

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

**REQUEST FOR RESOLUTION OF A CONTRACT  
CONTROVERSY BY:**

**DTZ, INC., F/K/A UGL SERVICES UNICCO  
OPERATIONS CO., AND F/K/A UNICCO SERVICE  
COMPANY,**

**v.**

**SOUTH CAROLINA STATE UNIVERSITY AND THE  
STATE OF SOUTH CAROLINA**

**CONTRACT NO. 4400002499  
SOLICITATION NO. 5400001770  
FACILITIES MANAGEMENT SERVICES**

**BEFORE THE CHIEF PROCUREMENT  
OFFICER FOR CONSTRUCTION**

**CASE NO. 2015-130**

**DECISION**

**STATE OF SOUTH CAROLINA'S MOTION TO DISMISS**

**DTZ, INC.'S MOTION FOR ENTRY OF PARTIAL  
JUDGMENT**

**POSTING DATE: 6/29/2015**

This matter is before the Chief Procurement Officer ("CPO") pursuant to requests from DTZ, Inc., f/k/a UGL Services Unicco Operations Co., and f/k/a UNICCO Service Company (DTZ), made under the provisions of S.C. Code Ann. § 11-35-4230, for administrative review and resolution of contract controversies with South Carolina State University (SCSU) and the State of South Carolina (the State) regarding a contract for facilities management services at SCSU.

On February 20, 2015, DTZ filed a request for resolution of a contract controversy with SCSU and the State of South Carolina alleging that they breached a contract with DTZ for facility management services by, among other things, failing to pay DTZ in accordance with the requirements of the contract. DTZ alleged that SCSU and the State owed DTZ in excess of \$4.2 million for goods and services provided under the contract.

On March 2, 2015, SCSU responded to DTZ's claims. In its response, SCSU admitted that it "is indebted to DTZ in the approximate amount of \$3,533,088 as of February 27, 2015, and that this amount continues to accrue by the approximate amount of 402,000.00 [sic] on a monthly basis." On March 3, 2015, DTZ requested that the CPO enter partial judgment in favor of DTZ.

On or about April 16, 2015, the State responded to DTZ's claims against it with a motion to dismiss the State from the contract controversy because the "State is not a party to the contract at issue." On June 12, 2015, DTZ filed a brief in opposition to the State's request for dismissal.

On June 17, 2015, the CPO, pursuant to S.C. Code Ann. § 11-35-4230, heard oral arguments on the State's motion to be dismissed and DTZ's motion for entry of partial judgment in favor of DTZ. Attorney John E. Schmidt, III, represented DTZ, Deputy Solicitor General J. Emory Smith and Assistant Attorney General T. Parkin Hunter represented the State, and attorney Craig E. Burgess represented SCSU. This decision is based on applicable law and precedents.

### **BACKGROUND**

On April 1, 2010, the Materials Management Office of the South Carolina Budget & Control Board (MMO), on behalf of SCSU, issued a Request for Proposals (RFP) to provide facilities management services.<sup>1</sup> DTZ submitted a proposal in response to the solicitation, which was ultimately evaluated to be the most advantageous to SCSU. MMO subsequently negotiated a contract with DTZ on behalf of SCSU and posted a Notice of Intent to Award a Contract on June 9, 2010. The award of a contract to DTZ became final on June 21, 2010. The contract consists of the RFP, as amended, together with DTZ's proposal, and the record of negotiations.

Terms used in the RFP include "STATE" and "USING GOVERNMENTAL UNIT." The RFP defines "STATE" to mean "Using Governmental Unit(s) identified on the Cover Page" and "USING GOVERNMENTAL UNIT" to mean "the unit(s) of government identified as such on the Cover Page." The cover page identifies only SCSU as the USING GOVERNMENTAL UNIT and, therefore, the STATE.

DTZ started performance under the contract on July 1, 2010, and the contract has been renewed annually every year since. During this period, SCSU started to experience serious financial issues and as a result has fallen behind in its payment obligations to a number of contractors including by SCSU's own admission, DTZ. Nonetheless, DTZ has continued to perform under the contract.

### **STATE'S REQUEST FOR DISMISSAL**

The State has asked the CPO to dismiss it from this contract controversy because the State is not a party to the contract in dispute and the CPO can only exercise jurisdiction over a governmental body who is party to a contract, not the State herself.

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<sup>1</sup> "All rights, powers, duties, and authority relating to the procurement of supplies, services, and information technology and to the management...of supplies, construction, information technology, and services" formerly vested in each "governmental body" is vested in the appropriate CPO. S.C. Code Ann. § 11-35-510. The CPO for all procurements other than construction and information technology is the Material Management Officer.

The CPO's authority to resolve contract controversies is derived from Section 11-35-4230 of the Consolidated Procurement Code (the Code). This section grants the CPO exclusive authority to resolve any dispute between contractors and governmental bodies arising under contracts awarded pursuant to the Code. S.C. Code Ann. § 11-35-4230. Significantly, Section 11-35-4230(1) states:

This section applies to controversies between a **governmental body** and a contractor ... which arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or recession. The procedure set forth in this section constitutes the exclusive means of resolving a controversy between a **governmental body** and a contractor ... concerning a contract solicited and awarded pursuant to the provisions of the South Carolina Consolidated Procurement Code.

[emphasis supplied]. Thus the CPO only has jurisdiction over contract disputes with governmental bodies. The Code defines a "governmental body" as "a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch." SC Code Ann §11-35-310(18). This definition does not include the State, but only agencies of the State.<sup>2</sup> Had the General Assembly wanted to give the CPO jurisdiction over the State as well as its governmental body, they could have done so. They did not. Therefore, the CPO must dismiss the State from this contract controversy for lack of jurisdiction.

#### **DTZ'S REQUEST FOR ENTRY OF PARTIAL JUDGMENT**

DTZ has requested that the CPO enter judgment for those past due amounts that SCSU admits are due. SCSU did not oppose this request. At the hearing, DTZ claimed that as of June 16, 2015, SCSU owes it more than \$5.4 million. SCSU admitted that as of this same date, it owed DTZ \$5,399,895.59. Moreover, amounts owed DTZ continue to accrue as DTZ continues to perform under the contract which expires on June 30, 2015. SCSU disputes a small number of invoices for additional work outside the scope of the contract but allegedly ordered by SCSU; and interest claimed by DTZ.

#### **DECISION**

For the foregoing reasons:

1. The State's motion to dismiss DTZ's claims against the State for lack of jurisdiction is granted.

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<sup>2</sup> "This code applies to every procurement or expenditure of funds by this State under contract acting through a governmental body." SC Code Ann §11-35-40(2)

2. The CPO finds that there is no dispute that, as of June 16, 2015, SCSU owes DTZ, on account of services provided pursuant to the contract between them, no less than five million three hundred ninety-nine thousand eight hundred ninety-five and 59/100 (\$5,399,895.59) Dollars.

  
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John St. C. White  
Interim Chief Procurement Officer  
For Supplies and Services

  
\_\_\_\_\_  
Date

Columbia, South Carolina

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Protest Appeal Notice (Revised October 2014)*

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2014 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410... Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel  
Request for Filing Fee Waiver  
1105 Pendleton Street, Suite 209, Columbia, SC 29201**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

1. What is your/your company's monthly income? \_\_\_\_\_

2. What are your/your company's monthly expenses? \_\_\_\_\_

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public for South Carolina

\_\_\_\_\_  
Requestor/Appellant

My Commission expires: \_\_\_\_\_

For official use only: \_\_\_\_\_ Fee Waived \_\_\_\_\_ Waiver Denied

\_\_\_\_\_  
Chairman or Vice Chairman, SC Procurement Review Panel

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
Columbia, South Carolina

**NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.**