess liquidated damages of \$1000 per day for the delays involved; and

WHEREAS, in a effort to provide the CONSULTANT with a final opportunity to cure its breach and to complete the main phase of the Project and to avoid additional expense and delay that the County could incur if it was forced to seek an alternative consultant, the parties have agreed to provide for the CONSULTANT'S completion of Phase 1A of the Project under the following terms and conditions:

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. WHEREAS Clauses. The WHEREAS clauses set forth above are incorporated herein by reference and made a part of this Fifth Modification.



COUNTY'S satisfaction and no significant issues are identified during the testing phase.

5. In consideration of the COUNTY providing the CONSULTANT an opportunity to cure the default relating to the CONSULTANT'S lack of timely completion of the Project Plan, the CONSULTANT agrees that during the Cure Period, the COUNTY may at its sole discretion solicit proposals from other vendors for other alternative systems and/or products or to use its internal resources to complete any or all of the Scope of Work included on the Project Plan not completed by the CONSULTANT as the COUNTY may deem appropriate. The CONSULTANT further acknowledges that liquidated damages will continue to accrue during the Cure Period.
  
6. The notice requirement in the "Termination" section on page 11 of the Agreement is modified to include the following paragraph:

Should the CONSULTANT fail to deliver the Phase 1A build by the agreed upon date set forth in Section 1 of the Fifth Modification or if the build provided is not deemed acceptable by the COUNTY during the testing phase provided in Section 4 of such Fifth Modification, the CONSULTANT acknowledges that either of these conditions will constitute a material breach of the Agreement and that the COUNTY, as a result, will have the right to terminate the Agreement effective immediately upon the CONSULTANT'S receipt of such written notice from the COUNTY. Should the COUNTY terminate the Agreement for the reasons stated above, it will return the software acquired from the CONSULTANT specifically relating to the Customer Care and Billing System within a thirty six (36) hours of the effective date of the COUNTY'S notice of termination.

As a result of such default and in recognition of the damages the COUNTY has and will continue to incur as a result of such default, the CONSULTANT agrees to reimburse the COUNTY for the full amount of the funds paid to date under the Agreement in the amount of \$1, 226, 829.60 (the "Settlement Amount"). Such Settlement Amount shall be paid out over the six (6) month period following the effective date of the termination of the Agreement. In consideration of the COUNTY accepting this Settlement Amount as full and final satisfaction of any claim or action it may raise or bring against the CONSULTANT as a result of its actions relating to the Project and the COUNTY agreeing to a full release of such claims or action upon the CONSULTANT'S complete and satisfactory completion of its obligations under this Agreement. As part of this settlement, the CONSULTANT also agrees to waive any actions, claims and damages (monetary or otherwise) it may have against the COUNTY with respect to the Project or this Agreement.

Should the CONSULTANT fail to reimburse the COUNTY for any or all of the Settlement Amount, the COUNTY will be entitled to pursue any and all claims and remedies as may be provided under the Agreement including but not limited to making a claim on the performance bond or to pursue any other legal or equitable remedy available to it..

7. All the provisions of the Agreement dated November 8, 2005 (as amended by the First, Second, Third and Fourth Modifications to the Agreement), not otherwise specifically (and the COUNTY agrees to accept in full satisfaction of any claims it may have) modified herein, are hereby ratified and confirmed in their entirety and shall remain in full force and effect.

8. This Fifth Modification to the Agreement shall become effective upon execution by the COUNTY.

(THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have executed the foregoing Fifth Modification Agreement as evidenced their signature below.

(SEAL)

BOARD OF COUNTY COMMISSIONERS  
OF PASCO COUNTY, FLORIDA

ATTEST:

BY: \_\_\_\_\_  
PAT MULIERI, Ed. D., CHAIRMAN

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
PAULA S. O'NEAL, PASCO COUNTY CLERK and COMPTROLLER

DATE: \_\_\_\_\_

COGSDALE CORPORATION

WITNESSES:

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

PROVINCE OF PRINCE EDWARD ISLAND  
COUNTY OF QUEENS

Sworn and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2008 by  
\_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_,  
who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My Commission Expires: