

Procurement Resource Abstract



Title	Indiana V. IBM: What's At Stake For IT Contractors
Sponsoring Organization(s)	Law360 (Portfolio Media Inc.)
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Synopsis	<p>The article examines issues in the litigation between the State of Indiana and IBM. On Oct. 15, 2009, the state of Indiana terminated its \$1.4 billion welfare modernization contract with IBM Corp. for cause and sued IBM seeking damages of more than \$170 million. On July 18, 2012 the Marion County Indiana trial court ruled for IBM, finding that default was not justified where there was "substantial performance." On Feb. 13, 2014, the trial court's decision was reversed by the Court of Appeals of Indiana. In August 2014, the Supreme Court of Indiana announced that it will decide the dispute.</p> <p>The article contends the appellate decision applied an oversimplified and erroneous standard to a complex, multi-year IT transformation project. The article describes that, especially at the state and local level, IT transformation projects are acquired using historical contracting methods and states that these can work poorly when used to acquire complex solutions. The authors focus on three key challenges: 1) What Is the Required Performance? 2) How (and When) Is Performance Accepted? And 3) What Constitutes a "Breach"?</p> <p>The authors believe that Indiana v. IBM is an acute illustration of how a judicial process can produce a distorted and unjust result through simplistic reduction of a complex project and use of an ill-suited legal standard of performance. They warn that contractors should recognize the threat posed by the Court of Appeals decision in Indiana v. IBM — if it survives review by the Indiana Supreme Court. The appellate decision, if it stands, places an IT contractor at risk of being the guarantor of achievement of the supposed "policy purposes" of such projects, measured by its customer's subjective "satisfaction." At the very least, such an outcome would narrow the field of systems integrators willing to take on state IT implementation contracts and would cause those who remain in this market to increase their prices to reflect the greater risk premium. Companies entering into these high-value contracts should take extra care in drafting to manage these liability risks.</p>
Topic Areas	Legal and Contracting Issues
Web Reference	http://www.law360.com/articles/577169/indiana-v-ibm-what-s-at-stake-for-it-contractors