

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
(NORTHEASTERN DIVISION)

FILED

2018 JUL 26 PM 4:00

U.S. DISTRICT COURT  
N.D. OF ALABAMA

DYNCORP INTERNATIONAL LLC,

13500 Heritage Parkway  
Fort Worth, TX 76177

Plaintiff,

v.

MD HELICOPTERS, INC.,

4555 E. McDowell Road  
Mesa, AZ 85215

Serve:

Registered Agent

David W. Kash, Esq.,  
One Washington St. #400  
Phoenix, AZ 85004

Defendant.

5:18-cv-01166-UJH-AKK

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY JUDGMENT AND MONETARY RELIEF**

Plaintiff DynCorp International LLC ("DI"), by and through its undersigned counsel, for its Complaint for Declaratory Judgment and Monetary Relief against Defendant MD Helicopters, Inc. ("MDHI"). alleges as follows:

**NATURE OF ACTION**

1. This case involves an orchestrated scheme by MDHI's leadership to deprive DI of money that DI is undisputedly owed under a contract for services DI undisputedly rendered, and then to capitalize on DI's good-faith efforts to be paid the money owed to fraudulently induce DI

to provide confidential and proprietary information that provided to MDHI a playbook of how to run the subcontract without DI in order for MDHI to recruit DI's competitors to take DI's place. In addition, upon information and belief, MDHI is trying to damage DI's reputation by forcing DI to demobilize due to lack of payment. DI respectfully asks the Court to put an end to MDHI's abusive tactics.

2. This case involves a subcontract between MDHI and DI, which in turn relates to a prime contract MDHI holds with the federal government. Over several months, MDHI has withheld over \$8 million in payments due for DI's services. MDHI not only has rebuffed DI's attempts to resolve this matter without the need for suit, but also has demanded that DI continue performing — despite not being paid. Moreover, MDHI misled DI into providing a confidential proposal for future work based on the representation that MDHI would extend DI's subcontract for the period that the Government had extended MDHI's prime contract. But, one day after receiving DI's proposal, MDHI solicited bids from other contractors for the same work. In addition, MDHI lied about the status of its prime contract with the Government — that MDHI had not been paid and that the Government had not provided a definitized modification to its prime contract for future work under the contract. All of these actions were, upon information and belief, motivated by a desire of MDHI to squeeze profit from DI for its own pockets and to remove DI as its subcontractor by improperly using DI's confidential and proprietary information — with a complete disregard to the terms of the contract between the parties.

3. The contract at issue is the Firm Fixed Price Subcontract Agreement No. 2017-05-SC-002 for Afghanistan On-Site Contractor Logistics Support (the "CLS-5 Subcontract" or "Subcontract") in Support of Prime Contract No. W58RGZ-17-C-0038 (the "Prime Contract"), entered into as of May 26, 2017, among and between MDHI and DI.

4. Pursuant to the CLS-5 Subcontract, DI was to provide Contractor Logistics Support (“CLS”) for the Afghanistan Air Force, for which MDHI would pay DI a firm fixed price of \$29,566,864, with payments on a monthly basis. For the period that included March, April and May 2018, DI is owed \$8,100,423.

5. Over several months, MDHI withheld over \$8 million in payments due for DI’s services. MDHI not only has rebuffed DI’s attempts to resolve this matter without the need for suit, but also has demanded that DI continue performing — despite not being paid.

6. DI has performed the CLS required under the CLS-5 Subcontract and timely and accurately invoiced MDHI for the work performed.

7. MDHI has breached the subcontract by refusing to pay DI for services performed under the subcontract despite repeated demands by DI for payment of the amounts due.

8. The parties met to discuss the contractual dispute resolution process between senior executives on June 20, 2018. At that meeting, MDHI promised that the overdue sums would be paid no later than the week of July 9, 2018. Thereafter, MDHI continued to represent that the sums were undisputed, but MDHI refused, and continues to refuse, to pay.

9. In addition to its refusal to pay DI for work already performed under the contractual period of performance, MDHI has failed to pay for work performed by DI in June and July 2018.

10. Specifically, the CLS-5 Subcontract would have expired by its own terms on May 31, 2018; however, MDHI has exercised two (2) one-month options to extend the term of the CLS-5 Subcontract.

11. Based on its breach of the subcontract, MDHI owes DI \$8,100,423 for work performed through May 31, 2018.

12. As DI performed the same scope of work in June and July 2018, MDHI also owes DI \$5,400,282 for June and July 2018 subject to DI providing invoices to MDHI.

13. Independent of the breach of contract, on June 12 and 20, 2018 MDHI fraudulently induced DI into providing a highly detailed confidential and proprietary proposal based on the false representation that MDHI needed this information to obtain a definitized contract from the Government. DI provided this proposal on June 25 with a revised version on June 28, 2018.

14. In reality, as of June 12, 2018, the Government had already provided a definitized modification to MDHI's contract. Then, twenty four (24) hours after receiving DI's proposal, MDHI improperly used DI's confidential information to solicit bids from other contractors for the same work.

15. All of these actions were motivated by a desire of MDHI to squeeze profit from DI and to replace DI as its subcontractor by improperly using DI's confidential and proprietary information – with a blatant and egregious disregard to the terms of the contract between the parties.

16. Upon information and belief, the CEO of MDHI, Lynn G. Tilton, directed MDHI to make these false representations to DI.

17. Several individuals at MDHI falsely represented to DI the alleged undefinitized status of MDHI's prime contract for work between June to November 2018, and MDHI's intention to issue a modification to DI's subcontract for additional work. These individuals included MDHI's CFO Gordon Walsh and MDHI Vice President & General Counsel William Black.

18. For MDHI's breach of the contract, DI seeks damages in the amount of \$8,100,423 for March, April and May 2018 invoices plus an order requiring MDHI to pay DI within thirty (30) days of receipt of invoices for work performed in June and July 2018 in the cumulative amount of \$5,400,282. In addition, DI seeks a declaratory judgment ruling that: (1) DI is not in breach of any enforceable contractual obligations to MDHI; (2) Section H.4 of the CLS-5 Subcontract requires MDHI to make timely payment to DI within 30 days of receipt of any invoice by DI, notwithstanding any withholding or delay in payment to MDHI by the U.S. Government; (3) MDHI is in breach of the CLS-5 Subcontract; and (4) DI is not required to fulfill any further obligations under, nor is bound by any restrictions contained in, the CLS-5 Subcontract.

19. DI also seeks compensatory damages and punitive damages as a result of MDHI's fraudulent inducement and misappropriation of DI's confidential and proprietary information.

#### **PARTIES**

20. Plaintiff DI is a Delaware corporation with its headquarters and principal place of business at 1700 Old Meadow Rd., McLean, VA 22102. DI is a leading provider of specialized, mission-critical professional and support services outsourced by the U.S. military, non-military U.S. governmental agencies and foreign governments. Relevant here, DI is a leading aviation services provider with a license to operate in Afghanistan. It has global expertise in law enforcement training and support, security services, base and logistics operations, intelligence training, rule of law development, construction management, platform services and operations, linguist services, and logistics support.

21. Defendant MDHI is an Arizona corporation with its principal place of business at 4555 E. McDowell Rd., Mesa, AZ 85215. MDHI manufactures helicopters, including both civil

and military variants of the MD500 series helicopters. MDHI does not have a license to operate in Afghanistan. MDHI has reported annual revenue in excess of \$70 million. In September 2017, MDHI announced that it received a five year, 1.4 billion dollar IDIQ contract for attack helicopters.

### **JURISDICTION AND VENUE**

22. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §§ 1332, 2201, and 2202.

23. MDHI is subject to personal jurisdiction in this Court because it regularly and systematically conducts and does business in the Northern District of Alabama. The CLS-5 Subcontract is in support of the Prime Contract between MDHI and the U.S. Army Contracting Command (“ACC”), and the ACC is based in this District. The CLS-5 Subcontract was principally negotiated by the parties in Huntsville, Alabama, and the Prime Contract was also issued and entered into by the ACC in this District. MDHI regularly makes trips to this District in connection with the work under the CLS-5 Subcontract and the Prime Contract, including trips to this District in the summer of 2016 and the spring of 2017 during which MDHI met with DI in DI’s offices located in this District to discuss extensions of the CLS-5 Subcontract. The 2016 meetings were attended by MDHI Program Manager Konrad Cote, and the spring of 2017 meetings were attended by Mr. Cote and MDHI Contract Manager Ron Steel.

24. The ACC ultimately decided to change the contract vehicle for the work and also to end the predecessor contract on May 31, 2017, at which time the ACC and MDHI executed the Prime Contract issued by the ACC in this District. MDHI then negotiated with DI to execute the CLS-5 Subcontract. Mr. Burton, on behalf of DI, negotiated with MDHI and executed the Subcontract from DI’s offices in this District.

25. At no point while DI and MDHI discussed the work to be done after June 1, 2017 and negotiated the CLS-5 Subcontract did Mr. Burton ever travel to meet with MDHI in Arizona,

26. DI performs substantially all of the work provided for under the Prime Contract, and all of DI's work related to the CLS-5 Subcontract and the Prime Contract is managed from DI's offices in this District.

27. As detailed below, an actual case or controversy has arisen between MDHI and DI regarding MDHI's refusal to make timely payments to DI under the CLS-5 Subcontract, and its demand for additional performance from DI notwithstanding its refusal to pay DI for work already performed and failure to pay for the additional work or even negotiate the amount due to DI for the additional work performed.

28. DI has followed the disputes procedure set forth in the Subcontract and further adherence to the dispute resolution process would be futile given that MDHI has stated that certain of DI's asserted disputes are "ludicrous."

29. H.21(3) of the Subcontract provides: "All disputes arising from or related to this Subcontract that is not disposed of by mutual agreement may be decided by recourse to an action at law or in equity, subject to the limitations herein stated and incorporated by Subcontract."

30. DI is currently owed in excess of \$8,100,423. The amount in controversy therefore exceeds the sum or value of \$75,000 necessary for diversity jurisdiction.

31. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

### **FACTUAL ALLEGATIONS**

#### **A. The CLS-5 Subcontract**

32. DI restates and incorporates the allegations contained in paragraphs 1 through 31 above as though fully set forth herein.

33. DI and MDHI are parties to the CLS-5 Subcontract for contractor logistics support in support of the Prime Contract between MDHI and the ACC.

34. Prior to the execution of the Prime Contract, DI was a subcontractor to MDHI for substantially the same work, which was set to end on May 31, 2017.

35. MDHI and DI expected that the work would be extended under the prior contract and that DI would continue working as subcontractor to MDHI in essentially the same role.

36. The narrow scope of work authorized under the CLS-5 Subcontract consists of a program for the maintenance and support of MD530 helicopters located in Afghanistan and related rotary wing training for the Afghanistan Air Force.

37. The term of the CLS-5 Subcontract runs from June 1, 2017 through May 31, 2018 (with an option for a six-month extension).

38. DI has acted as a subcontractor to MDHI with respect to this particular CLS work supporting MD530 helicopters in Afghanistan since 2009 under different subcontracts with MDHI.

39. The operative payment provision in the CLS-5 Subcontract between MDHI (called "BUYER") and DI ("SELLER") provides:

Payment for all services, supplies, and deliverables required by this Subcontract shall be in United States dollars and in accordance with FAR 52.232-1, Payments, which is incorporated in this Subcontract by reference with the same force and effect as if set forth below in full text. As set out in PART B, SELLER shall invoice BUYER on a monthly basis not later than fifteen (15) days after the conclusion of each monthly billing period for Services delivered and accepted in that month. All invoices shall contain the following information:

- Invoice number and date;
- Subcontractor name and remittance address;
- Subcontract number;
- Invoice amount, by Purchase Order Line Item;
- Period covered by the invoice



\* \* \*

Payment shall become due to SELLER within 30 days following BUYER's receipt of invoice. Payment shall be in accordance with the above and the prices set forth in PART B of this Subcontract for Services delivered less any deductions provided for in this Subcontract.

\* \* \*

(Emphasis added.)

**B. DI Performed the CLS-5 Subcontract and Submitted Timely, Accurate Invoices**

40. DI fulfilled each of its obligations under the CLS-5 Subcontract by furnishing all of the services referred to in the Part J, Attachment 1- DI Statement of Work, which was attached to the CLS-5 Subcontract.

41. MDHI has not asserted any failure to perform, or inadequacy of performance by DI. In fact, on July 13, 2018, MDHI's Chief Financial Officer stated: "On the cash payment, we have been notified by DFAS that the issues regarding the contract modifications have been cleared and we should receive our payments next week, and we will promptly pay DI once this cash is received."

42. DI submitted Invoice No. MD532-2018-03 to MDHI on April 12 2018, in the amount of \$2,700,141.00, covering work performed in March 2018. A copy of Invoice No. MD532-2018-03 is attached hereto as Exhibit 1.

43. DI submitted Invoice No. MD532-2018-04 to MDHI on May 4, 2018, in the amount of \$2,700,141.00, covering work performed in April 2018. A copy of Invoice No. MD532-2018-04 is attached hereto as Exhibit 2.

44. DI submitted Invoice No. MD532-2018-05 to MDHI on June 4, 2018, in the amount of \$2,700,141.00, covering work performed in May 2018. A copy of Invoice No. MD532-2018-05 is attached hereto as Exhibit 3.

45. MDHI has failed to pay DI for Invoice Nos. MD532-2018-03, MD532-2018-04, and MD532-2018-05.

46. To date, MDHI has accepted all of DI's performance under the contract, and has given no written notice of any defect or non-conformance within seven days of acceptance of service, as required by Section H.15 of the CLS-5 Subcontract.

**C. MDHI Breached the CLS-5 Subcontract By Refusing and Failing to Make Timely Payments to DI**

47. DI attempted in good faith to negotiate with MDHI to obtain payment for Invoice Nos. MD532-2018-03, MD532-2018-04, and MD532-2018-05.

48. On May 25, 2018, a DI representative spoke with William R. Black, MDHI Vice President & General Counsel, on May 28 and May 29, 2018, requesting payment for Invoice Nos. MD532-2018-03, MD532-2018-04, and MD532-2018-05. Mr. Black promised to speak with Mr. Gordon Walsh and provide a response to DI.

49. No one from MDHI contacted DI in response to this request for payment.

50. DI then sent emails to Mr. Black, on May 28 and May 29, 2018, again requesting payment for Invoice Nos. MD532-2018-03, MD532-2018-04, and MD532-2018-05.

51. MDHI failed to respond to either email.

52. On June 5, 2018, DI sent MDHI a letter, addressed to William R. Black, MDHI Vice President & General Counsel to make another demand for payment of Invoice Nos. MD532-2018-03, MD532-2018-04, and MD532-2018-05.

53. In the letter DI stated, "We all hope that the Government will pay MDHI and definitize the Prime Contract. But as you know, regardless of whether MDHI is paid by the Government. MDHI must pay DI its fully definitized, Firm Fixed Price Subcontract."

54. Then, noting that DI and MDHI had been unable to resolve the dispute at the program level, DI expressly invoked Section H.21(2) of the CLS-5 Subcontract, which specifically states: “In the event negotiation at the program level fails, each party shall appoint one officer from the top five ranking corporate officers to meet and attempt to resolve the dispute.”

55. DI proposed to have Joseph Ford, President of DynAviation — the unit within DI responsible for performance of the CLS-5 Subcontract — meet with MDHI to attempt to resolve the dispute. DI stated that Mr. Ford was willing to travel to a location other than MDHI’s headquarters.

56. On June 12, 2018, MDHI provided a letter to DI seeking a proposal for additional work under the Subcontract but did not address the unpaid invoices.

57. On June 20, 2018, an in-person meeting occurred in Phoenix, Arizona to discuss the unpaid invoices.

58. Despite efforts by DI to resolve the dispute, MDHI has failed to pay the invoices despite acknowledging the amounts are due. In addition, upon information and belief, MDHI was paid by the Government for DI’s work.

59. On July 19, 2018, Mike Bell, Deputy General Counsel and Head of Contracts for MDHI stated in an email to DI: “MDHI is 100% ready and willing to pay DynCorp the \$8.1M for March through May.” On July 20 he wrote: “**We are definitely going to pay DynCorp the \$8.1M it is owed - that has never been an issue.** You will be paid whether you agree on a reasonable payment model for June through August or whether you choose to begin demobilization.” Yet, to date, payment has not been made.

60. MDHI has failed to pay DI for work performed in March, April, and May 2018.

61. MDHI has failed to modify the Subcontract to include the same monthly amount for work performed by DI in June and July 2018 as was charged for the same scope of work in March, April, and May 2018.

62. DI performed the same scope of work under the Subcontract in June 2018 and July 2018 as DI performed in March, April, and May 2018.

**D. MDHI Fraudulently Induced DI to Provide its Confidential and Proprietary Information to DI and Misappropriated DI's Confidential and Proprietary Information**

63. In order to obtain, and then misappropriate, DI's confidential and proprietary cost and technical information, MDHI fraudulently represented to DI that it was operating under an undefinitized contract beginning on June 1, 2018, and that it needed detailed cost data from DI to help support the payments that MDHI would be seeking from the Government. Specifically, MDHI requested that DI provide an "audit-ready" proposal that was highly-detailed and included the methodology and staffing levels necessary to perform the contract. This "know-how" is confidential and proprietary to DI.

64. Upon information and belief, MDHI did not need DI to submit a highly-detailed proposal because MDHI had already received a fully definitized modification to the Prime Contract.

65. MDHI, as the Prime Contractor under the C-5 Subcontract, met on June 20, 2018 in Arizona with Joseph Ford, President of DynAviation, and one of the top five ranking corporate officers of DI. MDHI, through Gordon Walsh, misrepresented that MDHI would award a follow-on subcontract to DI for the work contained in the CL-5 Subcontract to cover additional months' work, and asked DI to provide a detailed confidential proposal for such work.

66. As a result of the June 20, 2018 meeting and assurances from MDHI of its intent to continue to be a partner with DI in providing services to the Government under the Subcontract, DI provided to MDHI on June 25 and 28, 2018 a proposal (the "Proposal") for additive and deductive changes that included DI proprietary and confidential information.

67. The Proposal was provided to MDHI for the sole purpose of obtaining an extension to the Subcontract to include additional work.

68. Upon information and belief, instead of using DI's confidential and proprietary information as discussed in the June 20, 2018 meeting, MDHI used DI's confidential and proprietary information (including DI's technical solution) in formulating a Request for Proposal to send to third parties for a new contract.

69. MDHI continued its deception by asking DI to sign a modification to continue performing for July 2018. On June 29, 2018, Gordon Walsh represented to DI's CFO William Kansky that the two companies were working together as a "team" for future work on the contract. Based on that representation by MDHI that the parties were teamed together for the long term, Mr. Kansky authorized DI to enter into a one month extension for July 2018. However, unknown to DI, and inconsistent with the representations made by Gordon Walsh, on information and belief, MDHI sent DI's confidential information to third parties for the purpose of soliciting bids to replace DI as a subcontractor on the program starting in September 2018.

70. Had MDHI properly notified DI that it intended to issue a competitive request for proposal, DI would have provided a much different proposal that did not include DI's highly-detailed confidential and proprietary information.

71. DI's confidential and proprietary information in its Proposal includes its know-how and processes that DI uses to fulfill the requirements of the Subcontract including details of

labor hours and skill sets required to perform On-Site Contractor Logistics Support. Such information includes, for example, the details regarding labor hours and maintenance requirements of certain aircraft both when idle and when in active use.

72. The narrative portion of DI's proposal was DI's proprietary technical solution. It provided great detail on the methodology for manpower deployment, mix of job skills, and new aircraft integration, thus MDHI will or can provide the Government with the DI solution in their response to the Government RFP for MDHI's own purposes either on its own or with one of DI's competitors thereby eliminating DI's competitive advantage.

73. This information constitutes a trade secret because of the extent to which the information is not known outside DI's business; DI has protected the information from disclosure to third parties; the confidential and proprietary information was gleaned over years of performance and provides DI with a competitive advantage; and the information cannot be properly acquired or duplicated by others. MDHI would have no other access to the information that was provided in DI's Proposal.

74. By incorporating DI's confidential and proprietary information into a Request for Proposal that was submitted to third parties and using that information for its own purposes, MDHI prejudiced and harmed DI by usurping DI's competitive advantage.

75. DI informed MDHI that MDHI did not have permission to utilize DI's confidential and proprietary information contained in DI's Proposal.

76. To date, MDHI has not provided any assurances that it would protect or delete DI's confidential and proprietary information. Instead, Deputy General Counsel and Head of Contracts for MDHI Mike Bell referred to DI's request as "ludicrous" by email on July 20, 2018.

77. In addition to misappropriating DI's confidential and proprietary information through DI's Proposal, MDHI improperly acquired and retained actual cost information from the Defense Contract Audit Agency ("DCAA") for DI's actual costs under the Subcontract. Upon information and belief, MDHI obtained this information between November 2017 and May 22, 2018. Instead of immediately rejecting this information and deleting any copies of such information (and informing DI that such information had been improperly given to MDHI), MDHI misappropriated DI's confidential and proprietary cost information for its own purposes.

78. On July 20, 2018, MDHI's General Counsel, William Black, stated that MDHI had seen DI's profit earned on the firm fixed price subcontract -- the amount of which came as a "surprise" to MDHI -- and he made clear that MDHI's CEO Lynn Tilton was unhappy about that profit. He then stated, contrary to all prior representations, that if DI did not agree to accept MDHI's payment terms starting retroactively to June 1, 2018, for an undefinitized contract extension, he would take direction from MDHI's CEO regarding whether to pay DI for the undisputed sums. Such misuse of DI's confidential and proprietary information has caused damage to DI.

79. Upon information and belief, MDHI CEO Lynn Tilton wanted more of the profit for MDHI even though MDHI and DI were parties to a firm, fixed price subcontract. By no coincidence, MDHI's failure to pay DI and attempts to replace DI as its subcontractor began once MDHI obtained and misused DI's confidential and proprietary cost information.

### **CAUSES OF ACTION**

#### **COUNT 1**

#### **BREACH OF CONTRACT (MARCH, APRIL, MAY INVOICES)**

80. DI restates and incorporates the allegations in paragraphs 1-79 as though fully set forth herein.

81. The CLS-5 Subcontract is a valid contract that bound MDHI to pay DI a Firm Fixed Price for the work performed in the Statement of Work.

82. DI performed the CLS required under the contract and submitted timely, accurate invoices to MDHI for payment.

83. DI has made demand upon MDHI for payment of amounts due and owing for March, April and May, 2018. *See* Exhibits 1-3. MDHI has failed and refused to pay the same.

84. MDHI's refusal to pay DI for work performed constitutes a breach of the CLS-5 Subcontract.

85. As a result of this breach, DI has suffered damages in the amount of \$8,100,423.

**COUNT 2  
BREACH OF CONTRACT (JUNE, JULY ADDITIONAL WORK)**

86. DI restates and incorporates the allegations in paragraphs 1-85 as though fully set forth herein.

87. DI has performed the same scope of work under the Subcontract for June and July 2018.

88. There is no dispute that the work performed by DI, as a subcontractor, benefitted MDHI as the prime contractor.

89. Upon information and belief, and contrary to its express representations to DI, MDHI received a fully definitized contract extension from the government for work performed by DI in June and July 2018.

90. DI is entitled to the same monthly amount for June and July 2018 as it is for March, April, and May 2018. For June and July 2018, MDHI owes DI \$5,400,282.

91. DI has failed to agree that \$5,400,282 is the appropriate amount due to DI for DI's work in June and July 2018 and has been obstructive in any discussion.



92. The failure to modify the Subcontract to provide for payment of \$5,400,282 for the work DI has performed in June and July 2018 and failure to negotiate in good faith is a breach of the Subcontract.

93. MDHI should be required to pay, per the terms of the Subcontract within thirty (30) days of receipt of invoices for June and July 2018, the sum of \$5,400,282 to DI.

**COUNT 3**  
**DECLARATORY JUDGMENT UNDER 28 U.S.C. § 2201 et seq.**

94. DI restates and incorporates the allegations in paragraphs 1-93 as though fully set forth herein.

95. Pursuant to Rule 57 of the Federal Rules of Civil Procedure, “the existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate” and this Court “may order a speedy hearing of a declaratory-judgment action.”

96. There is an actual controversy between the parties with respect to whether MDHI’s breach of the Subcontract excuses DI from adherence to additional provisions in the Subcontract.

97. The CLS-5 Subcontract requires MDHI to make timely payment to DI within 30 days of receipt of any invoice submitted by DI, and provides no exception to such timely payment based on the U.S. Government’s delay or withholding of payment to MDHI under the Prime Contract. (CLS-5 Subcontract § H.4).

98. MDHI has breached the CLS-5 Subcontract by refusing to make timely payment to DI for Invoice Nos. MD532-2018-03, MD532-2018-04, and MD532-2018-05.

99. As a result of MDHI’s breach set forth in Count 1, MDHI currently owes MDHI in excess of \$8,100,423.

100. MDHI has further breached the Subcontract by failing to pay DI for work

performed in June and July 2018. As a result of MDHI's further breach set forth in Count 2, MDHI owes DI an additional \$5,400,282.

101. MDHI's breaches deprive DI of the benefit of the agreement and frustrates the purposes of the parties' agreement.

102. In addition, DI agreed to certain additional elements in the CL-5 Subcontract on the condition of prompt payment including, but not limited to, a non-competition clause. DI seeks a declaratory judgment that relieves DI from any obligation to adhere to additional elements of the CL-5 Subcontract as a result of MDHI's breach.

103. This Court has authority pursuant to 28 U.S.C. §§ 2201-2202 to declare the rights of DI with respect to the subcontract at issue.

104. Pursuant to 28 U.S.C. §§ 2201 and 2202, a judicial determination of the respective rights of the parties with respect to MDHI's refusal to pay and DI's future obligations to adhere to additional elements of the CLS-5 Subcontract are necessary and appropriate to set forth the respective rights of the parties.

105. DI is entitled to a declaratory judgment that: (1) DI is not in breach of any enforceable contractual obligations to MDHI; (2) Section H.4 of the CLS-5 Subcontract requires MDHI to make timely payment to DI within 30 days of receipt of any invoice by DI, notwithstanding any withholding or delay in payment to MDHI by the U.S. Government; (3) MDHI is in breach of the CLS-5 Subcontract; and (4) DI is not required to fulfill any further obligations under the CLS-5 Subcontract.

106. Given the need for the Government to receive the services set forth in the Subcontract involving the risk of human life and DI's unwillingness to perform additional work without payment, and to prevent DI and MDHI the significant expense of litigating the

enforceability of the additional elements of the Subcontract, DI requests that the Court order a speedy hearing on the declaratory relief sought herein, pursuant to Federal Rule of Civil Procedure 57, advance this case on its Calendar, and order expedited discovery and briefing to enable a speedy hearing on the merits.

**COUNT 4  
MISAPPROPRIATION OF DI'S  
CONFIDENTIAL AND PROPRIETARY INFORMATION**

107. DI restates and incorporates the allegations in paragraphs 1-106 as though fully set forth herein.

108. DI's confidential and proprietary cost information encompasses unique, creative, novel, original and concrete concepts, ideas, designs, and proposals.

109. DI provided the confidential information to MDHI based on false and misleading representations by MDHI and based upon the agreement and understanding that the information would be used to mutually benefit DI and MDHI's continuing relationship.

110. MDHI misappropriated the confidential and proprietary information in DI's Proposal and the cost information improperly obtained and retained by MDHI from DCAA for its own benefit and to the exclusion and injury of DI.

111. MDHI's conduct has caused, and continues to cause DI economic injury, including monetary damages and loss of its competitive advantage.

112. DI is entitled to recover from MDHI damages in an amount to be determined at trial, in excess of the sum of \$75,000, excluding interest and costs.

**COUNT 5  
FRAUDULENT INDUCEMENT**

113. DI restates and incorporates the allegations in paragraphs 1-112 as though fully set forth herein.

114. MDHI misrepresented to DI several critical facts that **it knew to be false**:

- (1) MDHI was operating under an undefinitized contract beginning on June 1, 2018, and that MDHI needed detailed cost and technical data from DI to help support the payments that MDHI would be seeking from the Government – that DI needed to provide an “audit ready” proposal to MDHI;
- (2) MDHI had not received a contract modification that included funding for additional months of work to include DI’s scope of work under the Subcontract; and
- (3) MDHI intended to issue a modification to DI’s subcontract for additional work once the Government modified the prime contract for additional work.

115. MDHI misrepresented these false facts for the purpose of inducing DI to rely upon them — causing DI to provide the Proposal that contained highly-detailed confidential and proprietary DI information.

116. Upon information and belief, MDHI acted with malice for the intention of causing DI economic and reputational injury.

117. DI reasonably relied upon MDHI’s misrepresentations as MDHI is a party to the Subcontract and assured DI that it intended to work with DI “long-term.”

118. DI suffered, and continues to suffer, injury through MDHI’s improper use of its confidential and proprietary information in formulating an RFP that was sent to DI’s competitors, by using DI’s competitive and proprietary information in the Proposal for its own improper purposes to the exclusion of DI. The damages suffered by DI will be determined at trial. DI’s damages exceed the sum of \$75,000, excluding interest and costs.

PRAYER FOR RELIEF

Based on the foregoing, as well as evidence to be presented at the trial of this matter, DI respectfully requests that the Court:

A. Enter an order awarding DI damages in the amount of \$8,100,423 based on MDHI's breach of the CLS-5 Subcontract for failure to pay March, April, and May invoices plus pre- and post-judgment interest, and reasonable attorneys' fees and costs as the prevailing party per the terms of the CL-5 Subcontract;

B. Enter an order requiring MDHI to pay DI the sum of \$5,400,282 within 30 days of receipt of an invoice from DI covering the work performed by DI in June and July 2018 under the Subcontract;

C. Enter a declaratory judgment that:

- i. DI is entitled to declaratory judgment against MDHI;
- ii. DI is not in breach of any enforceable contractual obligations to MDHI;
- iii. Section H.4 of the CLS-5 Subcontract requires MDHI to make timely payment to DI within 30 days of receipt of any invoice by DI, notwithstanding any withholding or delay in payment to MDHI by the U.S. Government;
- iv. MDHI is in breach of the CLS-5 Subcontract;
- v. DI is not required to fulfill any further obligations under, nor is bound by any restrictions contained in, the CLS-5 Subcontract; and

D. An order setting a speedy hearing on DI's declaratory judgment claim pursuant to Federal Rule of Civil Procedure 57, and to facilitate orders expediting the schedule for MDHI to answer this Complaint, expedited discovery, and expedited briefing.

E. For Counts 4 and 5, and to the full extent permitted by the law, an order providing damages to be determined at trial and punitive damages of at least \$10 million.

F. Grant DI such other and further relief as the Court may deem just, proper, and equitable.

JURY DEMAND

Plaintiff requests a trial by jury.

Dated July 26, 2018.

Respectfully submitted,

/s/ Craig A. Alexander

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