

STATE OF MINNESOTA
COUNTY OF RAMSEY

OTHER CIVIL
DISTRICT COURT
SECOND JUDICIAL DISTRICT

BidPrime, Inc.,

Court File No.:

Plaintiff,

vs.

COMPLAINT

DemandStar Corporation; and
Ramsey County, Minnesota,

JURY TRIAL DEMANDED

Defendants.

Plaintiff BidPrime, Inc. (“BidPrime”), for its Complaint against Defendants DemandStar Corporation (“DemandStar”) and Ramsey County, Minnesota (“Ramsey County”) and, states and alleges as follows:

INTRODUCTION

1. Plaintiff BidPrime is a comprehensive, constantly updated database of government business opportunities that permits its clients to swiftly and near-effortlessly connect with relevant bid requests and bid specifications. BidPrime helps its clients not only identify potential government contracts in their wheelhouse, but also enables those clients to learn of government opportunities they might otherwise overlook.

2. BidPrime advertises that “We tell you about government contract opportunities as soon as they’re issued.” Consequently, by and through BidPrime’s services, BidPrime actually helps government entities by ensuring its clients have the longest time possible in which to compile their bid—that is, giving potential winning bids more time to analyze and perfect their response to government RFPs. And BidPrime’s services are not limited to a few clients: once a

client pays the appropriate fee, anyone can join its network. Governments thus benefit again through BidPrime's products and services because governments receive the benefit of more competition.

3. In March 2019, BidPrime sought copies of Ramsey County's bid-related documents for a "Transportation Services for Emergency/Business Interruption" opportunity. In response to this requests, Ramsey County instructed BidPrime to obtain the documents from DemandStar, a for-profit corporation that stores and distributes government bids and requests for proposal. Ramsey County uses DemandStar through a Service Agreement entered into in December 2015 by the Wisconsin Association for Public Procurement ("WAPP").

4. When BidPrime tried to access the public data from DemandStar, however, DemandStar deactivated and barred BidPrime's account, contending that BidPrime violated DemandStar's Terms of Service, presumably because DemandStar believed the two companies were competitors.

5. BidPrime then informed Ramsey County of DemandStar's position. After some back-and-forth, Ramsey County assured BidPrime it could access DemandStar's website to obtain Ramsey County's public data. But when BidPrime tried to obtain the data from DemandStar, DemandStar again refused, telling BidPrime to get its public data from Ramsey County. Defendants' cat-and-mouse game led to this lawsuit.

6. But BidPrime's problems with DemandStar do not end with Ramsey County. Even though the Service Agreement (referenced above) specifically requires DemandStar to provide "suppliers," including BidPrime, with free access to its website so those suppliers can obtain bid- and solicitation-related documents relating to dozens of governmental entities, DemandStar illegally refuses to permit BidPrime to access its website.

7. BidPrime realizes that its product and services are far better than DemandStar's. But through this lawsuit, BidPrime seeks damages, an injunction, specific performance, costs, and reasonable attorneys' fees relating to defendants' ongoing and willful failure to provide public data to BidPrime, which continues to cause BidPrime to incur needless time and expense chasing down public data which Minnesota law, and the Service Agreement, plainly permits BidPrime to immediately access.

PARTIES

8. Plaintiff BidPrime is a corporation organized and existing under the laws of the State of Texas. It resides in Austin, Texas.

9. Plaintiff BidPrime is a provider of goods and/or services to its clients.

10. Defendant DemandStar is a Delaware corporation with its principal place of business in the State of Washington.

11. In the summer of 2018, DemandStar was carved out of Onvia, Inc. by Ben Vaught shortly after Onvia was acquired by Deltek (a Roper Technologies company).

12. Defendant DemandStar currently has nearly 600 government entities within its network.

13. Defendant Ramsey County is a "political subdivision" of the State of Minnesota within the meaning of Minn. Stat. § 13.02, Subd. 11.

14. Defendant Ramsey County is a "government entity" within the meaning of Minn. Stat. § 13.02, Subd. 7a.

15. Defendant Ramsey County is a citizen of the State of Minnesota for the purposes of federal-diversity jurisdiction, including 28 U.S.C. § 1332(a) and 28 U.S.C. § 1441(b).¹

¹ See, e.g., *Moor v. County of Alameda*, 411 U.S. 693, 717 (1973).

Agullard v. Principal Life Ins. Co., 685 F. Supp. 2d 947, 951 (D. Ariz. 2010)

JURISDICTION & VENUE

Jurisdiction

16. This Court has jurisdiction over this matter pursuant to: (a) Minn. Stat. § 13.08, Subd. 1; (b) Minn. Stat. § 13.08, Subd. 2; (c) Minn. Stat. § 13.08, Subd. 4; and (d) Minn. Stat. § 484.01, Subd. 1(1) and 1(7).

Venue

17. Venue is proper in this Court pursuant to Minn. Stat. § 13.08, Subd. 3.

JURY-TRIAL DEMAND

18. BidPrime demands a jury trial on all counts so triable.

FACTS

I. BidPrime's Product Is Much Better Than DemandStar's

19. As stated above, BidPrime provides its clients with a comprehensive, constantly updated database of government business opportunities that permits its clients to swiftly and near-effortlessly connect with relevant bid requests and bid specifications. BidPrime helps its clients not only identify potential government contracts in their wheelhouse, but also enables those clients to learn of government opportunities they might otherwise overlook.

20. As shown by the following chart of “differentiators,” BidPrime's product is superior to DemandStar's in several material ways:

Category	DemandStar	BidPrime
Coverage	DemandStar claims “access to over 400 governments,” with national, state, and county-based subscription options.	Access to over 100,000 governments with comprehensive coverage of local, state, US and Canadian bids and RFPs.

Obtaining data	Data entered by government-procurement officials. Only provides bids that are inputted into their system by government/municipal procurement employees.	Independently sourced, cultivated, curated, and enhanced dataset. Uses specialized software and research team to seek and capture public bids from municipal government procurement websites, state procurement portals, eprocurement portals, classified ads, and any other available public sources. BidPrime captures bids from any agency regardless of the source where they post and distribute procurement data.
Core customer base	Has contracts and engagements with government agencies to provide and share procurement data. Also upsells notification services of over 400 governments to vendors/suppliers. “Double dips” by providing services for profit to either governments, suppliers/vendors, or both.	Information obtained by BidPrime is researched, sought out through electronic means, mailed, or obtained through public-records requests. The sole customer is the vendor/supplier, not any government agency.
Registration & market	Suppliers/vendors can register for free for one agency to obtain its bid data. Attempts to charge for access to more than one agency. (Note: in violation of Service Agreement as alleged herein.)	Suppliers/vendors pay a subscription fee to obtain access to BidPrime's independently sourced and curated set of compiled public data.

II. December 2015: the Service Agreement

21. On or about December 17, 2015, the Wisconsin Association of Public Procurement and Onvia, Inc. each signed the Service Agreement Between Onvia, Inc. and Wisconsin Association for Public Procurement (“Service Agreement”).

22. A true and correct copy of the Service Agreement is attached hereto as Exhibit 1 and incorporated herein by reference.

23. Under the Service Agreement, the Wisconsin Association for Public Procurement was referred to as “WAPP.”

24. Under the Service Agreement, the Wisconsin Association for Public Procurement’s members were referred to as “Agency.”

25. Section 3 of the Service Agreement, entitled “Onvia Responsibilities,” provides that Onvia will, among other things:

- a. Automatically notify suppliers that are registered members of the Onvia DemandStar system, and have opted to receive notification service connecting them to the Agency, of the Agency’s solicitations for formal bids, proposals, and quote requests via electronic mail or facsimile;
- b. To provide links to the Onvia DemandStar Web site [sic] through the Web site [sic] of the Agency, which will: (a) allow anyone to view bid and proposal information posted to the Onvia DemandStar system by the Agency; (b) allow bid and proposed documents to be electronically downloaded or mail ordered; and (c) allow suppliers to register for memberships and subscriptions to the Onvia DemandStar system;
- c. To provide customer service support to the Agency and suppliers;
- d. To supply the Agency with reference information and instructional materials to facilitate its notification to suppliers of its decision to utilize the Onvia DemandStar system.

26. Section 5 of the Service Agreement provides:

The service will be provided free of charge to the Institution and its member Agency(s). Access to the Agency's bids and documents will also be provided free of charge to WAPP participating Agency's suppliers who register through and exclusively access WAPP formal and informal solicitations through a unique WAPP portal (www.onvia.com/wapp) to the DemandStar platform. DemandStar may offer such suppliers other products and services for a fee; however there will be no charge associated with accessing WAPP participating Agency(s) bids/quotes and related information that have been posted on DemandStar's platform.

27. Section 12 of the Service Agreement provides that "[t]his Agreement will be governed by and constructed in accordance with the laws of the State of Wisconsin, without regard to its choice of law principles."

28. Section 13 of the Service Agreement provides "[i]n the event of litigation, the prevailing party shall be entitled to receive reasonable attorneys' fees and costs."

29. DemandStar is specifically referenced in the Service Agreement.

30. DemandStar assumed Onvia's rights and obligations under the Service Agreement.

31. DemandStar has been performing Onvia's rights and obligations under the Service Agreement since at least January 1, 2019.

III. March 2019: BidPrime's Request for Ramsey County's Bid Documents Regarding "Transportation Services for Emergency/Business Interruption" Opportunity

32. On March 15, 2019, Anna Barnett of BidPrime emailed Karen N. Bollinger, the Principal Procurement Specialist for Ramsey County. In this email, Ms. Barnett requested, via email, "...the bid documents for the 'Transportation Services for Emergency / Business Interruption' opportunity at [her] earliest convenience."

33. Ms. Bollinger responded the same day (i.e., March 15, 2019), stating, "[t]hank you for your interest. All documents are posted to DemandStar."

34. In the same March 15, 2019 email, Ms. Bollinger also stated: “Please be advised that Ramsey County recommends that your firm access DemandStar to obtain the information requested. In addition, the County needs to assure [sic] the solicitation process is fair, open and transparent which means that everyone is referred to DemandStar to obtain the same information from the documents that are attached to the solicitation. This will be a much faster method of updating your records on the status of each of our solicitations. We post the initial responses and pricing within a day after opening.”

35. In the same March 15, 2019 email, Ms. Bollinger also stated: “In consultation with the Ramsey County Attorney, we confirmed that since DemandStar is our primary tool for posting solicitations, you will need to contact them directly to access documents. Additionally, we contacted DemandStar and were told that BidPrime can utilize their program. DemandStar does not deny access to their program by their competitors.”

36. On or about March 21, 2019, Ms. Barnett downloaded the Ramsey County bid documents from the DemandStar website, but several days later, when BidPrime attempted to log into their DemandStar account to access a document, BidPrime learned that DemandStar suspended BidPrime’s account.

IV. March 2019: DemandStar Prohibits BidPrime’s Access To Its Website

37. On March 22, 2019, Ms. Barnett emailed DemandStar and stated: “To whom it may concern, I was recently advised by Ramsey County to create a DemandStar account in order to review and qualify leads for our clients. Upon trying to log in this morning, it mentions the account has been placed on hold. Please advise on any further steps or information that might be needed from your end.”

38. On March 24, 2019, Ben Vaught, CEO of DemandStar, replied. He wrote, “Anna – our Terms of Service prohibit your use of our site.

<https://www.demandstar.com/termservice>[.] Please advise your client to register directly with DemandStar to review and qualify leads.”

V. DemandStar Tells BidPrime To Obtain Documents Directly From Ramsey County

39. On January 14, 2020, Mr. Vaught emailed BidPrime’s counsel and stated he was “...following up on a conversation between you and Karen Bollinger, Principal Procurement Specialist at Ramsey County MN. DemandStar allows other companies that may be considered competitors to utilize DemandStar, provided they agree to [sic] and adhere to our Terms of Use as posted on our website. Please confirm if BidPrime is able to adhere to our Terms of Use.”

40. BidPrime’s counsel responded to Mr. Vaught on February 7, 2020. In that email, BidPrime’s counsel, Myra Dioquino, stated “[t]hank you for confirming that companies may be considered competitors of DemandStar are allowed to utilize DemandStar services. This is particularly important to us in places such as Ramsey County, where DemandStar is the exclusive provider for public contract opportunities. We have carefully reviewed the DemandStar Terms of Use and determined that we can accept these Terms with the slight clarifications in the attached (as redlines). These edits are simply to align DemandStar’s Terms of Use with current applicable law, and BidPrime does agree to adhere to these Terms with the clarifications provided.” Ms. Dioquino, on behalf of BidPrime, also attached a Microsoft Word document to this February 7, 2020 email that contained proposed edits to DemandStar’s Terms of Service that would remove the competitive limitations in DemandStar’s Terms of Service with respect to BidPrime.

41. On Tuesday, February 11, 2020, DemandStar's outside counsel, Jennifer Davis, emailed Ms. Dioquino. Ms. Davis stated that DemandStar provided BidPrime's request to redline DemandStar's terms of use, which she referred to as "ToU," and "that we aim to provide a substantive response by the end of next week."

42. Having received nothing, on Friday, February 21, 2020, Ms. Dioquino, on behalf of BidPrime, emailed Ms. Davis and asked if DemandStar has changed its "ToU."

43. Later that day, Ms. Davis sent Ms. Dioquino a letter. In this February 21, 2020 letter, Ms. Davis, on behalf of DemandStar, stated that BidPrime can, and should, obtain its requested Ramsey-County information through an open-records request rather than use of DemandStar's website.

44. DemandStar authorized Ms. Davis to write her February 21, 2020 letter on behalf of DemandStar.

45. In her February 21, 2020 letter, Ms. Davis, on behalf of DemandStar, also referenced DemandStar's "agreement" with Ramsey County.

46. Specifically, in her February 21, 2020 letter, Ms. Davis stated:

DemandStar's Agreement With Ramsey County Does Not Bar BidPrime's Right to Use the MGPDA

DemandStar provides institutions like Ramsey County with access to its DemandStar system, which as you know, is an Internet-based electronic information system designed to process, distribute, and archive information. DemandStar, in furnishing the services, acts as an independent contractor and not as the custodian of an institution's public records. As with all institutions for which DemandStar provides services, DemandStar does not have an exclusive license to access or use public records related to Ramsey County, nor is DemandStar entrusted with any records belonging to Ramsey County and nor is it entrusted with making available such records for public inspection and copying in accordance with any applicable laws. In other words, while DemandStar does provide services to various public entities—including Ramsey County—pertaining to procurement processes, it in no way restricts, prohibits or otherwise interferes with the ability of third parties to obtain relevant information directly from the public entities themselves.

47. Upon information and belief, the agreement that Ms. Davis referenced in her February 21, 2020 letter was the Service Agreement Between Onvia, Inc. and Wisconsin Association for Public Procurement dated December 17, 2015.

48. Also in her February 21, 2020 letter, Ms. Davis stated, “[f]or the reasons stated above, BidPrime is free to obtain the information it seeks directly from Ramsey County via an MGDPA request. Therefore, BidPrime’s proposed edits to DemandStar’s ToU are unnecessary and DemandStar declines to accept these changes. If you wish to discuss this matter further, I may be reached by telephone at 206.529.4827 or by email at jen@focallaw.com.”

49. After receiving Ms. Davis’s February 21, 2020 letter, BidPrime’s outside counsel then attempted to schedule a time to speak to Ms. Davis.

50. On March 3, 2020, BidPrime’s outside counsel, Radney Wood, emailed Karen Bollinger of Ramsey County. In this email, Mr. Wood stated:

Dear Ms. Bollinger—

My firm represents BidPrime Inc. My colleagues Myra Dioquino and Jennifer Carroll (copied here) have been in communication with you over the past year regarding BidPrime being granted access to the Ramsey County procurement solicitations.

As your email below states, Ramsey County has told my client that they must use DemandStar to obtain these public records. We have attempted on multiple occasions to gain access to DemandStar as you asked us to do. As you can see from DemandStar’s response, however, we have been informed that DemandStar will not grant us access.

I would request that you forward this email and the DemandStar response to Ramsey County’s legal counsel and also request that you put me in touch with Ramsey County’s legal counsel so we can discuss this matter in further detail. It is our position that DemandStar’s action violates the Minnesota Government Data Practices Act and we would like to find an amicable resolution to this matter.

Thank you,
Radney Wood

51. Having heard nothing, on March 11, 2020 at 12:53PM, Mr. Wood emailed Ms. Bollinger again, stating: "I am following up on my email from a week ago. Please put me in touch with Ramsey County's legal counsel at your earliest convenience. It is important that I speak with someone about the fact that over a year later my client still does not have access to the public procurement offerings of Ramsey County."

52. Ms. Bollinger replied approximately 15 minutes later (i.e., March 11, 2020 at 1:06PM), stating, "[y]our request has been received. At this time we are trying to obtain information from DemandStar as to what was discussed. As soon as we have the information we will be in touch with you."

53. On that same day, i.e., March 11, 2020, BidPrime's outside counsel, including Radney Wood and Myra Dioquino, and DemandStar's outside counsel, including Jen Davis and Venkat Balasubramani, participated in a brief conference call. After this discussion, DemandStar's outside counsel asked to go back to their client to discuss BidPrime's proposal.

54. Mr. Wood did not hear anything back from Ms. Bollinger following her March 11, 2020 email, so he emailed again on March 25, 2020. In this email, Mr. Wood, on behalf of BidPrime, stated:

Good morning, Karen. I hope you are staying safe and inside during the current pandemic. I just wanted to check in to see if you had been able to discuss this situation with Demand[S]tar and Ramsey County's legal counsel? We are hoping to find an amicable resolution, but our client has been shout [sic] out of the Ramsey County system for months now and we are looking for headway on solving this problem.

Thanks,
Rad

55. Also on March 25, 2020, BidPrime's outside counsel, Radney Wood, emailed Ms. Davis and others and requested another time to speak about BidPrime's requests to access

Ramsey County's public data from DemandStar. Specifically, Mr. Wood stated, "[w]e are still hopeful that we can find an amicable solution here, but our client has been precluded from timely accessing the Ramsey County database for months now."

56. On March 30, 2020, Ms. Davis responded, stating "I wanted to let you know that we're still working with our client to be able to provide a substantive reply to BidPrime's request. We should be able to get that to you by early next week."

57. On behalf of BidPrime, Mr. Wood responded the same day (i.e., March 30, 2020), stating "Thanks so much for the update, Jen. Take care and stay safe."

58. On April 9, 2020, Karen Bollinger, on behalf of Ramsey County, replied to Radney Wood's email dated March 25, 2020 wherein Mr. Wood requested an update regarding Ramsey County's communications with DemandStar. In her April 9 email, Ms. Bollinger stated: "Due to all the COVID 19 work being performed during the past few weeks it has been impossible to devote the time necessary. I will be discussing this with our Attorney within the next week or two, and will follow-up with you thereafter."

59. Mr. Wood responded to Ms. Bollinger's April 9, 2020 email within five minutes, stating, "[n]o problem, Karen. I understand these are unusual times. I appreciate the update. Hope you are staying safe and healthy."

60. On April 10, 2020, Ms. Davis emailed Mr. Wood and apologized "...for the delays we are experiencing. It seems that everything is moving at a much slower pace than normal due to the current crisis. We are actively working with our client to evaluate possible options for moving forward, and I will get back to you as soon as possible. I don't anticipate that it will be much longer. Again, thanks for your patience."

61. On behalf of BidPrime, Mr. Wood responded—again—the same day (i.e., April 10, 2020), stating, “Thanks so much for the update, Jen. I do appreciate it and understand the delay with everything going on in the world today.”

62. On April 22, 2020, Ms. Davis emailed Mr. Wood, stating: “Thank you for your patience while we consulted with our client. BidPrime’s request to make changes to DemandStar’s ToS came at an unusual time, in that DemandStar was just preparing to launch its new platform—which has since happened. As a part of this launch, DemandStar is revising its platform ToS with an eye towards possibly accommodating request like BidPrime’s, while also maintaining relationships with its current partners. This retooling of the ToS is ongoing and fluid at the moment, and DemandStar would like to revisit BidPrime’s request in the near future when this effort is complete. As present circumstances have resulted in an unusually attenuated response time with regard to this matter, I especially appreciate your graciousness.”

VI. May-June 2020: BidPrime Requests Documents From Ramsey County, and Ramsey County Tells BidPrime To Obtain The Documents From DemandStar

63. On May 15, 2020, BidPrime emailed Karen Bollinger of Ramsey County and requested “copies of public records and specifications for the bid solicitation issued by Ramsey County titled: ‘Catering Services at Union Depot.’”

64. Ramsey County responded with the document on May 19, 2020, and stated, “[f]or your reference, solicitations are posted electronically on DemandStar, the government bidding system used by Ramsey County.”

65. On May 24, 2020, BidPrime emailed Karen Bollinger and requested “...to obtain copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Answering Services for 633-Easy.”

66. Also on May 24, 2020, BidPrime emailed Karen Bollinger and requested "...to obtain copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Social and Medical History Writing."

67. On May 26, 2020 at 4:01PM, Donna Knutson, a Ramsey County employee, responded to BidPrime's email regarding BidPrime's request for documents relating to "Answering Services for 633-Easy." Ms. Knutson copied Karen Bollinger and stated, "[y]ou may find the information you are requesting on our internet purchasing site, DemandStar. Please visit our website for information on how to access and search for solicitations.... If you have any questions or need technical assistance with DemandStar, contact support@demandstar.com or call 206-940-0305."

68. On May 26, 2020 at 4:04PM, Donna Knutson, a Ramsey County employee, responded to BidPrime's email regarding BidPrime's request for documents relating to Ramsey County's RFP regarding "Social and Medical History Writing." Ms. Knutson copied Karen Bollinger and stated, "[y]ou may find the information you are requesting on our internet purchasing site, DemandStar. Please visit our website for information on how to access and search for solicitations.... If you have any questions or need technical assistance with DemandStar, contact support@demandstar.com (<mailto:support@demandstar.com>) or call 206-940-0305."

69. BidPrime responded to Ms. Knutson approximately five minutes later (i.e., May 26, 2020 at 4:09PM), stating: "DemandStar will not grant my company access to an account. I've been told to attach this letter from DemandStar's counsel, who have directed BidPrime to the Open Records request to obtain this data. Please advise on the status of this timely request."

70. BidPrime attached Ms. Davis's February 21, 2020 letter (described above) to its May 26, 2020 email (at 4:09PM) to Ms. Knutson and others at Ramsey County.

71. Approximately one minute after his May 26, 2020 at 4:09PM email, BidPrime responded to Ms. Knutson's 4:04PM email at 4:10PM (on May 26, 2020) regarding BidPrime's request for documents relating to Ramsey County's RFP regarding "Social and Medical History Writing." BidPrime wrote, "Please reference my other request and advise on how to proceed obtaining these specifications. Demandstar [sic] has directed my firm to file Open Records requests. Any direction would be greatly appreciated."

72. Having heard nothing, BidPrime emailed Ms. Knutson and Ms. Bollinger again on Friday, June 5, 2020. (This email was also sent to DataRequests@CO.RAMSEY.MN.US). This email was the same string in which BidPrime requested documents relating to "Social and Medical History Writing Specifications." In this email, BidPrime wrote, "[p]lease let me know if my request for records has been denied."

73. On June 8, 2020, Ms. Knutson "replied to all" and stated, "[y]our request is in the review process. Thank you for your patience."

74. To date, Ramsey County has not provided any documents relating to BidPrime's May 24, 2020 document request relating to "Answering Services for 633-Easy."

75. To date, Ramsey County has not provided any documents relating to BidPrime's May 24, 2020 document request relating to "Social and Medical History Writing."

76. On June 15, 2020, BidPrime requested "...to obtain copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Tamarack Nature Center Garden House Remodel."

77. Nineteen minutes later, on June 15, 2020 at 2:20PM, Kyle Rahne, Ramsey County's Principal Procurement Specialist, replied to BidPrime's email. Mr. Rahne wrote, "[p]lease be advised that the bid documents for the above referenced project must be downloaded from Demandstar.com."

78. To date, Ramsey County has not provided any documents relating to BidPrime's June 15, 2020 document request relating to "Tamarack Nature Center Garden House Remodel."

79. On June 16, 2020, BidPrime requested "...to obtain copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Horizontal Curve Analysis, Data Collection and Report."

80. To date, Ramsey County has not provided any documents relating to BidPrime's June 16, 2020 document request relating to "Horizontal Curve Analysis, Data Collection and Report."

81. On June 19, 2020, Ms. Knutson emailed BidPrime again in the same email string pertaining to its request for documents relating to Ramsey County's RFP regarding "Social and Medical History Writing Specifications." In this email, Ms. Knutson wrote:

We understand DemandStar is not able to adjust their terms of use for your needs, but the information you're requesting from Ramsey County is publicly available on DemandStar in the same format in which we would provide it. We fulfill our responsibilities under the Minnesota Government Practices Act by placing these documents publicly through DemandStar.

82. Mr. Knutson's response is untrue. Minnesota Statute § 13.05, Subd. 11 provides that "[i]f a government entity enters into a contract with a private person to perform any of its functions, all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and the private person must comply with those requirements as if it were a government entity.

All contracts entered into by a government entity must include a notice that the requirements of this subdivision apply to the contract. Failure to include the notice in the contract does not invalidate the application of this subdivision. The remedies in section 13.08 apply to the private person under this subdivision.” Thus, Ramsey County cannot simply wash its hands by subcontracting its obligations under the Minnesota Government Data Practices Act, particularly when it has actual knowledge that the private party it contracted with is not following the requirements of the Act.

83. Since June 2020, Ramsey County and DemandStar have been unresponsive to BidPrime’s requests for public data. It continues to this day. As a result, BidPrime has had to inform its clients in a form email that included the following:

Unfortunately Ramsey County has stopped responding to our multiple FOIA requests. Please contact the agency directly at the information provided below to obtain any available documents.

Name: Karen Bollinger
Email: karen.bollinger@co.ramsey.mn.us
Phone: 651-266-8077

I do apologize for any inconvenience this has caused. Please know we are working diligently to get things worked out with the agency. Please let me know if you have any questions or if I can be of further assistance.

84. Ramsey County and DemandStar’s failure to provide public data to BidPrime has caused, and continues to cause, irreparable injury to BidPrime through the apparent failure to provide products and services it has promised to provide, thus damaging BidPrime’s goodwill.

VII. DemandStar's Refusal To Provide Public Data Via Access To Its Website Is Not Limited To Ramsey County

A. City of Naperville, Illinois

85. On June 2, 2020, BidPrime requested bid-related documents relating to the City of Naperville, Illinois' "Northwest Waterworks Booster Pump Vfd Installation and South Operations Center Pump Vfd Replacement."

86. In response, the City of Naperville, Illinois responded in an email dated June 2, 2020, [p]lease note that if a procurement is currently being advertised, the City does not provide the documents via FOIA. Instead, the Procurement Team requires bidders to go to Demandstar.com, the City's online bidding service to obtain the documents. This ensures that the bidders obtain the correct documents and are added as planholders in case there are addenda that are issued."

87. On June 2, 2020, Radney Wood, on behalf of BidPrime, emailed the City of Naperville (specifically, SchmidtK@naperville.il.us). In this email, Mr. Wood stated:

Dear Ms. Schmidt et al—

My firm represents BidPrime Inc. My client forwarded me your email from earlier today (pasted below). Thank you for informing us that my client must use DemandStar to access procurements that are being advertised by the City of Naperville instead of requesting such information via FOIA.

Unfortunately, the reason my client submitted the FOIA request is that DemandStar has rejected my client's attempt to use their platform and has instead demanded that they use FOIA requests in locations where procurements are offered by DemandStar.

I am attaching correspondence that my office received from DemandStar's attorneys on this topic from a different municipality. As you can see from DemandStar's response, my client is not allowed on the DemandStar platform and now, based on your email, is not allowed to get this public information from the city as well.

I would request that you forward this email and the DemandStar response to the City of Naperville's legal counsel and also request that you put me in touch with the City of Naperville's legal counsel so we can discuss this matter in further detail.

It is our position that DemandStar's action violates the Illinois Procurement Code and puts the City of Naperville's compliance into question as well. We would like to find an amicable resolution to this matter if possible, but the status quo is clearly untenable.

Thank you,
Rad

88. Unfortunately, BidPrime's experience with the City of Naperville is similar to its experience with Ramsey County. That is, when BidPrime requests publicly available documents from the City of Naperville, the City tells BidPrime to obtain the documents from DemandStar. But as alleged herein, DemandStar refuses to permit BidPrime to maintain an account with DemandStar, all in violation of the above-described Service Agreement.

B. City of Springfield, Missouri

89. On May 15, 2020, BidPrime requested bid-specification documents relating to the City of Springfield, Missouri's "Ifb 082-2020 Manhole Adjustment Rings & Lamp Hole Lids."

90. On May 18, 2020 at 8:08AM, Kilina Goldenberg, Buyer, City of Springfield—Division of Purchases, stated, "[t]he bid specifications are available from Demandstar [sic]."

91. On May 18, 2020 at 11:09AM, BidPrime responded, "Demandstar [sic] will not approve my registration and will not respond to my requests. Please let me know where I may direct a Public Record request to obtain this timely information."

92. On May 18, 2020 at 12:29PM, BidPrime emailed the City of Springfield, Missouri again and stated, "[p]ursuant to the open records law 5 Mo. Rev. Stat. Secs. 610.010 to 610.225, I am requesting an opportunity to obtain copies of public records and specifications for the bid solicitation issued[:] Ifb 082-2020 Manhole Adjustment Rings & Lamp Hole Lids."

93. On May 19, 2020, Russ McLaughlin, City Clerk Specialist of the City of Springfield, Missouri, to BidPrime's May 18, 2020 at 12:29PM email, stating:

I am in receipt of your Sunshine Request—assigned number 4685—and I have forwarded your request to the departments/individuals that may have records responsive to your request. All no records, we will contact you concerning any charges associated with accumulating this information and providing copies to you.

Thank you for your request and I look forward to further communication.

(Underline emphasis deleted).

94. On May 20, 2020 at 1:49PM, Russ McLaughlin, City Clerk Specialist of the City of Springfield, Missouri, provided BidPrime with documents relating to the City of Springfield, Missouri's "Manhole Adjustment Rings & Lamp Hole Lids." The documents were described in Mr. McLaughlin's email under the heading, "Purchasing Department."

95. On May 22, 2020, BidPrime requested bid-specification documents relating to the City of Springfield, Missouri's "ifb 096-2020 Native Plant Landscape Maintenance."

96. On May 26, 2020, Russ McLaughlin, City Clerk Specialist of the City of Springfield, Missouri, replied and stated that "[a]ll non-privileged material responsive to your request will be provided to you." (Underlined emphasis deleted.)

97. On May 27, 2020, Russ McLaughlin, City Clerk Specialist of the City of Springfield, Missouri, provided BidPrime with documents relating to the City of Springfield, Missouri's "ifb 096-2020 Native Plant Landscape Maintenance."

98. On August 7, 2020, BidPrime emailed the City of Springfield, Missouri and requested specification documents relating to the City of Springfield, Missouri's "Ifb 008-2021 Liquid Polymer."

99. On August 7, 2020 at 2:19PM, the City of Springfield, Missouri replied and stated that "The City of Springfield will now accept electronically submitted bids through its e-bidding service provider, DemandStar, from qualified persons." The same email provided, "[i]f you have issues registering or uploading a bid, please contact DemandStar toll free at (866) 273-1863."

100. Four minutes later, on August 7, 2020 at 2:21PM, BidPrime responded to the City of Springfield, Missouri's August 7, 2020 at 2:19PM email. In this email, BidPrime stated, "Demandstar [sic] will not approve my company's registration to view these specifications. Please advise on where to send public records requests."

101. On August 12, 2020, the City of Springfield, Missouri responded, stating "[p]lease send a sunshine request to the City of Springfield Missouri City Clerk. Her e-mail address is on our website."

102. To date, DemandStar has not provided BidPrime with bid-specification documents relating to the City of Springfield, Missouri—Division of Purchases' "Manhole Adjustment Rings & Lamp Hole Lids."

103. To date, DemandStar has not provided BidPrime with bid-specification documents relating to the City of Springfield, Missouri—Division of Purchases' "ifb 096-2020 Native Plant Landscape Maintenance."

104. To date, DemandStar has not provided BidPrime with bid-specification documents relating to the City of Springfield, Missouri—Division of Purchases' "Ifb 008-2021 Liquid Polymer."

C. City of Wasilla, Alaska

105. On August 5, 2020 at 10:39AM, BidPrime emailed the City of Wasilla, Alaska and requested bid-specification documents relating to the City of Wasilla, Alaska's solicitation relating to "Install Owner Furnish Playground Equipment."

106. On August 5, 2020 at 4:02PM, "Ashley" from "publicworks" from the City of Wasilla, Alaska responded:

We go through demandstar.com (<http://demandstar.com>). You can download everything from there. If you have any trouble and want to be considered, I can

add you to the planholders list and then provide the documents to you. If you want me to add you, I will need the following sent back:

Project:

Contact Name: Business Name: Address:

Phone Number: Email Address:

Thanks, Ashley

107. On August 5, 2020, at 4:06PM, BidPrime responded, "Hi Ashley. Thanks so much. The attachment helps because Demandstar [sic] will not approve my registration. Here is my information to add to plan holder list as well."

108. To date, DemandStar has not provided BidPrime with bid-specification documents relating to the City of Wasilla, Alaska's solicitation relating to "Install Owner Furnish Playground Equipment."

D. Clark County, Nevada

109. On August 26, 2020 at 9:26AM, BidPrime requested specification documents relating to Clark County, Nevada's Water Reclamation District's "CMAR Request for Proposal."

110. On August 26, 2020 at 12:09PM, Larry Silver, Purchasing Analyst, Clark County Water Reclamation District, replied, "[a]ll of the District's CMAR project documents can be found here:

http://www.demandstar.com/supplier/bids/agency_inc/bid_list.asp?f=search&mi=1676692

(http://www.demandstar.com/supplier/bids/agency_inc/bid_list.asp?f=search&mi=1676692)

Or you can complete the attached Request for Public Records and return it to me."

111. On August 27, 2020, because DemandStar would not permit BidPrime to access its website, BidPrime provided a records request to Clark County, Nevada. BidPrime's email

concluded with, “[p]lease let me know if you need any other information to receive these specifications.”

112. BidPrime received no response to this email, so on September 2, 2020, BidPrime forwarded its August 27, 2020 email to the same email address at Clark County’s Water Reclamation District, Nevada, and stated: “Greetings. I wanted to follow up to ensure this solicitation request is being processed.”

113. To date, Clark County, Nevada’s Water Reclamation District has not provided any specification documents to BidPrime relating to its “CMAR Request for Proposal.”

114. To date, DemandStar has not provided any specification documents to BidPrime relating to Clark County, Nevada’s Water Reclamation District’s “CMAR Request for Proposal.”

E. Dupage County, Illinois

115. On July 8, 2020, BidPrime emailed Jessica Ortega, an employee at the Forest Preserve District of DuPage County, and requested “...the bid specifications for the following solicitation[]: Forest Preserve Master Plans: Blackwell, Herrick Lake and Greene Valley.” In this email, BidPrime noted that “[u]nfortunately, the website where the bids are listed will not approve my registration to download these specifications.”

116. The deadline to submit response to the Forest Preserve Master Plans: Blackwell, Herrick Lake and Greene Valley was July 31, 2020.

117. On July 17, 2020, BidPrime emailed Carla Soria, Purchasing Services Supervisor, Forest Preserve District of DuPage County, Illinois and requested “...the bid specifications for the following solicitation[]: 2020 District Uniform.” In this email, BidPrime again noted that “[u]nfortunately, the website where the bids are listed will not approve my registration to download these specifications.”

118. The deadline to submit response to the 2020 District Uniform was August 5, 2020.

119. On July 20, 2020, Ms. Soria replied and stated, "I have added you to the supplier list for this bid. You should be able to now," meaning that she added BidPrime to DemandStar's supplier list to enable it to view the bid specifications on DemandStar's website.

120. That same morning, on July 20, 2020, BidPrime replied to Ms. Soria's email and stated: "Even when I am added to a supplier list on the site, it doesn't let me log in to the site to download/access and specifications. We've attempted to reach out to their platform many times and no longer receive responses. Can you please attach the original specifications document?"

121. On July 22, 2020, Ms. Soria emailed BidPrime and stated, "[s]ince you are unable to access the documents through Demandstar, the District will process your records request through the Freedom of Information Act (FOIA). I have forwarded your request to the District FOIA Officer who will contact you shortly."

122. Approximately three hours later, on July 22, 2020, Jordan Countryman, Records Coordinator for the Forest Preserve District of DuPage County, emailed BidPrime and stated:

As Carla stated, the District is processing your request under the Freedom of Information Act. 5 ILCS 140/3.1 et seq. as a commercial request.

The District will respond to your request in 21 business days or less in which the District shall (i) provide an estimate of the time required to provide the records requested and an estimate of the fees to be charged, which the District may require payment in full before copying the requested documents, (ii) deny the request pursuant to one or more of the exemptions set out in FOIA, (iii) notify you that the request is unduly burdensome and extend an opportunity to attempt to reduce the request to manageable proportions, or (iv) provide the records requested.

123. On August 6, 2020, Mr. Countryman finally provided the documents that BidPrime requested on July 8, 2020 with respect to Forest Preserve District of Dupage County,

Illinois' "Forest Preserve Master Plans: Blackwell, Herrick Lake and Greene Valley"

solicitation.

124. On August 20, 2020, Mr. Countryman finally provided the documents BidPrime requested on July 17, 2020 with respect to Forest Preserve District of Dupage County, Illinois' "2020 District Uniform" solicitation.

125. To date, DemandStar has not provided any specification documents to BidPrime relating to Forest Preserve District of Dupage County, Illinois' "Forest Preserve Master Plans: Blackwell, Herrick Lake and Greene Valley" solicitation.

126. To date, DemandStar has not provided any specification documents to BidPrime relating to Forest Preserve District of Dupage County, Illinois' "2020 District Uniform" solicitation.

F. Virginia Beach, Virginia

127. On or about February 18, 2020, BidPrime requested solicitation documents related to Virginia Beach Schools, Virginia Beach, Virginia's "5012 Stage Curtains" solicitation.

128. On February 18, 2020, Andrea Caretta, Procurement Specialist, Office of Purchasing Services, Virginia Beach Schools, Virginia Beach, Virginia, emailed BidPrime and stated, "Please obtain all bid documents from DemandStar.com."

129. On February 18, 2020, BidPrime emailed Ms. Caretta and requested "...copies of public records and specifications for the bid solicitation issued by Virginia Beach City Public Schools titled Stage Curtains & Installation Services which is due 3/2/2020." BidPrime made this request through Virginia's open-records law.

130. On February 18, 2020 at 3:59PM, Ms. Caretta replied to this email and directed BidPrime to "...submit all of your FOIA request [sic] to John Sutton, Coordinator of Policy and Intergovernmental Affairs."

131. Five minutes later, i.e., on February 18, 2020 at 4:04PM, BidPrime made the same open-records law request in an email to Mr. Sutton.

132. On February 19, 2020, Kamala Lannetti, Deputy City Attorney, City of Virginia Beach, emailed a letter to BidPrime. In this letter, Ms. Lannetti stated:

February 20, 2020

VIA ELECTRONIC MAIL

William Hallaway
BidPrime
1301 South Interstate Hwy 35, Suite 200
Austin, TX 78741

Re: FOIA request: Stage Curtains and Installation Services

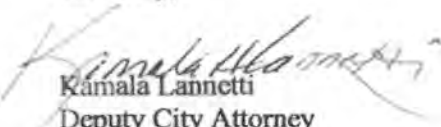
Dear Mr. Hallaway:

This is in response to your February 18, 2020 email to John Sutton, Coordinator of Policy and Intergovernmental Relations in which you request documents regarding "the bid solicitation issued by *Virginia Beach City Public Schools* titled *Stage Curtains & Installation Services* which is due 3/2/2020".

Pursuant to Virginia Code § 2.2-3704(A), only citizens of the Commonwealth and certain members of the media are entitled to assert the rights and privileges conferred by the Virginia Freedom of Information Act. Accordingly, your request is denied. However, the documents you are requesting are available on DemandStar. The link to access this bid information is as follows: https://www.demandstar.com/supplier/bids/agency_inc/bid_list.asp?f=search&LP=BB&mi=10044.

If you feel that this decision has been reached in error or you are able to provide information that demonstrates that you are eligible to receive this information, please feel free to contact me or my paralegal, Anna Cleveland, at (757) 263-1210.

Sincerely,


Kamala Lannetti
Deputy City Attorney

KHL/agc

cc: John Sutton, III
Andrea Caretta, Procurement Specialist

133. Due to the City of Virginia Beach's February 20, 2020 letter, and because DemandStar would not provide BidPrime with access to its website, BidPrime sought alternate methods to obtain the information from a third-party vendor.

134. On May 28, 2020 at 12:41PM, BidPrime emailed the Virginia Beach Schools, Virginia Beach, Virginia and sought "...bid specifications for the following solicitation[]: Ocean

Lakes High Brick Veneer & Waterproofing Sealant.” In this email, BidPrime noted that “[u]nfortunately, the website where the bids are listed will not approve my registration to download these specifications.”

135. On May 28, 2020 at 12:59PM, Ms. Caretta responded, stating “[b]ids can be downloaded on Demandstar.com.”

136. On June 24, 2020 at 9:13AM, BidPrime emailed the Virginia Beach Schools, Virginia Beach, Virginia and sought “...bid specifications for the following solicitation[]: Roofing Services.” In this email, BidPrime again noted that “[u]nfortunately, the website where the bids are listed will not approve my registration to download these specifications.”

137. On June 24, 2020 at 9:20AM, 2020, Ms. Caretta responded, stating “[a]ll bids and RFPs can be downloaded on Demandstar.com.”

138. To date, DemandStar has not provided BidPrime with any documents relating to its request for specification documents relating to Virginia Beach Schools, Virginia Beach, Virginia’s “5012 Stage Curtains” solicitation.

139. To date, DemandStar has not provided BidPrime with any documents relating to its request for specification documents relating to Virginia Beach Schools, Virginia Beach, Virginia’s “Ocean Lakes High Brick Veneer & Waterproofing Sealant” solicitation.

140. To date, DemandStar has not provided BidPrime with any documents relating to its request for specification documents relating to Virginia Beach Schools, Virginia Beach, Virginia’s “Roofing Services” solicitation.

VIII. Today: DemandStar’s Terms Of Service Prohibits BidPrime From Accessing Ramsey County’s Documents Via demandstar.com

141. DemandStar's current Terms of Service provide, among other things:

2. No Competitive Use

You may not subscribe for or use the Services or the Content if you are (or your company is) our direct competitor or to monitor or test the availability or performance of the Services, for benchmarking purposes or for competitive analysis. If you violate this Section 2, and without means of limitation, we may terminate this Agreement and your access to the Services and the Content immediately, and retain any amounts you have prepaid for the Services and the Content.

142. Because DemandStar considers BidPrime its "direct competitor," BidPrime may not use demandstar.com without potentially subjecting itself to litigation from DemandStar.

COUNT 1

Violation of Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01 et seq. (Against Ramsey County)

143. BidPrime hereby incorporates the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

144. Defendant Ramsey County is a "political subdivision" of the State of Minnesota within the meaning of Minn. Stat. § 13.02, Subd. 11.

145. Defendant Ramsey County is a "government entity" within the meaning of Minn. Stat. § 13.02, Subd. 7a.

146. BidPrime's March 15, 2019, May 24, 2020, June 15, 2020, and June 16, 2020 requests for documents to Ramsey County relating to Ramsey County's bids and requests for proposal constitute requests for "public data" under the Minnesota Government Data Practices Act.

147. BidPrime's requests to Ramsey County include the following requests for Ramsey County public data:

No.	Date of BidPrime's request	BidPrime's request
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1.	March 15, 2019	Bid documents for the Transportation Services for Emergency/Business Interruption opportunity
2.	May 24, 2020	Copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Answering Services for 633-Easy
3.	May 24, 2020	Copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Social and Medical History Writing.
4.	June 15, 2020	Copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Tamarack Nature Center Garden House Remodel
5.	June 16, 2020	Copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Horizontal Curve Analysis, Data Collection and Report.

148. BidPrime's clients need sufficient time to review a government entity's request for proposal (or bid) in order to aggregate and draft their respective responses. As noted above, BidPrime advertises to its clients that it works quickly to provide government requests for proposals and bids directly to its clients as soon as possible. To demonstrate the immediacy associated with BidPrime's requests for this public data, the solicitation due date for the above requests, and the days between BidPrime's requests and the solicitation due, was as follows:

No.	Date of BidPrime's request	Solicitation due date	Days between BidPrime's request & Solicitation due date
1.	March 15, 2019	April 4, 2019	20
2.	May 24, 2020	June 18, 2020	25
3.	May 24, 2020	June 4, 2020	11
4.	June 15, 2020	July 9, 2020	24
5.	June 16, 2020	July 1, 2020	15

149. To date, Ramsey County has not provided BidPrime with copies of the bid documents for the Transportation Services for Emergency/Business Interruption opportunity pursuant to BidPrime's March 15, 2019 request.

150. Ramsey County's failure to provide copies of the bid documents for the Transportation Services for Emergency/Business Interruption opportunity pursuant to BidPrime's March 15, 2019 request constitutes a violation of Minn. Stat. § 13.03.

151. To date, Ramsey County has not provided BidPrime with copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Answering Services for 633-Easy pursuant to BidPrime's May 24, 2020 request.

152. Ramsey County's failure to provide copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Answering Services for 633-Easy pursuant to BidPrime's May 24, 2020 request constitutes a violation of Minn. Stat. § 13.03.

153. To date, Ramsey County has not provided BidPrime with copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Social and Medical History Writing pursuant to BidPrime's May 24, 2020 request.

154. Ramsey County's failure to provide copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Social and Medical History Writing pursuant to BidPrime's May 24, 2020 request constitutes a violation of Minn. Stat. § 13.03.

155. To date, Ramsey County has not provided BidPrime with copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Tamarack Nature Center Garden House Remodel pursuant to BidPrime's June 15, 2020 request.

156. Ramsey County's failure to provide copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Tamarack Nature Center Garden House Remodel pursuant to BidPrime's June 15, 2020 request constitutes a violation of Minn. Stat. § 13.03.

157. To date, Ramsey County has not provided BidPrime with copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Horizontal Curve Analysis, Data Collection and Report pursuant to BidPrime's June 16, 2020 request.

158. Ramsey County's failure to provide copies of public records and specifications for the bid solicitation issued by Ramsey County titled: Horizontal Curve Analysis, Data Collection and Report pursuant to BidPrime's June 16, 2020 request constitutes a violation of Minn. Stat. § 13.03.

159. BidPrime has not asked Ramsey County to enhance any data, or enhance any access to any data, that it requested of Ramsey County.

160. Ramsey County knew that DemandStar had failed to provide, and continued to fail to provide, BidPrime's requested public data. Nevertheless, Ramsey County continued to persist in directing BidPrime to obtain its Ramsey-County public data from DemandStar. Ramsey County's violations of Minn. Stat. § 13.03, among other things, were, and continue to be, willful violations of Minn. Stat. § 13.03. *See* Minn. Stat. § 13.08, Subd. 1.

161. As a direct and proximate consequence of Ramsey County's violation of Minn. Stat. § 13.03, among other things, BidPrime has been damaged in an amount in excess of \$50,000, the amount to be proven at trial.

162. Additionally, BidPrime respectfully seeks, and is entitled to, an injunction and an order compelling Ramsey County's compliance with the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01, et seq., that specifically orders Ramsey County to provide BidPrime with: (a) its past requests of public data; and (b) all public data BidPrime requests in the future, including, but not limited to, all Ramsey County documents constituting or containing any bid or

request for proposal, all pursuant to Minn. Stat. § 13.08, Subd. 2 and Minn. Stat. § 13.08, Subd. 4.

COUNT 2
Violation of Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01 et seq.
(Against DemandStar)

163. BidPrime hereby incorporates the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

164. Minnesota Statute 13.05, Subd. 11 provides, among other things, that “[i]f a government entity enters into a contract with a private person to perform any of its functions, all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and the private person must comply with those requirements as if it were a government entity. All contracts entered into by a government entity must include a notice that the requirements of this subdivision apply to the contract.”

165. Ramsey County has entered into a contract with DemandStar to perform certain of its functions under the Minnesota Government Data Practices Act. DemandStar, therefore, is subject to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01 et seq., pursuant to Minn. Stat. § 13.05, Subd. 11.

166. Minnesota Statutes Chapter 13 applies to DemandStar.

167. The remedies in Minn. Stat. § 13.08 apply to DemandStar.

168. DemandStar contends that the Service Agreement is a contract between Ramsey County and DemandStar.

169. The Service Agreement does not include a notice that Minn. Stat. § 13.05, Subd. 11 applies to the contract.

170. As alleged herein, DemandStar has refused to provide BidPrime with access to Ramsey County's public data, in addition to all other Minnesota public data, via demandstar.com.

171. As alleged herein, DemandStar continues to refuse to provide BidPrime with access to Ramsey County's public data, in addition to all other Minnesota public data, via demandstar.com.

172. DemandStar's past and continuing failure to provide Ramsey County's public data, in addition to all other Minnesota public data, constitutes a violation of Minn. Stat. §§ 13.03 and 13.05.

173. BidPrime has not asked DemandStar to enhance any data, or enhance any access to any data, that it requested of DemandStar.

174. DemandStar knew that Ramsey County had failed to provide, and continued to fail to provide, BidPrime's requested public data. Nevertheless, DemandStar continued to direct BidPrime to obtain its Ramsey-County public data from Ramsey County. DemandStar's violations of Minn. Stat. § 13.03, among other things, were, and continue to be, willful violations of Minn. Stat. § 13.03. *See* Minn. Stat. § 13.08, Subd. 1.

175. As a direct and proximate consequence of DemandStar's violation of Minn. Stat. § 13.03, among other things, BidPrime has been damaged in an amount in excess of \$50,000, the amount to be proven at trial.

176. Additionally, BidPrime respectfully seeks, and is entitled to, an injunction and an order compelling DemandStar's compliance with the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01, et seq., that specifically orders DemandStar to provide BidPrime with: (a) its past requests of public data; and (b) all public data BidPrime requests in the future,

including, but not limited to, all Ramsey County and other Minnesota documents constituting or containing any bid or request for proposal, all pursuant to Minn. Stat. § 13.08, Subd. 2 and Minn. Stat. § 13.08, Subd. 4.

COUNT 3
Breach of the Service Agreement
(Against DemandStar)

177. BidPrime hereby incorporates the allegations set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

178. DemandStar is a party to a contract entitled “Service Agreement Between Onvia, Inc. and Wisconsin Association for Public Procurement” dated December 17, 2015 (“Service Agreement”).

179. DemandStar assumed Onvia’s rights and obligations under the Service Agreement.

180. Under the Service Agreement, the Wisconsin Association for Public Procurement’s members were referred to as “Agency.”

181. Ramsey County is a member of the Wisconsin Association for Public Procurement (“WAPP”).

182. On September 3, 2020, the website <https://www.wapp.org/chapters/nigp-wapp/member_agencies.cfm> listed “Ramsey County” as a “WAPP MEMBER AGENC[Y].”

183. DemandStar lists Ramsey County on its “Agency List” on its website. (See <https://network.demandstar.com/agency-list/>).

184. DemandStar lists the City of Naperville-Procurement Services Office on its “Agency List” on its website. (See <https://network.demandstar.com/agency-list/>).

185. DemandStar lists the City of Springfield, Missouri—Division of Purchases on its “Agency List” on its website. (See <https://network.demandstar.com/agency-list/>).

186. DemandStar lists the City of Wasilla, Alaska on its “Agency List” on its website. (See <https://network.demandstar.com/agency-list/>).

187. DemandStar lists the Clark County, Nevada Water Reclamation District on its “Agency List” on its website. (See <https://network.demandstar.com/agency-list/>).

188. DemandStar lists “Forest Preserve District of DuPage County” on its “Agency List” on its website. (See <https://network.demandstar.com/agency-list/>).

189. DemandStar lists Virginia Beach City Public Schools—Purchasing Services on its “Agency List” on its website. (See <https://network.demandstar.com/agency-list/>).

190. DemandStar and Ramsey County have agreed to follow the terms and provisions of the Service Agreement.

191. DemandStar and the City of Naperville-Procurement Services Office have agreed to follow the terms and provisions of the Service Agreement.

192. DemandStar and the City of Springfield, Missouri—Division of Purchases have agreed to follow the terms and provisions of the Service Agreement.

193. DemandStar and the City of Wasilla, Alaska have agreed to follow the terms and provisions of the Service Agreement.

194. DemandStar and the Clark County, Nevada Water Reclamation District have agreed to follow the terms and provisions of the Service Agreement.

195. DemandStar and the Forest Preserve District of DuPage County have agreed to follow the terms and provisions of the Service Agreement.

196. DemandStar and Virginia Beach City Public Schools—Purchasing Services have agreed to follow the terms and provisions of the Service Agreement.

197. Since at least 2015, DemandStar has followed the terms and provisions of the Service Agreement with respect to solicitation documents provided to DemandStar from Ramsey County.

198. Since at least 2015, DemandStar has followed the terms and provisions of the Service Agreement with respect to solicitation documents provided to DemandStar from City of Naperville-Procurement Services Office.

199. Since at least 2015, DemandStar has followed the terms and provisions of the Service Agreement with respect to solicitation documents provided to DemandStar from the City of Springfield, Missouri—Division of Purchases.

200. Since at least 2015, DemandStar has followed the terms and provisions of the Service Agreement with respect to solicitation documents provided to DemandStar from the City of Wasilla, Alaska.

201. Since at least 2015, DemandStar has followed the terms and provisions of the Service Agreement with respect to solicitation documents provided to DemandStar from the Clark County, Nevada Water Reclamation District.

202. Since at least 2015, DemandStar has followed the terms and provisions of the Service Agreement with respect to solicitation documents provided to DemandStar from the Forest Preserve District of DuPage County.

203. Since at least 2015, DemandStar has followed the terms and provisions of the Service Agreement with respect to solicitation documents provided to DemandStar from Virginia Beach City Public Schools—Purchasing Services.

204. The Service Agreement defines “supplier” as “[a]ny provider of goods or services, may also be known as a vendor or contractor.” (Service Agreement at Exhibit A at 5).

205. BidPrime provides goods or services to its clients.

206. BidPrime is a “supplier” within the defined meaning of that word in the Service Agreement.

207. Section 3 of the Service Agreement, entitled “Onvia Responsibilities,” provides that Onvia will, among other things:

- a. Automatically notify suppliers that are registered members of the Onvia DemandStar system, and have opted to receive notification service connecting them to the Agency, of the Agency’s solicitations for formal bids, proposals, and quote requests via electronic mail or facsimile;
- b. To provide links to the Onvia DemandStar Web site [sic] through the Web site [sic] of the Agency, which will: (a) allow anyone to view bid and proposal information posted to the Onvia DemandStar system by the Agency; (b) allow bid and proposed documents to be electronically downloaded or mail ordered; and (c) allow suppliers to register for memberships and subscriptions to the Onvia DemandStar system;
- c. To provide customer service support to the Agency and suppliers; and
- d. To supply the Agency with reference information and instructional materials to facilitate its notification to suppliers of its decision to utilize the Onvia DemandStar system.

208. Section 5 of the Service Agreement provides:

The service will be provided free of charge to the Institution and its member Agency(s). Access to the Agency’s bids and documents will also be provided free

of charge to WAPP participating Agency's suppliers who register through and exclusively access WAPP formal and informal solicitations through a unique WAPP portal (www.onvia.com/wapp) to the DemandStar platform. DemandStar may offer such suppliers other products and services for a fee; however there will be no charge associated with accessing WAPP participating Agency(s) bids/quotes and related information that have been posted on DemandStar's platform.

209. WAPP also maintains a website at wapp.org.

210. WAPP's website (at <https://www.wapp.org/chapters/nigp-wapp/demandstar.cfm>) contains instructions for "vendor registration" on its website. These instructions provide, among other things, that "[v]endors may register for DemandStar services free of charge at demandstar.com."

211. The Service Agreement was created for the direct and primary benefit of WAPP participating Agencies (such as Ramsey County) *and* those Agency's "suppliers," including BidPrime. Specifically, the Service Agreement, pursuant to section 5, provides that access to an "Agency's" bids (such as Ramsey County) "will also be provided free of charge to WAPP participating Agency's suppliers...". And while the Service Agreement provides that "DemandStar may offer such suppliers other products and services for a fee; *however there will be no charge associated with accessing WAPP participating Agency(s) bids/quotes and related information that have been posted on DemandStar's platform.*" (Service Agreement at § 5) (emphasis added).

212. Section 12 of the Service Agreement provides that "[t]his Agreement will be governed by and constructed in accordance with the laws of the State of Wisconsin, without regard to its choice of law principles."

213. The Service Agreement directly and primarily benefited "Agency suppliers," including BidPrime, by, among other things: (a) providing access to DemandStar's website to

access bids, quotes, and related information posted by an “Agency,” such as Ramsey County; and (b) providing that access free of charge. *See, e.g., Pappas v. Jack O. A. Nelsen Agency, Inc.*, 260 N.W.2d 721, 725 (Wis. 1978) (“The appellants’ first contention rests on the theory that a third-party beneficiary contract must directly and specifically intend to benefit a particular third party at the time of the agreement. However, the generally accepted rule is that a third-party need not demonstrate that he, individually, was intended to benefit from the contract; rather, it is sufficient if the third-party demonstrates that he was a member of a class of beneficiaries intended by the parties to benefit from it.”); *Estate of Plautz by Pagel v. Time Ins. Co.*, 525 N.W.2d 342, 347 (Wis. Ct. App. 1994) (“Thus, a third party can recover upon a contract when the contract indicates an intention to secure a benefit to that party.”).

214. Section 13 of the Service Agreement provides “[i]n the event of litigation, the prevailing party shall be entitled to receive reasonable attorneys’ fees and costs.”

215. DemandStar has failed to provide BidPrime with access, let alone free access, to demandstar.com as required by the Service Agreement.

216. As alleged herein, DemandStar’s failure to provide BidPrime with access to demandstar.com has resulted in BidPrime’s repeated failure to obtain documents that are required to be made available to “suppliers,” including BidPrime, by DemandStar as required by the Service Agreement.

217. BidPrime advertises that “We tell you about government contract opportunities as soon as they’re issued.” This advertisement is a material part of BidPrime’s business; if it cannot quickly access and deliver government bids, quotes, requests for proposal, etc., to its clients, its clients may obtain the same value as BidPrime’s products and services on their own or from others. Consequently, immediate access to Ramsey County, Minnesota’s, and other

governments' public data is essential to BidPrime's business, and the failure to immediately provide the same constitutes an irreparable injury to BidPrime.

218. As a direct and proximate consequence of DemandStar's material breach of the Service Agreement, among other things, BidPrime has been damaged in an amount in excess of \$50,000, the amount to be proven at trial.

219. Additionally, BidPrime continues to suffer irreparable injury due to DemandStar's failure to abide by the Service Agreement, including, without limitation, providing access to Ramsey County's, and other of Minnesota's, public data. Accordingly, BidPrime is entitled to an injunction (and/or specific performance of the Service Agreement) that specifically orders DemandStar to provide BidPrime with (a) its past requests of public data; and (b) all public data BidPrime requests in the future, including, but not limited to, all Ramsey County and other Minnesota documents constituting or containing any bid or request for proposal.

PRAYER FOR RELIEF

WHEREFORE, BidPrime respectfully requests that this Court enter judgment in favor of it and against defendants, as follows:

1. An order requiring defendants to compensate BidPrime for its damages pursuant to Minn. Stat. § 13.08, Subd. 1;
2. An order requiring DemandStar to compensate BidPrime for its damages due to its breaches of contract as alleged herein;
3. An order finding defendants willfully violated the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01 et seq., and compensating BidPrime not less than \$15,000 for each violation of the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01 et seq. pursuant to Minn. Stat. § 13.08, Subd. 1;
4. An order imposing a civil penalty against defendants of not less than \$1,000 per violation of the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01 et seq. pursuant to Minn. Stat. § 13.08, Subd. 4;
5. An injunction requiring defendants to provide them with all past public data it has requested, and all public data BidPrime requests in the future, including, but not limited to, all Ramsey County documents constituting or containing any bid or request for proposal;
6. Specific performance of the Service Agreement that specifically orders DemandStar, among other things, to provide BidPrime with immediate and free access to its website to obtain: (a) its past requests of public data; and (b) all public data BidPrime requests in the future, including, but not limited to, all Ramsey County and other Minnesota documents constituting or containing any bid or request for proposal;

7. An order compelling defendants' compliance with the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01 et seq., requiring defendants to provide them with all past public data requested, and all public data to be requested in the future, including, but not limited to, all Ramsey County and other Minnesota documents constituting or containing any bid or request for proposal;
8. An order requiring defendants to pay BidPrime's reasonable attorneys' fees pursuant to (a) Minn. Stat. § 13.08, Subd. 1; and/or (b) Minn. Stat. § 13.08, Subd. 4;
9. An order requiring DemandStar to pay BidPrime's reasonable attorneys' fees pursuant to § 13 of the Service Agreement;
10. An order requiring defendants to pay BidPrime's costs, disbursements, and applicable interest (pursuant to, *inter alia*, Minn. Stat. § 13.08, Subd. 1, Minn. Stat. § 13.08, Subd. 4, and Minn. Stat. 549.02); and
11. All further relief available in equity and at law.

DATED: September 14, 2020

MADDELL PA



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Attorneys for Plaintiff BidPrime, Inc.

ACKNOWLEDGMENT

The undersigned hereby acknowledges that, pursuant to Minn. Stat. § 549.211, sanctions may be awarded to the parties against whom the allegations in the pleadings are asserted.

DATED: September 14, 2020


Christopher W. Madel

EXHIBIT 1

**SERVICE AGREEMENT
BETWEEN
ONVIA, INC.
AND
WISCONSIN ASSOCIATION FOR PUBLIC PROCUREMENT**

1. Introduction

This Service Agreement ("Agreement") is entered into between Onvia, Inc. ("Onvia"), a Delaware corporation and WAPP, the Wisconsin Association for Public Procurement ("Institution"), a non-profit corporation and a Chapter of NIGP, the National Institute for Public Procurement. The services included under this agreement will be provided to WAPP members ("Agency"), comprised of municipal, county, state, and educational agencies.

2. Services Rendered

Onvia will provide the Agency with access to its Onvia DemandStar system, which is an Internet-based electronic information system designed to process, distribute, and archive information pertaining to the procurement process of the Agency.

3. Onvia Responsibilities

- To allow the Agency to use the Onvia DemandStar system through the Web site located at www.demandstar.com to post documentation to and communicate with suppliers about its solicitations for formal bids, proposals, and informal quote requests.
- To automatically notify suppliers that are registered members of the Onvia DemandStar system, and have opted to receive notification service connecting them to the Agency, of the Agency's solicitations for formal bids, proposals, and quote requests via electronic mail or facsimile.
- To provide links to the Onvia DemandStar Web site through the Web site of the Agency, which will: (a) allow anyone to view bid and proposal information posted to the Onvia DemandStar system by the Agency, (b) allow bid and proposal documents to be electronically downloaded or mail ordered, and (c) allow suppliers to register for memberships and subscriptions to the Onvia DemandStar system.
- To provide customer service support to the Agency and suppliers.
- To supply the Agency with reference information and instructional materials to facilitate its notification to suppliers of its decision to utilize the Onvia DemandStar system.

4. Agency Responsibilities

- To make reasonable efforts to enter all formal and informal purchase request items into the Onvia DemandStar system.
- To enter planholder information into the Onvia DemandStar system for any suppliers that obtain bid or proposal documents through a source other than the Onvia DemandStar system (this process ensures that Onvia can deliver newly issued addenda notification to all planholders, which reduces the likelihood of protests due to required information not being delivered to bidders and respondents).
- To notify the Agency's suppliers of the decision to utilize the Onvia DemandStar system.

5. Charge for Service

The service will be provided free of charge to the Institution and its member Agency(s). Access to the Agency's bids and documents will also be provided free of charge to WAPP participating Agency's suppliers who register through and exclusively access WAPP formal and informal solicitations through a unique WAPP portal (www.onvia.com/wapp) to the DemandStar platform. DemandStar may offer such suppliers other products and services for a fee; however there will be no charge associated with accessing WAPP participating Agency(s) bids/quotes and related information that have been posted on DemandStar's platform.

6. Intellectual Property Rights

Any copyrightable works, ideas, discoveries, inventions, patents, products, trade secrets, software, trade marks, trade names, service marks, license rights, or other intellectual property rights (collectively, "Intellectual Property Rights") developed in whole or in part by Onvia in connection with the services will be the exclusive property of Onvia. Ownership and all intellectual property rights in the Onvia DemandStar system and in all ideas, processes and works of authorship created in whole or in part during the term of this Agreement by Onvia belong exclusively to Onvia. The Institution acknowledges such ownership and intellectual property rights in the Onvia DemandStar System, acknowledges that any such work is not a work made by Onvia for hire, and agrees that the Institution will not assert any actions to the contrary.

7. Confidentiality

Onvia and the Institution each agree not to use any confidential or proprietary information disclosed to it by the other party for its own use or for any purpose other than for the provision of the services pursuant to this Agreement. Each party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of the confidential information of the other party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information.

8. Warranty

Onvia shall provide the services and meet its obligations under this Agreement with due care and skill and in a timely and professional manner. Other than as provided in this Agreement, neither party provides any express or implied warranties, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose.

9. Relationship of the Parties

Onvia, in furnishing the services, is acting as an independent contractor. In addition, Onvia is not acting as the custodian of the Agency's public records, has not been entrusted with any records belonging to the Agency or the availability of such records for public inspection and copying in accordance with the laws of the State of Wisconsin.

10. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to the subject matter contained in this Agreement.

11. Severability

If any provision of this Agreement is found to be illegal or otherwise unenforceable in any respect, that provision will be deemed to be restated to reflect as nearly as possible the original intent of the parties in accordance with applicable law. The remainder of this Agreement will remain in full force and effect.

12. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to its choice of law principles.

13. Attorneys' Fees

In the event of litigation, the prevailing party shall be entitled to receive reasonable attorneys' fees and costs.

14. Term of Agreement and Termination

This Agreement will be effective on the date of execution, or January 1, 2016, whichever is earliest. This Agreement does not have a specified term. This Agreement may be terminated at any time by either party upon 30 days prior written notice to the other party.

15. Amendments

No amendment or modification of this Agreement shall be valid or binding unless set forth in writing and duly executed and delivered by each of the parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date set forth above.

By

ONVIA, INC.



Signature

Kevin Green

Printed Name

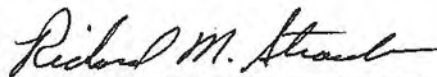
Associate Manager, Content

Title

12-17-2015

Date

WISCONSIN ASSOCIATION OF
PUBLIC PROCUREMENT



Signature

Richard M. Straub

Printed Name

President - WAPP

Title

12/17/2015

Date

Exhibit A

Definitions of terms used in this Agreement

Institution: The legal entity that entered into this Agreement with Onvia, Inc., may also be described using the term, "agency".

Plan Holder: Any entity that has obtained a copy of the primary governing document of a solicitation for a formal purchase request, such as a bid or proposal.

Supplier: Any provider of goods or services, may also be known as a vendor or contractor.