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Contract Controversy Decision

Matter of: DTZ, Inc., f/k/a UGL Services Unicco Operations Co., and f/k/a UNICCO Service Company

Case No.: 2015-130 (on remand from the Procurement Review Panel)

Posting Date: October 12, 2016

Contracting Entity: South Carolina State University

Contract No.: 4400002499

Solicitation No.: 5400001770

Description: Facilities Management Services

Appearances:

Mr. John E. Schmidt, III, of Schmidt & Copeland LLC, for DTZ, Inc.
Messrs. Dwayne T. Mazyck and Vernie L. Williams, of Childs & Halligan, P.A., for South Carolina State University
Messrs. J. Emory Smith, Jr., and T. Parkin Hunter, of the Office of the Attorney General of South Carolina, for the State of South Carolina

DIGEST

On remand from Procurement Review Panel, decision posted providing for interest on unpaid contract balance in accord with the SC Statewide Disbursement Regulations.

BACKGROUND

This is the latest chapter of a contract controversy claim brought by DTZ, Inc., against South Carolina State University. The case has a long and complex procedural history, described in some detail by the Procurement Review Panel in *Appeal by DTZ, Inc.*, Panel Case No. 2016-6. That Panel decision reversed so much of a March 24, 2016, CPO decision finding that SCSU did not owe DTZ interest on undisputed amounts the University owed DTZ under their contract. The Panel remanded the case to the CPO “for calculation of an interest award in favor of DTZ and in accord with the SC Statewide Disbursement Regulations.”

DISCUSSION

Following remand, the CPO requested that DTZ¹ submit a calculation of the interest as ordered by the Panel. DTZ provided that interest calculation on August 3, 2016. Its counsel sent copies to the CPO, his counsel, and all parties. Because the calculation inadvertently included subsequent invoices that were not part of the claim DTZ originally presented, the CPO asked DTZ to submit revised calculations. DTZ provided the revised spreadsheet on September 26, 2016. On September 28, counsel for the CPO advised counsel for the University that any comments on the interest calculations must be submitted by the following day. The University's response was an email message from its Controller that included the following text:

Based on the spreadsheet provided the interest continues to calculate after the underlying invoice has been paid – essentially the University is being charged interest on unpaid interest.

For example[,] Invoice 1798815 (dated 10/01/13 for \$401,964.34) was paid 06/30/14 and the accumulated interest at 06/30/14 was \$17,057.73. However, the spreadsheet provided is still calculating interest through August 2016, so the accumulated interest on an invoice paid two years ago has grown to \$19,523.67.

The University provided no further “examples” or other details, nor suggested what amount of interest was, in fact, due. The CPO has reviewed the September 26 spreadsheet and finds that it accurately calculates interest at the rate provided for by the Panel. The amount of interest owed under that calculation is \$489,717.35, as of August 31, 2016.

DECISION

The CPO finds that as of August 31, 2016, the University owes DTZ interest in the amount of Four Hundred Eighty-nine Thousand Seven Hundred Seventeen and 35/100 (\$489,717.35) dollars on the invoices that were the subject of this contract controversy. Interest will continue to accrue on the unpaid amount of each invoice at the simple rate of 6.25% per annum until paid in full.


John St. C. White

Chief Procurement Officer For Construction

12 Oct. 16
Date

Columbia, South Carolina

¹ DTZ is now legally known as C&W Facility Services Inc. (successor to DTZ, Inc.).

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Contract Controversy Appeal Notice (Revised January 2016)

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>

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 111.1 of the 2015 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**

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.