

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

Dismissal of Contract Controversy

Matter of: L&S Electronics, LLC

File No.: 2022-005 (formerly 2022-002)

Posting Date: April 29, 2022

Contracting Entity: Medical University of South Carolina

Project No.: H15-9846-ML

Description: New College of Pharmacy Addition and Innovative Instruction Redesign Renovation

DIGEST

Claim of wrongful termination and tortious interference with a contractual relationship dismissed for lack of jurisdiction.

AUTHORITY

Per S.C. Code Ann. § 11-35-4230, the Chief Procurement Officer for Construction (CPOC) conducted an administrative review of a request for resolution of a contract controversy filed by L&S Electronics, LLC, (L&S). L&S's request is attached as Exhibit A. This decision is based on the allegations of fact set forth in L&S's request and applicable law and precedents.

BACKGROUND

On September 15, 2021, L&S filed a request for resolution of a contract controversy with the CPOC alleging the following facts:

- "Pursuant to the South Carolina Consolidated Procurement Code, S.C. Code Ann. § 11-35-10 et seq., the Medical University of South Carolina hired Whiting-Turner Contracting Company to redesign and renovate the MUSC College of Pharmacy Building."
- "Whiting-Turner subcontracted certain work to Feyen Zylstra, LLC."
- "Feyen Zylstra contracted with my client [L&S], which was responsible for installing a new fire alarm system."

MUSC filed a response with the CPOC on January 26, 2022, wherein it agrees with these facts. [Exhibit B] MUSC also asserts that these facts being true means that the CPOC lacks jurisdiction to decide the issues raised in L&S's request.

ANALYSIS

Section 11-35-4230 sets forth the limits of the CPOC's jurisdiction stating:

SECTION 11-35-4230. Authority to resolve contract and breach of contract controversies.

(1) Applicability. 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 rescission. 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 governed by the provisions of the South Carolina Consolidated Procurement Code...

(2) Request for Resolution; Time for Filing. 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 ...

(emphasis added)

The Consolidate Procurement Code (Code) defines the words contractor and subcontractor stating:

SECTION 11-35-310. Definitions.

Unless the context clearly indicates otherwise:

(10) "Contractor" means any person having a contract with a governmental body.

(32) "Subcontractor" means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with a governmental body.

While the Code does not define the modifier prime in the term prime contractor, it is well understood to mean the contractor having a contract with a governmental body with prime responsibility for total construction of the project and who enters into sub-contracts for performance of some of the work such as HVAC, electrical, plumbing, etc. Black's Law Dictionary (6th Edition 1990); See also S.C. Code Ann. §§40-11-20(17), (21), and 40-11-340.

Protest Decision, page 3


File No. 2022-005

April 29, 2022

By its own allegations of fact, L&S is neither a contractor nor subcontractor but is a sub-subcontractor. As set forth above, the right to file a request for resolution of a contract controversy does not extend to a sub-subcontractor. Therefore, the CPOC lacks jurisdiction over L&S's request.

DECISION

Based on the foregoing, the CPOC dismisses L&S's request for resolution of a contract controversy.



John St. C. White, PE

Chief Procurement Officer for Construction

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised May 2020)

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.

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 2020 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.

Smith | Closser | Wheeler, P.A.

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578

Samuel M. Wheeler
swheeler@scnlaw.com

Office – 843-760-0220
Fax – 843-552-2678
www.smithclosser.com

September 15, 2021

Via U.S. Mail and Email

Mr. John St. C. White, PE
State Engineer and Chief Procurement Officer for Construction
1201 Main St., Suite 600
Columbia, SC 29201
jswhite@mmo.sc.gov

**Re: Request for Resolution, S.C. Code Ann. § 11-35-4230(2)
L&S Electronics
Medical University of South Carolina College of Pharmacy
SC Project # HIS-9846-ML**

Dear Mr. White:

This firm represents L&S Electronics in connection with the above project. Please send or have sent all communications regarding this matter to the offices of Smith | Closser | Wheeler, P.A., at the address listed above.

Please consider this letter my client's request for resolution pursuant to S.C. Code Ann. § 11-35-4230(2).

It should be noted from the onset that my client has 40 years of experience successfully bidding MUSC projects. It has never failed to complete an MUSC project nor has it, prior to this project, been removed from an MUSC project for any reason.

The facts of this request are simple. Pursuant to the South Carolina Consolidated Procurement Code, S.C. Code Ann. § 11-35-10 *et seq.*, the Medical University of South Carolina hired Whiting-Turner Contracting Company to redesign and renovate the MUSC College of Pharmacy Building. Whiting-Turner subcontracted certain work to Feyen Zylstra, LLC. Feyen Zylstra contracted with my client, which was responsible for installing a new fire alarm system. My client began work on the project, and it submitted its first payment application on May 18, 2021, a copy of which is enclosed.

On June 1, 2021, my client was notified via email by Craig Jurgonski, Project Manager for Feyen Zylstra, that "MUSC has directed Feyen Zylstra to make a change in subcontractors from L&S to Convergent." Apparently, based on this email, MUSC, without justification, instructed Feyen Zylstra to fire my client. A copy of the email is enclosed. It is our understanding that the change was made without bidding from Convergent, and the change would suggest that MUSC is engaging in preferential treatment of one company over another. MUSC's actions violate the Procurement Code and amount to a tortious interference with my client's contract with Feyen Zylstra. As a result, my client has not been paid for work performed, and it lost a significant amount of profit that it would have made on the project. My client first requests to be reinstated on the project and allowed to complete it. If this is no longer possible, then it requests all damages, including actual damages, consequential damages, lost profit, and attorney's fees, associated with being fired for no cause.

A second and somewhat related request for resolution relates to ongoing treatment of my client. It has come to my client's attention that certain individuals, including Matthew White, have effectively blackballed my client by instructing contractors not to include bids from my client on any MUSC project. Again, my client has been performing work on MUSC projects for decades. If this behavior is in fact occurring, it violates the very purpose of the Procurement Code. My client would request an investigation into, or the right to investigate, these action, and it would further request that no one interfere with its right to bid on any state project, including MUSC projects.

At one point in time, Charles Workman, MUHA Supervisor, met with my client and informed them that it was MUSC/MUHA's intent to have both my client and Convergent bid against each other for all work over \$10,000. Supposedly, the intent was to create more competition and to have who ever had the programming part of the contract, whether it be for the University or MUHA side, provide the programming. Now, it appears this is not occurring due to MUSC's preferential treatment of Convergent.

If you have any questions or concerns, please do not hesitate to contact me. Otherwise, I look forward to your response as to the next steps in this process.

Best regards,



Samuel M. Wheeler

cc (via email): L&S Electronics
Manton Grier

APPLICATION AND CERTIFICATE FOR PAYMENT

ALA DOCUMENT G702

(Instructions on reverse side)

CONTRACTOR: Feyen Zystra Electric
 Chas, SC 29425

SUBCONTRACTOR: L & S Electronics
 PO Box 90310
 N. Chas, SC 29410

CONTRACT FOR: Fire Alarm System

PROJECT: MUSC College of Pharmacy
 Chas, SC
 Fire Alarm System

APPLICATION NO.: 1
APPLICATION DATE: 5/18/2021
PERIOD TO: 5/25/2021
ARCHITECT'S PROJECT NO.:
PO #/NO.:

VIA CONSTRUCTION MANAGER: OWNER
VIA ARCHITECT: CONSTRUCTION MANAGER
 ARCHITECT
 CONTRACTOR

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in accordance with the Contract.

Continuation Sheet, ALA Document G703, is attached.

1. **ORIGINAL CONTRACT SUM** \$157,350.00
2. **Net Change By Change Orders**..... \$0.00
3. **CONTRACT SUM TO DATE** (Line 1 +2)..... \$157,350.00
4. **TOTAL COMPLETED & STORED TO DATE**..... \$18,531.42
 (Column G on G703)
5. **RETAINAGE:**
 - a. **10% % of Completed Work** \$1,853.14
 (Columns D & E on G703)
 - b. **10% % of Stored Material** \$0.00
 (Column F on G703)
 Total Retainage (Line 5a + 5b or
 Total in Column I of G703) \$1,853.14
6. **TOTAL EARNED LESS RETAINAGE**..... \$16,678.28
 (Line 4 less Line 5 Total)
7. **LESS PREVIOUS CERTIFICATES FOR PAYMENT**
 (Line 6 from prior Certificate) \$0.00
8. **CURRENT PAYMENT DUE** \$16,678.28
9. **BALANCE TO FINISH, INCLUDING RETAINAGE**
 (Line 3 less Line 6) \$140,671.72

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	
Total Approved this Month	\$0.00	\$0.00
TOTALS		\$0.00
NET CHANGES by Change Order	\$0.00	\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

BY: L. J. Brade 5/18/2021

State of: _____ County of: _____
 Subscribed and sworn before me this _____ day of _____ 20____
 Notary Public:
 My Commission Expires: _____

CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Construction Manager certifies that to the best of his knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED..... \$ 16,678.28

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that changed to conform to the amount certified.)

CONSTRUCTION MGR: _____ Date: _____

ARCHITECT: _____ Date: _____

This certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CONTINUATION SHEET

AIA DOCUMENT G703 (Instructions on reverse side)

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use column 1 on Contracts where variable retainage for line items may apply.

APPLICATION NO: _____
 APPLICATION DATE: 5/18/2021
 PERIOD TO: 5/25/2021
 ARCHITECT'S PROJECT NO: _____

A	B	C	D	E	F	G	H	I	
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D+E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED, (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G/C)	BALANCE TO FINISH (C-G)	RETAINAGE
1	Edwards Systems Technologies Fire Alarm System:	157,350	\$0.00	\$18,531.42	\$0.00	\$18,531.42	12%	\$138,818.58	\$1,853.14
2			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
3	Mobilized Project/Submittals/Drawings for Project:		\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
4			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
5	Released Fire Alarm Backbox:		\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
6	Control Panels and Power Extenders; All Bldgs:		\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
7			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
8			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
9			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
10			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
11			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
12			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
13			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
14			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
15			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
16			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
17			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
18			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
19			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
20			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
21			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
22			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
23			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
24			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
25			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
26			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
27			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
28			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
29			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
30			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
31	Change Orders:	\$18,890.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
32	Power Plug		\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
33			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
34			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
35			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
36			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
37			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
38			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
39			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
40			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00
TOTALS CONTRACT & CO'S		\$176,240.00	\$0.00	\$18,531.42	\$0.00	\$18,531.42	10.51%	\$138,818.58	\$1,853.14

Back Compose Reply Reply with icon Forwar Delete Move Print Archive Mark More

- Inbox** 71
- Drafts
- Sent
- Junk** 30
- Trash** 2
- Archive

FW: MUSC Collage of Phar...

Message 5 of 393

From **nnesbitt@lselectsc.com**

To **'Mike Brodie'**

Date **Today 14:53**

**To protect your privacy
remote resources have been
blocked.**

00 LSE00 5.21.2... (~334 KB)

Nicolas Nesbitt
Nnesbitt@Lselectsc.com
 L&S Electronics of South Carolina,
 Inc.
 (P) (843) 554-5900
 (F) (843) 554-0909
 (C) (843) 568-9401

From: Craig Jurgonski
 <craigj@fzcorp.com>
Sent: Tuesday, June 1, 2021 9:49
 AM
To: nnesbitt@lselectsc.com
Subject: MUSC Collage of Pharmacy
 Contract Termination

Nicolas,

MUSC has directed Feyen Zylstra to make a change in subcontractors from L&S to Convergent. Please provide all costs to date so that we can close you out. I have attached the received invoice from last week that will need revised. Please let me know if you have any questions.

Craig Jurgonski
 Project Manager
 Electrical Solutions
 -
 D / 843-531-9536
 M / 843-259-4377
 Feyen Zylstra
 8351 Palmetto Commerce Parkway,

Exhibit B



Office of the General Counsel
MUSC HEALTH
22 WestEdge Street, Suite 300
Charleston, SC 29403
Tel: 843 792 4063
Fax: 843 792 0570

January 26, 2022

Delivery Via Email: jswwhite@mms.sc.gov

John St. C White, PE

Materials Management Officer, Chief Procurement

Officer for Construction, and State Engineer

Division of Procurement Services SFAA

1201 Main Street, Suite 600

Columbia, SC 29201

Re: MUSC's response to Request for Resolution of a Contract Controversy

File: No. 2022-002

Project Number H15-9846-ML

Medical University of South Carolina

Dear Mr. White,

MUSC takes great exception to the mischaracterization of the events that transpired between MUSC and L&S Electronics (L&S), as alleged in their Request for Resolution and submits this response.

Before addressing the allegations asserted by L&S against MUSC, it pertinent that the Chief Procurement Officer have an understanding of the nature of the project, the relationships between the parties involved, and their respective roles.

MUSC, pursuant to the Procurement Code, awarded the above referenced construction project to Contractor at Risk Whiting-Turner Contracting Company in the Spring of 2021. The nature of the project itself was to redesign and renovate the MUSC College of Pharmacy Building, which is located on the MUSC campus. The MUSC campus is made up of student buildings, hospitals, research facilities, and physician outpatient offices. Contractor at Risk Whiting-Turner subcontracted the electric work on the project, to include the fire alarm work, to Feylen Zylstra, LLC. Without MUSC's knowledge or approval, Whiting-Turner's subcontractor Feylen Zylstra, LLC., hired L&S to perform the fire alarm work on the project. The nature of the fire alarm work to be performed is life and safety oriented and germane to the safety of the MUSC campus, its patients, students and employees.

Upon learning of L&S involvement on the Project, MUSC for cause, requested that Whiting-Turner refrain from allowing L&S to perform the fire alarm work on the project. Pursuant to its contracted authority to terminate its contract with or without cause, on June 1, 2020, Whiting-Turner, exercised their contractual right and terminated L&S from the Project and engaged an alternative but responsive bidder. L&S was notified of their removal by Feylen Zylstra, LLC. Feylen Zylstra, LLC. simultaneously requested that L&S submit a supported pay application in

attempt to make L&S whole. To this day, L&S has failed to provide reasonable documentation to substantiate their submitted pay application for \$18,531.42 or allow Feylen Zylstra, LLC. or MUSC to ascertain the accuracy or inaccuracy of the amounts claimed.

For the past five years at the time of L&S's removal, MUSC had a separate contractual relationship with L&S for fire alarm installation, repairs and inspection services on its existing campus. At the time of that procurement, L&S was the only local contractor authorized to work on MUSC's existing fire alarm system. During that contractual relationship, MUSC experienced numerous and repeated concerns with L&S's performance, to include safety, quality, timeliness and reporting performance deficiencies. See the attached emails that are reflective of MUSC experience with L&S and their inattention to work orders which are reflective of their lack of regard for the health and safety of MUSC campus, its patients, students and employees. Based on MUSC's prior experience with L&S, MUSC had significant concerns regarding L&S Electronics' ability to meet the needs of the services required on the College of Pharmacy ("COP") project in a timely and workman like manner. Accordingly, and with well-founded cause, MUSC requested L&S's removal from the COP Project.

Pending before the Chief Procurement Officer is L&S's Request for Resolution concerning its removal from the COP Project under S.C. Code Ann. §11-35-4230(2). This provision of the Code provides that either a state agency, a contractor or a subcontractor may initiate resolution proceedings. The Procurement Code at S.C. Code §11-35-310(32), specifically defines a "subcontractor" as any person having a contract to perform work or render service to a prime contractor as part of the prime contractor's agreement with a governmental body. At no time did L&S have a contract with MUSC, the state agency, or the prime contractor, Whiting-Turner, on the COP Project.

L&S does not have standing to seek a remedy or resolution under S.C. Code Ann. §11-35-4230(2) or any other provision of the Procurement Code. Therefore, the Division of Procurement Services is without jurisdiction to address L&S's pending request and should summarily dismiss the request.

If the Division of Procurement Services, sought to exceed their jurisdiction over this request, the CPO should note, the primary contract between MUSC and Whiting-Turner sets out that:

"The Owner and Contractor respectively bind themselves, their partners, successors, and assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole, or in part, without consent of the other and then only in accordance with and as permitted by Regulation 19-445.2180 of the South Carolina Code of Regulations, as amended."

At no point was MUSC contacted prior to the engagement of L&S services on the Project. It was only when MUSC discovered L&S Electronics' presence on site that it learned of their involvement. It was at this point, that MUSC, for cause requested that L&S be removed.

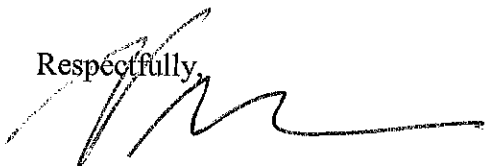
Furthermore, L&S's removal/termination from the project occurred pursuant to the contractually reserved rights of Whiting-Turner with Feylen Zylstra, LLC. as Whiting-Turner contractually reserved the right to terminate L&S's service with or without cause.

With respect to all the other allegations asserted by L&S in its Request for Resolution, MUSC vehemently denies same and reserves its right to assert any and all defenses.

MUSC respectfully requests that L&S Electronics' Request for Resolution be dismissed for lack of standing and jurisdiction, or in the alternative be deemed without merit and dismissed in its entirety.

Thank you for your consideration. Should you require additional information or clarification on any items included in this response, please do not hesitate to contact me at fairbaiv@musc.edu.

Respectfully,



Vivian Fairbairn
MUSC Assistant General Counsel

cc:
Will Kalivas, Esquire
Manning Grier, Jr., OGC-SFAA