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EXECUTIVE DIRECTOR

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DIVISION DIRECTOR
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MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Decision

Matter of: Request for Resolution of a Contract Controversy by Atlantic Executive Consulting Group, LLC and Mr. Stephen D. Kirkland

Case No.: 2019-151

Posting Date: September 23, 2019

Contracting Entity: South Carolina Department of Revenue

Description: South Carolina Special Needs Educational Credit Audit

AUTHORITY

The Chief Procurement Officer¹ (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

Audit Agreement Signed	07/06/2015
Final Audit Report Issued	10/16/2015
Request for Resolution	06/21/2019

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

Mr. Stephen Kirkland ("Mr. Kirkland") of the Atlantic Executive Consulting Group, LLC ("AECG") was retained by the South Carolina Department of Revenue (DOR) to review an audit previously conducted by the DOR of Palmetto Kids First, a South Carolina non-profit organization, and Mr. Jefferson Davis related to the South Carolina Special Needs Educational Credit. Mr. Kirkland's services as an expert witness were procured under an exemption from the purchasing procedures and reporting requirements of the Code. Mr. Kirkland was to review the previous audit performed by DOR for accuracy and fairness. The contract was executed on July 6, 2015. Mr. Kirkland began his review on or about July 12, 2015 and submitted his final report to DOR on October 16, 2015.

AECG and Mr. Kirkland requested resolution of a contract controversy on June 21, 2019 (Attachment 1) alleging that the DOR refused and continues to refuse to comply with a provision in the contract which states:

It is also agreed that AECG will be compensated for any time and reimbursed for any expenses necessary to comply with any subpoena, summons, deposition notice or other legal action related to my work on this matter.

AECG and Mr. Kirkland state that the DOR refused to reimburse them for expenses they have incurred and continue to incur responding to legal filings by Palmetto Kids First and Mr. Davis related to the work performed under this contract. AECG's and Mr. Kirkland's essentially seek indemnification.

DOR responded to these allegations on July 26, 2019 and provided a copy of the subject contract. (Attachment 2)

AECG and Mr. Kirkland submit three questions for consideration by the CPO:

1. Does this contract dispute fall within the jurisdiction of the Consolidated Procurement Code?
2. Does the relevant provision of the Engagement Agreement ("AECG will be compensated for any time and reimbursed for any expenses necessary to comply with any subpoena, summons, deposition notice or other legal action related to [Mr. Kirkland's] work on this matter") entitle Mr. Kirkland or AECG to compensation for time spent or expenses incurred in defending services provided in accordance with the Engagement Agreement as challenged by Mr. Davis? This includes time and expenses incurred defending the Amended Complaint (and pending Notice of Appeal), as well as the complaints filed against Mr. Kirkland

with the South Carolina Board of Accountancy, the American Institute of CPAs, and Institute of Management Consultants USA.

3. What monetary amount must be awarded to Mr. Kirkland or AECG for his continued defense of the various legal proceedings filed by Mr. Davis?

ANALYSIS

The first question from AECG and Mr. Kirkland asks whether this contract dispute falls within the jurisdiction of the Consolidated Procurement Code?

This contract was awarded pursuant to a Budget and Control Board exemption authorized under Section 11-35-710 of the Code. This exemption excludes the acquisition of expert witness services from the purchasing procedures and reporting requirements of the Code. It does not, however, exempt these contracts from any other provisions of the Code including Section 11-35-4230(1)² which provides:

This section applies to controversies between a governmental body and a contractor or subcontractor, when the subcontractor is the real party in interest, 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 or subcontractor, when the subcontractor is the real party in interest, concerning a contract solicited and awarded pursuant to the provisions of the South Carolina Consolidated Procurement Code.

Based on the limited scope of the exemption this controversy falls within the jurisdiction of the Consolidated Procurement Code.

The next question is whether this request was timely filed. Section 11-35-4230(2) provides:

Either the contracting state agency or the contractor or subcontractor, when the subcontractor is the real party in interest, may initiate resolution proceedings before the appropriate chief procurement officer by submitting a request for resolution to the appropriate chief procurement officer in writing setting forth the specific nature of the controversy and the specific relief requested with enough

² The General Assembly amended § 11-35-4230 on May 13, 2019. The amended § 11-35-4230 does apply to this contract controversy, as it only applies to solicitations issued after May 13, 2019.

particularity to give notice of every issue to be decided. *A request for resolution of contract controversy must be filed within one year of the date the contractor last performs work under the contract*; except that in the case of latent defects a request for resolution of a contract controversy must be filed within three years of the date the requesting party first knows or should know of the grounds giving rise to the request for resolution.

(emphasis added).

AECG and Mr. Kirkland last performed work on this contract when it submitted its final report on October 16, 2015, nearly four years ago. AECG and Mr. Kirkland argue that when they began responding to the legal filings of Palmetto Kids First and Mr. Davis in November of 2018, they were continuing to perform compensable work under the contract, and the one-year limitation should not apply.

The CPO is not persuaded by this argument. In *Appeal by University of South Carolina*, Panel Case No. 2018-1³, the Panel affirmed the CPO's dismissal of a similar claim brought by the University of South Carolina seeking indemnification and reimbursement from one of its contractors more than one year after the contractor had last performed work on the contract. Although the University had paid the settlement for which it sought indemnity within a year of filing a contract controversy, the Panel found that the claims were time-barred. "The inflexible one-year deadline which applies to USC's claims makes no allowance for the discovery of or accrual of any contract-related claims because the clock starts running at a defined point in time: when the contractor last performed work." *Id.*

This contract began on July 6, 2015. The contract does not identify a specific date for the contract to end. The contract does not identify any options to extend the contract. There is no language cancelling the contract for lack of funding in a succeeding fiscal period. Section 11-35-2030(1) limits the term of a contract to a term of one year:

³ The Circuit Court affirmed the Panel's decision in *University of South Carolina v. Loveless Commercial Contracting Inc.*, Civil Act No. 2018-CP-40-04752 (July 31, 2019).

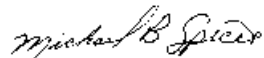
Unless otherwise provided by law, a contract for supplies, services, or information technology must not be entered into for any a period of more than one year unless approved in a manner prescribed by regulation of the board.

Even if the subject language survives submission of the final report, it cannot extend beyond the end of the contract as stipulated in law. Therefore, because this claim was brought more than a year after the contractor last performed work on October 16, 2015, it is time barred.

DECISION

The request for resolution of a contract controversy by Atlantic Executive Consulting Group, LLC and Mr. Stephen D. Kirkland was not filed within the statutory time allowed and is dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

LAW OFFICES
CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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REPLY TO SC OFFICE

June 21, 2019

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Michael Spicer
Chief Procurement Officer
South Carolina State Budget & Control Board
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Atlantic Executive Consulting Group, LLC and Stephen D. Kirkland – Contract with
South Carolina Department of Revenue
CCS File No.: 01834-58192

Dear Mr. Spicer:

In accordance with S.C. Code Ann. § 11-35-4230, please accept this letter as a demand and request for resolution of certain contract disputes between Atlantic Executive Consulting Group, LLC (“AECG”) and Mr. Stephen Kirkland (“Mr. Kirkland”) and the South Carolina Department of Revenue (“DOR”). By way of background, the DOR engaged AECG and Mr. Kirkland to review an audit previously conducted by the DOR. The audit to be reviewed by AECG and Mr. Kirkland pertained to Palmetto Kids First, a South Carolina non-profit organization, and Mr. Jefferson Davis (“Mr. Davis”).

On July 6, 2015, the DOR signed an engagement agreement (“the Engagement Agreement”) with AECG and Mr. Kirkland detailing the scope of services to be provided. Mr. Rick Reames, then Director of the DOR, signed the Engagement Agreement. Among other terms, the Engagement Agreement contained a provision in which the DOR agreed that “AECG will be compensated for any time and reimbursed for any expenses necessary to comply with any subpoena, summons, deposition notice or other legal action related to [Mr. Kirkland’s] work on this matter.” Mr. Kirkland and AECG proceeded to provide the services set forth in the Engagement Agreement.

On November 19, 2018, Mr. Davis filed an Amended Summons and Amended Complaint in the Court of Common Pleas, Richland County, South Carolina (“the Lawsuit”)¹. Mr. Kirkland was one of over thirty (30) defendants – including the DOR – named in the Lawsuit. The Lawsuit contained a wide range of allegations against the various defendants; however, the allegations

¹ *Davis v. Weaver, et al.*, C/A No. 2018-CP-40-2425.

specific to Mr. Kirkland centered solely on the services he provided for the DOR pursuant to the Engagement Agreement. Specifically, the Lawsuit referenced Mr. Reames's alleged promise to "make sure Mr. Davis and his group were not politically targeted and were treated fairly by DOR." *See* Amended Complaint, Paragraph 120. The Lawsuit further alleged Mr. Kirkland was "conflicted" and should not have performed the services sought by the DOR as detailed in the Engagement Agreement.

My firm was then retained by Mr. Kirkland to defend the allegations in the Lawsuit. I filed a Motion to Dismiss the Amended Complaint, which the Court granted on February 19, 2019. Mr. Davis filed a Motion to Reconsider the dismissal, which the Court denied on March 27, 2019. Thereafter, Mr. Davis filed a Notice of Appeal with the South Carolina Court of Appeals. This appeal remains pending. In addition to filing the Lawsuit, Mr. Davis filed complaints against Mr. Kirkland with the South Carolina Board of Accountancy, the American Institute of CPAs, and Institute of Management Consultants USA. Mr. Kirkland has been forced to defend – and continues to defend – himself in these proceedings instituted by Mr. Davis and arising solely from services he provided to the DOR in accordance with the Engagement Agreement.

On January 4, 2019, the undersigned contacted the DOR regarding its reimbursement of costs (e.g., time) and expenses incurred in the defense of these matters. Mr. Davis's allegations against Mr. Kirkland focus exclusively on the services he provided pursuant to the Engagement Agreement, and the subsequent litigation, complaints, and other proceedings fall squarely within the clear language of the Engagement Agreement. Specifically, Mr. Kirkland and AECG are entitled to "compensation for time" and "reimbursement of expenses" necessarily incurred to defend the "subpoena, summons ... or other legal action related to Mr. Kirkland's work on this matter." Nonetheless, the DOR has inexplicably refused to honor this request for compensation and reimbursement.

It is expected the DOR may argue this request for resolution of contract controversy is not timely pursuant to S.C. Code Ann. § 11-35-4230 (2). This statute provides that such a request must be filed within one year of the date the contractor last performs work under the contract; except that in the case of latent defects a request for resolution of a contract controversy must be filed within three years of the date the requesting party first knows or should know of the grounds giving rise to the request for resolution.

Admittedly, Mr. Kirkland and AECG completed its work reviewing the DOR audit and providing a report more than one year ago. However, the DOR's commitment to compensate and reimburse Mr. Kirkland and AECG for time and expenses related to its work on this matter (i.e. the Engagement Agreement) is not temporally limited and survives the conclusion of the engagement. Similarly, it was not until November 2018 that Mr. Davis filed the Amended Complaint and instituted various other proceedings against Mr. Kirkland relative to the services he previously provided the DOR. Thus, it was not until this point that Mr. Kirkland or AECG began investing any amount of time or incurring considerable costs in defending its work for the DOR. The DOR's breach of the Engagement Agreement occurred within the last year, and this breach was one which neither Mr. Kirkland nor AECG could have reasonably expected (i.e., latent). Therefore, this request for resolution is timely. Any decision to the contrary is both impractical and illogical in that it would have required Mr. Kirkland or AECG seek compensation and recover expenses that had not yet been incurred. Further, as Mr. Kirkland, AECG, and the DOR anticipated the possibility of future legal proceedings by Mr. Davis and Palmetto Kids First, I submit that in responding to these

legal proceedings, Mr. Kirkland and AECG are continuing to perform compensable work under the Engagement Agreement, and the one year limitation should not apply.

Based on the above, the issues to be decided are:

1. Does this contract dispute fall within the jurisdiction of the Consolidated Procurement Code?
2. Does the relevant provision of the Engagement Agreement ("AECG will be compensated for any time and reimbursed for any expenses necessary to comply with any subpoena, summons, deposition notice or other legal action related to [Mr. Kirkland's] work on this matter") entitle Mr. Kirkland or AECG to compensation for time spent or expenses incurred in defending services provided in accordance with the Engagement Agreement as challenged by Mr. Davis? This includes time and expenses incurred defending the Amended Complaint (and pending Notice of Appeal), as well as the complaints filed against Mr. Kirkland with the South Carolina Board of Accountancy, the American Institute of CPAs, and Institute of Management Consultants USA.
3. What monetary amount must be awarded to Mr. Kirkland or AECG for his continued defense of the various legal proceedings filed by Mr. Davis?

Mr. Kirkland is in possession of the fully-executed Engagement Agreement underlying this request. However, I have not included a copy of the Engagement Agreement out of concern that doing so may violate a non-disclosure agreement between Mr. Kirkland/AECG and the DOR. I will provide a copy of the Engagement Agreement with consent from the DOR. I have also not provided a copy of the report Mr. Kirkland prepared and submitted to the DOR because the DOR has refused to allow Mr. Kirkland to disclose this document to me as his counsel. Finally, Mr. Kirkland will prepare an affidavit detailing the number of hours he has committed to defending the allegations of Mr. Davis and costs incurred for the same.

Please contact me at your earliest convenience to discuss this request for resolution in attempt to settle the same by mutual agreement. See S.C. Code Ann. § 11-35-4230 (3). In the event such efforts are not successful, please let me know if you need additional information regarding the current dispute or my request for resolution. I look forward to hearing from you.

Sincerely,



FOR DOUGLAS W. MACKELCAN

DWM:tjr

cc: Stephen Kirkland
Joseph S. Dusenbury, Jr. (SC Dept. of Revenue)



State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd. PO Box 12265, Columbia SC 29211



July 26, 2019

Mr. Michael B. Spicer
Division of Procurement Services
SC State Fiscal Accountability Authority
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Stephen Kirkland, CCS File No.: 01834-58192

Dear Mike:

This is in response to Stephen Kirkland's request for the resolution of a contract controversy.

Mr. Kirkland was engaged by the former Director of the Department of Revenue, Rick Reames, under the expert witness exemption of the Procurement Code to review an audit for accuracy and fairness involving the South Carolina Special Needs Educational Credit. This credit was originally provided for in various budget provisos and was later codified as permanent legislation.

The original and subsequent provisos declared it to be illegal for there to be any "quid pro quo" arrangement connected to a donor's donation and the granting of a scholarship to a particular special needs child. The proviso also authorized the Department to audit the charities receiving the donations and granting scholarships to special needs children to go to private school. Such an audit was conducted by Department staff. Mr. Kirkland was subsequently engaged by Director Reames to review the aforesaid audit.

The contractual agreement in question was entered into by Director Reames under the expert witness exception to the Procurement Code. The fee agreement was drafted by Mr. Kirkland on July 2, 2015, and signed by Director Reames on July 6, 2015. The general rule of contract construction that a court will construe an ambiguous contractual term most strongly against the drafter of the agreement, Mr. Kirkland, is applicable here.

A full and complete copy of the fee agreement is enclosed for your review.

Mr. Kirkland's Final Report was issued three months later on October 16, 2015, and his services to the Department ended on that date. For the purposes of the one year statute of limitations under Section 11-35-4230(2), this was the last day Mr. Kirkland rendered any services to the Department.

Mr. Kirkland was sued more than three years later by Mr. Jefferson Davis for certain alleged unethical conduct asserting Mr. Kirkland had a conflict of interest during his review of the audit.



Mr. Michael B. Spicer
July 26, 2019
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An investigation of Mr. Kirkland was instituted by the South Carolina Board of Accountancy. The Department has no knowledge of the full scope or the outcome of the Board of Accountancy's investigation. According to Mr. Kirkland, he is also being investigated for unethical behavior by certain professional associations to which he belongs. The Department, likewise, has no knowledge of, or part in, these investigations.

Mr. Kirkland, in this contract controversy, basically seeks to be indemnified under the enclosed fee agreement for his time and expenses in responding to the Davis lawsuit, the Board of Accountancy's ethics investigation of him, as well as some professional associations' ethical investigations. Mr. Kirkland has not yet stated whether any attorney's fees charged by Mr. Mackelcan would be included in the "reimbursement expenses" he is seeking from the Department. No invoice has been presented to the Department for payment, so the amount Mr. Kirkland is requesting for his time and exactly what expenses he is seeking are unknown.

The Davis lawsuit has been dismissed with prejudice against Mr. Kirkland and numerous other defendants on procedural grounds based on the rule that one circuit judge cannot reverse or overrule a prior order of another circuit judge. Mr. Davis was given leave to file and serve an amended complaint naming additional defendants, which ultimately included Mr. Kirkland, but Mr. Davis did not file and serve the amended complaint within the allotted time of the first Circuit Court Judge's Order and hence his late amended complaint was dismissed with prejudice against all the newly named defendants. Mr. Davis has appealed this ruling but the Department (one of the newly named co-defendants) believes the ruling will be upheld on appeal.

Before going into the merits of the contract controversy, the Department would respectfully move to have a bifurcated proceeding in which you decide the statute of limitations question and then construe the language of the fee agreement. Basically, to bifurcate liability and damages. In addition, since no invoice has ever been presented to the Department or the Chief Procurement Officer in this contract controversy, no monetary amount can be determined at this time.

As to the statute of limitations issue, clearly more than one year has passed since the engagement ended on October 16, 2015, when Mr. Kirkland issued his Final Report. Section 11-35-4230(2) of the procurement code provides that the contract controversy must be "filed within one year of the date the contractor last performs work under the contract."

Mr. Mackelcan's latent defect argument to avoid the applicability of the one-year statute of limitations is without merit. The term "latent defect" applies to a hidden defect in a physical piece



Mr. Michael B. Spicer
July 26, 2019
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of property, such as a hidden defect in the construction of a building. The three year latent defect statute of limitations simply does not apply here.

Furthermore, the latent defect statute of limitations provides that the requesting party must begin the contract controversy within three years of when he "first knows or should have known the ground giving rise to the request for resolution." Mr. Kirkland's alleged conflict of interest, whether true or not, was certainly not hidden to Mr. Kirkland, and therefore, the latent defect three year statute of limitations could not apply to him as the requesting party.

As to the construction of the language of the contract itself, Mr. Kirkland's claim for indemnification for his time and expenses in responding to the Davis lawsuit, as well as various other ethical investigations of him, relies solely on the following sentence in his expert witness fee agreement:

It is also agreed that AECG will be compensated for any time and reimbursed for any expenses necessary to comply with any subpoena, summons, deposition notice or other legal action related to my work on this matter.

This language contemplates the normal services performed by an expert witness in the litigation of a case, such as appearing at a deposition or at trial.

The fee agreement also contains the following language:

If necessary, I will participate in conferences, depositions or testify in court.

After this matter is resolved, please direct me as to whether you want me to retain, destroy or return to you the documents you will have provided to me.

Fees for my services are not contingent on the outcome of any dispute between the Department and the taxpayer.

The language relied upon by Mr. Kirkland does not contemplate being indemnified for defending yourself from alleged wrongful conduct which occurred during the performance of the expert witness services. It also would not encompass an ethical investigation of him by the Board of Accountancy or any private association to which he belongs.



State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd. PO Box 12265, Columbia SC 29211



Mr. Michael B. Spicer
July 26, 2019
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In addition, the phrase in this sentence "related to my work on this matter," would certainly never include the Department having to indemnify Mr. Kirkland for defending himself from any alleged wrongful conduct. Under Mr. Kirkland's broad interpretation of this language, the Department would have to defend and indemnify Mr. Kirkland if he was involved in an automobile accident on the way to a deposition.

At best, the single sentence relied upon by Mr. Kirkland in this matter is ambiguous, and that ambiguity must be resolved against Mr. Kirkland as the drafter of his fee agreement.

Sincerely,

OFFICE OF GENERAL COUNSEL

A handwritten signature in blue ink that reads "Joe".

Joe S. Dusenbury, Jr.
General Counsel

Enclosure

c: Douglas W. Mackelcan, Esq.

SC02

12/05/2018

09:59:53

A ATLANTIC EXECUTIVE CONSULTING GROUP, LLC

July 2, 2015

Rick Reames, III, Esq.
South Carolina Department of Revenue
P.O. Box 125
Columbia, SC 29214

Re: Non-profit organization

Dear Mr. Reames,

This letter is to confirm the terms of my engagement by the South Carolina Department of Revenue to provide services in connection with a certain non-profit organization that has recently been audited by the Department of Revenue.

Anticipated Services

In this engagement, I will look to you for direction as to when and how you need my assistance. However, I plan to review the documents and information provided to me and form opinions as to whether the records show that the organization failed to follow appropriate governance procedures with respect to important financial matters, such as excess benefit transactions, related-party transactions and inurement of benefits. I will provide my opinions in a letter or report as requested by you. I will not audit the non-profit's financial statements or tax returns. If necessary, I will participate in conferences, depositions or testify in court. My work may include performing other tasks identified and agreed-upon during the course of this engagement. However, I always reserve the right to refuse to perform any act that I deem a violation of law or professional ethical standards.

Professional Standards

I anticipate that my services will comply with the American Institute of Certified Public Accountants' Code of Professional Conduct and the Institute of Management Consultants' Code of Ethics.

SC02

12/05/2018

08:59:50

The Department's Responsibilities and Representations

My ability to complete this project will be dependent upon timely receipt of the required information. Therefore, the Department agrees to provide promptly, upon request, all financial and nonfinancial information and documentation reasonably deemed necessary or desirable in connection with this engagement. The Department agrees to provide information that is believed to be accurate and agrees that I may rely upon such information and documentation without independent investigation or verification. After this matter has been resolved, please direct me as to whether you want me to retain, destroy or return to you the documents you will have provided to me.

Communications

I plan to report directly to you, unless you instruct me to do otherwise.

Timing

I will do my best to be available whenever needed. I anticipate focusing on this project soon after July 12.

Fees

My hourly rate is \$325.00. For this project, I will not charge for my travel time, preparation of this engagement letter or for completing the NDA. Out-of-pocket costs, such as express shipping and travel expenses, are added to invoices. Invoices will be issued as work progresses and payment will be due upon presentation of each invoice. I reserve the right to stop work if a payment becomes past due. Fees for my services are not contingent on the outcome of any dispute between the Department and the taxpayer.

Termination

You may direct me to stop work on this engagement any time. Upon such notification, I will stop all work and render an invoice for time and expenses incurred up to that time.

Confidentiality

Atlantic Executive Consulting Group ("AECG") routinely strives to keep all client information strictly confidential. If AECG ever receives a summons, subpoena, or court order to disclose such confidential information, I will promptly notify the Department and will seek to protect such confidential information from disclosure to the full extent provided under the law. I will cooperate with you in response to any such event, but it is agreed that AECG will be compensated for any time and reimbursed for any expenses associated with the defense of the confidentiality of this information and my work product.

SC02 . 12/05/2013
08:58:53

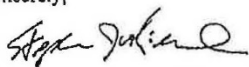
It is also agreed that AECG will be compensated for any time and reimbursed for any expenses necessary to comply with any subpoena, summons, deposition notice or other legal action related to my work on this matter.

I also anticipate signing and honoring a non-disclosure agreement to be provided by the Department.

If you and the Department agree with the foregoing terms, please sign in the space below and return this letter to me.

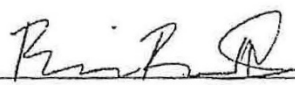
If you have any questions, please call me at 803-477-5973. Thank you for the opportunity to help resolve this matter.

Sincerely,



Stephen D. Kirkland, CPA, CMC, CFC, CFF

Acceptance: This letter correctly sets forth the Department's understanding of the terms of the engagement.

Signature: 

Printed Name: Rick Reams

Title: Director

Date: July 6, 2015

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Contract Controversy Appeal Notice (Revised June 2019)

The South Carolina Procurement Code, in Section 11-35-4230, 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 requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(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 why the person disagrees 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 any affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or legal.

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 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
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

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 of 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.