

**IN THE CIRCUIT COURT OF TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

WELLPATH LLC,	)	Case No.:
	)	
Plaintiff,	)	Division:
	)	
v.	)	
	)	
SHELBY COUNTY, TENNESSEE,	)	
	)	
Defendant.	)	
	)	
	)	

**VERIFIED COMPLAINT FOR DECLARATORY  
JUDGEMENT AND INJUNCTIVE RELIEF**

Plaintiff, Wellpath LLC (“Wellpath” or “Plaintiff”), by and through its attorneys, state the following for its Verified Complaint for Declaratory Judgment and Injunctive Relief against Defendant, Shelby County, Tennessee (the “County”):

**OVERVIEW**

1. This lawsuit arises out of the County’s arbitrary and capricious, and impermissible behavior surrounding the selection and approval of contracts pursuant to the procurement process, as outlined by the Shelby County Charter (the “Charter”). More particularly, on April 1, 2020 Wellpath, as a responsive bidder to Request for Qualifications No. 20-007-02 - Inmate/Detainee Clinical Services (the “RFQ”), was awarded the bid to serve as the medical care provider for the County’s inmates and detainees. The County concluded that Wellpath would provide the best medical care available and that awarding the bid to Wellpath was in the best interest of the County taxpayers, as Wellpath presented the best value over all other bidders.

2. Upon receiving notification of the award, Wellpath and the County negotiated in good faith and reached a mutual agreement on the terms of the contract governing their professional relationship.

3. Significantly, the notice of award issued to Wellpath by the County's purchasing administrator made clear that the contract agreed to by the County and Wellpath would be sent to the Shelby County Commission (the "County Commission") for final approval. However, the contract agreed to by Wellpath and the County was never submitted to the County Commission.

4. Inexplicably, despite awarding the bid to and negotiating a contract with Wellpath, the County, based upon a letter sent to the County by a Wellpath competitor, reversed course and refused to send the contract to the County Commission for final approval.

5. Instead of honoring its obligation to send the contract to the County Commission for approval, one of the County's lawyers who had not been involved in the County's competitive bidding process, sent Wellpath a letter attempting to improperly rescind the bid and correlating contract awarded to Wellpath. Notably, the County's rescission letter, which was not copied to the County's purchasing administrator that had signed the award to Wellpath, provided no explanation for the County's action.

6. Not only did County act arbitrarily and capriciously by not submitting the agreed-upon contract to the County Commission for final approval, the County has also harmed the County taxpayers by depriving them of the benefits of a fair, legal, and transparent public bidding process.

7. Accordingly, Wellpath files this action - on behalf of itself and the taxpayers of Shelby County - to [i] prevent the County from further breaching its obligations to Wellpath flowing from the award and correlating contract issued to Wellpath under the RFQ; [ii] enjoin

the County from improperly awarding the contract relating to the RFQ to any bidder or company other than Wellpath; and [iii] to ensure that the County proceeds with submitting the agreed-to contract to the County Commission so there is a fair, open and unbiased environment to ensure that County taxpayers receive optimal value.

### **PARTIES, JURISDICTION AND VENUE**

8. Plaintiff Wellpath LLC, is a Delaware limited liability company with its principal place of business located at 1283 Murfreesboro Road, Suite 500, Nashville, Tennessee 37217.

9. Defendant Shelby County, Tennessee, is a chartered County and political subdivision organized under the laws of the State of Tennessee. The County may be served with process upon the County Attorney, Marlinee Clark Iverson, at 160 North Main Street, Suite 950, Memphis Tennessee 38103.

10. This Court has subject matter jurisdiction over the claims asserted herein and personal jurisdiction over the parties because the acts complained of herein occurred in Shelby County, Tennessee.

11. Venue is proper in this Court pursuant *inter alia*, Tenn. Code Ann. §§ 20-4-101, 20-4-102 and 20-4-104.

12. This Court is vested with the authority to issue a declaratory judgment and injunction with the force and effect of final decree pursuant to Tenn. Code. Ann. §§ 29-14-102, 29-1-106.

### **FACTUAL BACKGROUND**

#### **A. The County Awards an Inmate/Detainee Medical Provider Contract to Wellpath as the Best-Qualified Proposer.**

13. For the past fourteen (14) years, Wellpath has served as the County's inmate/detainee medical services provider. In this role, Wellpath has faithfully provided cost-

efficient medical services to inmates/detainees in in the Shelby County Jail, Shelby County Correctional Center, and Juvenile Detention Services Center without significant complaint.

14. On or about October 4, 2019, the County issued Request for Qualifications No. 20-007-02 - Inmate/Detainee Clinical Services seeking proposals, on a competitive basis, to provide clinical services (*i.e.*, medical, pharmaceutical, dental, mental health/behavioral health and program support services) for Shelby County’s inmates/detainees at the County’s correctional and juvenile detention facilities. A true and correct copy of the RFQ is attached hereto as **Exhibit 1**.

15. The RFQ required the County to evaluate all proposals on the criteria contained in the RFQ and “per the scorecard attached to this bid.” See Exhibit 1, RFQ at §§ VII(E), VIII.

16. The County was required to award the contract “to the most qualified vendor(s) meeting specifications & requirements, while applying SCG LOSB/MWBE Ordinances (including applying preferences/discounts).” Id. at § VIII.

17. The RFQ also provided that “[t]he contents of the proposal of the successful proposer will become contractual obligations and failure to accept those obligations in a contractual agreement may result in cancellation of the award. The County reserves the right to negotiate any portions of the successful proposer’s fees and scope of work[.]” Id.

18. Wellpath submitted a proposal in response to the RFQ on November 22, 2019.

19. Wellpath supplied the County with almost 200 pages of supporting information with its proposal demonstrating its experience and capability to carry out the contract.

20. After a five-month RFQ process, an evaluation committee comprised of certain County employees determined that Wellpath was not only a responsive and responsible bidder that had the experience and capability to carry out the contract, but that it was the most qualified

vendor and that awarding a contract to Wellpath was in the best interest of the County's taxpayers.

21. Accordingly, on April 1, 2020, the County, via County Administrator of Purchasing, Christin Webb, issued a notice of award to Wellpath entitled "Bid Award: RFQ #20-007-02 INMATE/DETAINEE CLINICAL SERVICES" which stated as follows:

We are pleased to inform you that your firm has been selected to provide **Inmate/Detainee Clinical Services** for the Shelby County Health Department, which was issued on the above-described RFQ.

A contract or purchase order for these services will be forwarded to your office for your review and approval, with such contract becoming effective upon signature of the Purchasing Administrator of the Mayor and final approval of the Shelby County Commission, if it exceeds \$50,000.00. Until then, no work should begin on this project until you are notified or receive an official "Notice to Proceed," along with a fully negotiated and executed copy of the contract or purchase order.

Thank you for your proposal and congratulations on your selection. Shelby County Government looks forward to the successful and timely delivery of this very important service and your company's efforts in reaching this goal.

A true and correct copy of the notice of award is attached hereto as **Exhibit 2**.

22. Although the RFQ provided that an unsuccessful vendor could protest the selection decision "within two (2) calendar weeks of the selection," no disappointed vendor submitted a protest of the County's selection of Wellpath. RFQ at § VIII.

23. As such, the County closed the procurement process.

24. More than three months after the notice of award, Wellpath received drafts of contracts - one contract for inmate/detainee services and one for juvenile services - from the County on July 9, 2020.

25. Over the next few weeks, Wellpath negotiated the contractual terms expeditiously and in good faith with a "Negotiation Team" comprised of certain County employees who had not served on the RFQ evaluation committee.

26. The Negotiation Team did not inform Wellpath there were any insurmountable issues with Wellpath's requested contract terms.

27. Even though the County's RFQ evaluation committee had already concluded that Wellpath was a responsible bidder with the experience and capability to carry out the contract, and even though Wellpath supplied the County with almost 200 pages of supporting information demonstrating its capability to carry out the contract, in early August 2020, the County's Negotiation Team started requesting additional information from Wellpath regarding its financial capability and other issues relating to its capability to carry out the contract.

28. Wellpath provided the County Negotiation Team with all the requested information, including Wellpath's most recently prepared financial statements, and provided comprehensive answers and explanations to all the County employees' questions.

29. On August 4, 2020, the County's Finance Administrator, Audrey Tipton, who was not on the RFQ evaluation committee, requested that Wellpath provide yet additional financial statements.

30. On August 5, 2020, Wellpath informed one of the County's Attorneys on the Negotiation Team, Lisa Overall, who was not on the RFQ evaluation committee, that these statements were not readily available in the County's desired format, and noted that the County had never indicated they were necessary, but Wellpath would nonetheless undertake the efforts to compile the requested financial statements.

31. Ms. Overall responded that day by sending an email to Wellpath stating: "We would like to get this contract before the Board of Commissioners for consideration immediately so please let us know how long it will take to get the requested financial information."

32. On August 6, 2020, County Attorney, Marlinee Iverson, sent Wellpath an email

stating: “I believe we’ve checked on this and it will work. Any word on the financial data that our finance department needs? I would like to get this contract ready for commission approval this Monday [*i.e.*, August 10, 2020] but we can’t proceed without that data.”

33. Wellpath supplied the requested financial information to Ms. Iverson and Ms. Overall that same day, August 6, 2020.

34. Also, on August 6, 2020, Ms. Overall, sent Wellpath final drafts of the Contracts stating that the drafts “capture all of the requested and agreed changes[.]”

35. On August 7, 2020, Ms. Overall requested yet additional financial information. Wellpath promptly supplied the requested information to Ms. Overall and Ms. Iverson that same day.

36. The parties’ negotiations culminated on August 7, 2020 when Wellpath sent the County an email agreeing to the contractual terms forwarded and agreed to by the County the prior day. In agreeing to the terms, Wellpath communicated to the County that it would be available to discuss any additional questions or concerns.

**B. The County Attempts to Award an Inmate/Detainee Medical Provider Contract to a Company that Was Not the Best-Qualified Proposer and Refuses to Submit the Agreed-to Contract with Wellpath to the County Commission for Approval.**

37. Despite their prior representations, the County’s Negotiation Team never submitted the contract to the County Commission for approval.

38. In fact, following Wellpath and the County’s meeting of the minds on August 7, 2020, Wellpath received no communications from the County of any kind.

39. In the meantime, on August 11, 2020, Corizon Health, another company that had submitted a proposal to the RFQ but had not been selected by the County, emailed a letter to various County officials, including the members of the County Commission.

40. The letter was emailed by Corizon’s Chris Bell to County Commission Chairman

Mark Billingsley, Vice Chairman Van Turner, and the other eleven members of the County Commission. Also copied on the email was the County's Administrative Officer, Dwan Gilliom, an attorney from Bass Berry Sims that apparently represents Corizon (Al Bright) and former County Commissioner Deidre Malone who is now a public relations/government affairs consultant that apparently represents Corizon.

41. Corizon's letter stated it was a bidder on the RFQ and "our interest and the interest of our local partners strongly remains in becoming the provider of these services to the county."

42. Even though the County had just concluded its negotiations with Wellpath, the letter requested the Commissioners "[v]ote[] to negotiate a service contract with Corizon."

43. The very next day, on August 12, 2020, yet another County attorney, Megan J. Smith, sent Wellpath a one-sentence letter that stated as follows: "Please be advised that as a result of failed contract negotiations between the parties, Shelby County Government is rescinding the Intent to Award issued to Wellpath regarding RFQ#20-00702 Inmate/Detainee Clinical Services (Health Department) effective August 12, 2020."

44. The County's Administrative Officer, Dwan Gilliom was cc'd on the August 12, 2020 letter.

45. Notably, although County Purchasing Administrator Christin Webb issued the Intent to Award, she was not cc'd nor otherwise included on the August 12, 2020 letter.

**C. The County Refuses to Comply with the Law and Submit the Agreed-to Contract with Wellpath to the County Commission for Approval.**

46. After receiving the County's letter, on August 13, 2020, Wellpath contacted Ms. Smith and requested an opportunity to discuss with the relevant County officials, the



Wellpath/County contract and whatever issues the County believed constituted an impasse in negotiations.

47. The County did not grant this request.

48. On August 20, 2020, Wellpath's counsel sent a letter to the County's attorney Ms. Smith indicating that the County had circumvented Tennessee's public bidding laws by not contracting with the company that the County evaluation committee had determined was the most-qualified vendor during the concluded procurement process.

49. Wellpath made clear that any contract the County would enter with another vendor would not comply with the RFQ, the RFQ's selection criteria or Tennessee law and would be void as a matter of law.

50. Wellpath requested that the County cancel or rescind the withdrawal of award, reinstate the Notice of Award to Wellpath and finalize and execute the contract agreed to by the parties. Wellpath included with the letter, the parties' agreed-to contracts executed by Wellpath for the County to sign.

51. On August 25, 2020, the County's attorney Ms. Smith sent Wellpath a letter stating that there was a "stand-off" (with no details of what this "stand-off" entailed) and the County would not rescind the withdrawal of award, reinstate the Notice of Award to Wellpath and finalize and execute the contract agreed to by the parties.

52. On August 27, 2020, Wellpath's counsel sent another letter to the County's attorney Ms. Smith reiterating that it was unaware of any "stand-off," "significant disagreement," "impasse" or "failure to negotiate" and again requested that, at a minimum, the County have a meeting with Wellpath to discuss these matters.

53. That same day, the County's attorney Ms. Smith stated in an email to Wellpath's counsel: "I am not entirely sure what else there is to discuss."

54. To date, the County has refused to rescind the withdrawal of award, reinstate the Notice of Award to Wellpath and/or submit the contracts agreed to by the parties to the County Commission.

55. Instead, the County is now negotiating a contract with Corizon.

56. Corizon has reached out to various potential subcontractors and potential employees to work with Corizon on its contract with the County.

57. As such, Wellpath was left with no option but to file this lawsuit.

**COUNT I**  
**PRELIMINARY AND/OR PERMANENT INJUNCTION**  
***Wellpath v. Shelby County***

58. Wellpath restates and incorporates by reference all of the foregoing paragraphs of this Complaint as if fully set forth herein.

59. Wellpath was a responsive and responsible vendor with the financial capability and experience to carry out the contract and submitted a proposal in response to the RFQ that met or exceeded every requirement included in the RFQ.

60. The County determined that Wellpath is the most-qualified vendor and a contract with Wellpath is in the best interest of the taxpayers.

61. At all times, Wellpath negotiated in good faith with the County and the parties never reached an impasse during negotiations.

62. The parties had a meeting of the minds and reached an agreement on the terms of the contract on August 7, 2020.

63. To date, the County has refused to submit the contracts agreed to by the parties to

the County Commission for approval.

64. Upon information and belief, the County is now negotiating a contract with another company that was not the highest scoring vendor during the RFQ process and which the County has already determined was not the most-qualified vendor or in the best interests of the taxpayers.

65. The County has acted arbitrarily and capriciously and is attempting to circumvent the requirements of the RFQ and applicable public purchasing laws.

66. The County's refusal to submit the contracts agreed to by the parties to the County Commission for approval, the rescission of the Contract award to Wellpath and an award to any entity other than Wellpath would not comply with the RFQ or be based on the RFQ's selection criteria, and would thus be void as a matter of law.

67. The County's refusal to submit the contracts agreed to by the parties to the County Commission for approval, the rescission of the Contract award to Wellpath and an award to any entity other than Wellpath is arbitrary and capricious for the reasons identified above.

68. The County's refusal to submit the contracts agreed to by the parties to the County Commission for approval, the rescission of the Contract award to Wellpath and an award to any entity other than Wellpath is illegal for the reasons identified above and for numerous other reasons.

69. Further, because the County's refusal to submit the contracts agreed to by the parties to the County Commission for approval and the County's rescission of the Contract award is not in the best interest of the County, nor is it the most advantageous to the County, it violates the County Home Rule Charter and the County Purchasing Regulations and Tennessee law.

70. The County's refusal to submit the contracts agreed to by the parties to the County Commission for approval, the rescission of the Contract award to Wellpath and an award to any entity other than Wellpath seriously undermines the integrity of the public contracting system.

71. These improprieties have been brought to the attention of the County, but it has failed and refused to correct them.

72. Wellpath's right to relief is clear.

73. Wellpath has no adequate remedies at law.

74. Wellpath's injuries cannot be compensated by an award of damages.

75. An actual and substantial injury has occurred and/or is threatened in the future and constitutes irreparable harm.

76. If the County's decisions to not submit the contracts agreed to by the parties to the County Commission for approval, to rescind the Contract award to Wellpath and award a contract to any entity other than Wellpath are not overturned now, they will be so later, which will cause unnecessary expense and delay.

77. Redress through other channels is unavailable.

**WHEREFORE**, Plaintiff, Wellpath LLC, requests that this Court enter an order that: (1) preliminarily and then permanently enjoins the County from awarding or executing a contract to provide medical services for the County's inmates and detainees to any entity other than Wellpath; (2) voids any contract already executed between the County and any entity other than Wellpath to provide medical services for the County's inmates and detainees; (3) requires the County to withdraw its August 12, 2020 rescission of Notice of Award to Wellpath for RFQ No. 20-007-02; (4) requires the County to submit to the County Commission for approval the

contracts with Wellpath for the services requested pursuant to Shelby County RFQ No. 20-007-02; and (5) awards Wellpath its attorney's fees, costs and any such other and further relief as the Court deems just and proper.

**COUNT II**  
**DECLARATORY JUDGMENT**  
*Wellpath v. Shelby County*

78. Wellpath restates and incorporates by reference all of the foregoing paragraphs of this Complaint as if fully set forth herein.

79. The County's refusal to submit the contracts agreed to by the parties to the County Commission for approval, the rescission of the Contract award to Wellpath and an award to any entity other than Wellpath would not comply with the RFQ or be based on the RFQ's selection criteria and would thus be void as a matter of law.

80. The County's refusal to submit the contracts agreed to by the parties to the County Commission for approval, the rescission of the Contract award to Wellpath and an award to any entity other than Wellpath is arbitrary and capricious for the reasons identified above.

81. The County's refusal to submit the contracts agreed to by the parties to the County Commission for approval, the rescission of the Contract award to Wellpath and an award to any entity other than Wellpath is illegal for the reasons identified above and for numerous other reasons.

82. Further, because the County's refusal to submit the contracts agreed to by the parties to the County Commission for approval and the County's rescission of the Contract award is not in the best interest of the County nor is it the most advantageous to the County, it violates the County Home Rule Charter and the County Purchasing Regulations and Tennessee law.

83. The County's refusal to submit the contracts agreed to by the parties to the County Commission for approval, the rescission of the Contract award to Wellpath and an award to any entity other than Wellpath seriously undermines the integrity of the public contracting system.

84. An actual controversy presently exists between Wellpath, on the one hand, and the County, on the other hand, with respect to the County's refusal to submit the contracts agreed to by the parties to the County Commission for approval, the County's rescission on the Contract award to Wellpath and the County's negotiation of a contract with another entity, in that Wellpath contends and the County denies that the same is illegal, arbitrary, and capricious.

85. Wellpath and the County have a direct and immediate interest in the Contract Award.

**WHEREFORE**, Plaintiff, Wellpath LLC, requests that the Court enter an order declaring that: (1) the County's rescission of the Contract Award to Wellpath is illegal and null and void; (2) any contract awarded by the County to any entity other than Wellpath to provide medical services for the County's inmates and detainees is illegal and null and void; (3) any contract executed by the County and any entity other than Wellpath to provide medical services for the County's inmates and detainees is illegal and null and void; (4) the County must to submit to the County Commission for approval the contracts with Wellpath for the services requested pursuant to Shelby County RFQ No. 20-007-02 and (5) Wellpath is entitled to its attorney's fees, costs and any such other and further relief as the Court deems just and proper.

**THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.**

Date: September 10, 2020

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be 'Clarence A. Wilbon', written over a horizontal line.

CLARENCE A. WILBON (BPR #23378)

PATRICK H. MORRIS (BPR #33689)

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*Counsel for Plaintiff, Wellpath LLC*

**VERIFICATION**

STATE OF TENNESSEE            )  
  )  
COUNTY OF DAVIDSON         )

I, W. Colton Cline, after having been duly sworn according to law, hereby depose and state that the facts and statements contained in the foregoing VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF are true and correct to the best of my information, knowledge, and belief.

  
\_\_\_\_\_  
W. Colton Cline

Sworn to and subscribed before me this  
10th day of September 2020.



  
\_\_\_\_\_  
Notary Public