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Dismissal of Contract Controversy

Matter of: Midlands Pressure Wash Services LLC
Case No.: 2024-125
Posting Date: April 22, 2024
Contracting Entity: Department of Employment and Workforce (DEW)
Solicitation No.: 5400023854
Description: Soft Cleaning Services for Columbia Campus Buildings

DIGEST

Request for resolution of a contract controversy dismissed where claimant failed to prosecute its claims. The request for resolution of a contract controversy submitted by Midlands Pressure Wash Services LLC (Midlands), is attached as Exhibit A. The response and counterclaim of DEW is attached as Exhibit B.¹

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4230.

DISCUSSION

The issues in dispute in this matter are set forth in Midlands's request for resolution of a contract controversy and DEW's response. The CPO scheduled this matter for a hearing where the parties could present their arguments starting at 1 p.m. on April 10, 2024. On the morning of April 10,

¹ DEW's response included 21 Exhibits which the CPO has not included with Exhibit B.

2024, Cory Hansford, owner of Midlands, notified the CPO that he would not be able to attend the hearing on the grounds that his whole family was sick. [Exhibit C] However, Mr. Hansford did not ask the CPO to reschedule the hearing. Instead, Mr. Hansford stated:


I really don't want to waste anymore time with this matter. Seem like it is going to be one-sided from how it looks and some info I know on the back side, if you want to come up with a [fair] number since job was completed that would be great, if not just move on.

By making this statement, Mr. Hansford notified the CPO that Midlands would not prosecute its claim any further than what it stated in its request for resolution of a contract controversy. As the claimant, Midlands bears the burden of proving its case. In its response, DEW disputed Midlands's claims presenting genuine issues of fact and made a counterclaim of its own. By declining to prosecute its case, Midlands has failed to carry its burden of proof.

Upon its receipt of Midlands's notice, DEW notified the CPO it was ready and willing to proceed with its case against Midlands. However, upon further discussion, DEW agreed not to prosecute its case provided Midlands did not attempt to reassert its dispute and with the understanding that should Midlands do so, it would be able to reassert its claims against Midlands.

DECISION

For the foregoing reasons, the CPO dismisses this matter in its entirety.



John St. C. White
Chief Procurement Officer

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2023)

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 2023 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.

White, John

From: Cory Hansford <midlandspws@gmail.com>
Sent: Sunday, January 14, 2024 10:57 PM
To: Protest-MMO
Subject: [External] Midlands Pressure Wash Services Contract #4400030233
Attachments: 23.12.21. Settlement Agreement (1).pdf

We are disputing the resolution of this contract as we performed the scope of work 100%. The scope was to wash the building and wash the windows. All contractors brought to Doug's attention during the walk through that the windows would need to be hand squeegeed because after being soft washed would have residue from the air bubbles in the water and from the windows being pitted/old. Doug specifically said he did not want that done, just to clean the building and windows, not squeegee. He was asked different ways by multiple vendors. This can be verified from online videos of soft washing and calling any reputable power wash company. Throughout the entire process, Doug Kirkland was very difficult to work with and spoke inappropriately to us. He was angry the entire time about the timeframe. We are a big company with lots of work and the bid was not awarded within two weeks as stated in the bid packet. We got the job done as soon as we could fit it into our schedule. We then got notified the windows were not up to his liking. I reiterated to him this is what we talked about during the bid meeting. We went back and forth and he finally got an attorney involved. The attorney 100% agreed with me and said we needed to be paid for the job. He came back two days later and said he doesn't make the decision and Doug and his boss said not to pay me. I sent him two videos to prove to him they were cleaned and the water can make the windows do that and also coming out of the seals, that they needed to be squeegee cleaned. We arrived at the price we did for the bid based on the fact that he didn't want it squeegeed. The other power wash company, Ramsey, is obviously in collusion as they brought us the pictures before Doug even sent them to us. They gave the price for cleaning the windows after we were done and it was their bid for washing the building and windows, which a real window cleaning company would not charge that. Every day we told Doug we were coming, the other company showed up on site while we were there. We originally told Doug that if a lift was paid for we would squeegee the windows for free. They said they were going to do that and then all ignored me. This entire time, Kayla has been in agreement and trying to get us paid. Now I see this cancellation letter from her when just last week she sent a demand letter for us to be paid in full. However at the end of the day, we did the work and need to be paid in full.

The department is clearly in collusion with the other contractor.

Doug is completely out of line with how he treats his contractors.

They sent us a contract trying to get us to accept a pay of \$3,000 and saying they would come after us if we said anything about the apartment. We did not sign the contract as it was so out of line. We felt backed into a corner but we now know the contract sent should have never been sent. The procurement department said it was illegal.

That it did not follow procurement laws. Our attorney also said it was illegal and didn't follow it. Please find it attached. This entire situation is a first for us. We have never seen anything like this. I went above and beyond and did about \$5,000.00 of free work.

We cleaned the sidewalks, steps and retaining walls at both locations.

We never expected to be compensated for that. We just felt like it needed to be done so we did it to be nice. Then this all happened.

If the windows were so important, even procurement said they would have had them cleaned since all this and yet they haven't. We cleaned with a squeegee the bottom floor windows. At the end of the day, we performed the work as to the scope and based on what we were told at the bid meeting. We performed it in

full and well. We expect to be compensated in full. We have been given this email address and told the process to proceed to try to collect payment. Please confirm receipt of this email.

--

Midlands Pressure Wash Services LLC

Owner/Operator: Cory Hansford

Cell: 803-834-0367

Check Us Out on Facebook: Midlands Pressure Wash Services LLC

PROCUREMENT CONTRACT SETTLEMENT AGREEMENT

This Procurement Contract Settlement Agreement (Agreement) is made and shall be effective as of the ____ day of _____ 20____ (Effective Date) by and between Midlands Pressure Wash Services LLC (Contractor) and the South Carolina Department of Employment and Workforce (DEW).

STATEMENT OF PURPOSE

On October 14, 2022, through the state procurement process, Contractor was awarded Contract Number 4400030233 (the contract) as listed on the State Fiscal Accountability Authority website, for soft cleaning services for DEW. Contractor failed to fully perform the contract. Contractor agrees that not all work was performed in accordance with the contract.

Contractor and DEW subsequently exchanged additional information and agreed to resolve the contract, and any alleged breach thereof, through settlement.

TERMS

In consideration of the mutual execution of this Agreement and the releases and promises made in the Agreement by the Parties, the Parties agree as follows:

Section I. Terms of Settlement

As part of the consideration for this Agreement, the Parties:

- A. Acknowledge and agree to each of the statements set forth in the "Statement of Purpose" above and represent the information that has been submitted by the Parties in conjunction with their negotiations is true and correct to the best of their knowledge.
- B. Acknowledge this Agreement sets forth the entire agreement between the Parties regarding the contract. This Agreement supersedes all prior negotiations, contracts, agreements, arrangements, and understandings between Contractor and DEW with respect to the contract. It may not be amended, waived, or modified in any manner except by written addendum executed by Contractor and an authorized agent of DEW.

As part of consideration of this Agreement, DEW agrees:

- C. To resolve the payment of the contract by providing to Contractor a single lump sum payment of \$3,000.00.

As part of the consideration of this Agreement, the Contractor agrees:

- D. To resolve the payment of the contract by accepting payment of \$3,000.00 as payment in full for the contract.
- E. To acknowledge that payment shall be made through the Comptroller General office and, although DEW will take reasonable steps to expedite payment, the Comptroller General office ultimately controls when payment is issued.

Section II. Release of Claims

As part of the consideration for this Agreement, the Parties agree to:

- A. Mutual Release: DEW hereby fully and forever releases and discharges Contractor (and his heirs, executors, and administrators), and Contractor hereby fully and forever releases and discharges DEW (including all predecessors, successors, subsidiaries, affiliates, assigns, officers, directors, executives, agents and attorneys, past and present) from any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, damages, judgments, orders and liabilities, of whatever kind or nature, direct or indirect, in law, equity, or otherwise, whether known or unknown, arising through the date of this Agreement, out of Contractor's contract with DEW or the breach thereof, including, but not limited to, any claims for relief or causes of action under any other federal, state, or local statute, ordinance, or regulations regarding discrimination in employment or procurement and any claims, demands, or actions based upon any alleged wrongful or retaliation breach of contract under any state or federal law.
- B. Covenant Not to Sue: Contractor expressly represents that he has not filed a lawsuit or initiated any other administrative proceedings against DEW and that he has not assigned any claim against DEW to any other person or entity. DEW expressly represents that it has not filed a lawsuit or initiated any other administrative proceeding against Contractor and that it has not assigned any claim against the Contractor to any other person or entity. The Parties further promise not to initiate a lawsuit or bring another claim against the other arising out of or in any way related to the contract referenced above.
- C. Claims Not Released: The foregoing will not be deemed to release the Contractor or DEW from claims solely to enforce any provision of the Agreement.
- D. Non-Disparagement: Contractor will not take any action, including but not limited to verbal, written, or electronic actions or conduct, which could reasonably be expected to adversely affect the personal or professional reputation of DEW or any of its directors, officers, agents, or employees.

Contractor expressly acknowledges and recites that:

- E. He has read and understands this section in its entirety.

Contractor initials _____

- F. He has entered this release of claims knowingly and voluntarily, without any duress or coercion.

Contractor initials _____

- G. He has been advised orally and hereby advised in writing to consult with an attorney with respect to this Agreement, and specifically the release of claims before signing it.

Contractor initials _____

Section III. Confidentiality and Non-Disclosure

- A. Contractor shall treat the existence of this Agreement between the parties, and the contents and terms of this Agreement, as confidential. Contractor shall not disclose anything regarding this Agreement to any other person or entity not directly affiliated with the parties, unless legally compelled to do so, and then only upon timely prior to notice to DEW, giving DEW sufficient time to contest any such disclosure.

Contractor initials _____

- B. Confidentiality is a material part of this Agreement and is intended to apply and be binding upon the Contractor, its employees, agents, and other representatives, indefinitely. The Contractor shall take all steps necessary to assure the confidentiality provisions of this Agreement are communicated to and followed by those intended to be bound.
- C. Liquidated Damages: In the event of a breach of confidentiality and non-disclosure, or of the non-disparagement clause located in Section II.D, by the Contractor, the damages shall be:
- a. To repay DEW the monetary amount received by Contractor as set forth in Section I above, plus \$10,000.00; and
 - b. For each breach of confidentiality or non-disparagement after the first, an additional \$10,000.00.

The Parties acknowledge the costs to DEW, including both tangible and intangible costs, of a breach of confidentiality and non-disclosure and non-disparagement are not susceptible to precise measurement. Damages contemplated by the Parties in determining liquidated damages include loss of goodwill of the public, loss of trust of the public, impacted contractor relationships, impacted employer relationships, and impacted claimant relationships. The Parties hereby agree and stipulate the Liquidated Damages are not a penalty, but rather, a good faith estimate of the amount necessary to compensate DEW for its actual costs in connection with a breach of confidentiality and non-disclosure.

Section IV. Authority to Bind

The individuals signing on behalf of the Parties, represent and warrant that all steps and actions have been taken under the entity's governing instruments to authorize the entry into this Agreement. Breach of any representation contained in this paragraph is considered a material breach of the Agreement.

Section V. Future Liability

This Agreement does not release or otherwise affect Contractor's liability for any other current or future obligations to any agency of the State of South Carolina or the United States other than DEW as set forth in this Agreement.

Section VI. Miscellaneous

- A. Enforcement: The failure of any Party at any time to require performance of any provision of this Agreement shall not limit that Party’s right to enforce the provision, nor shall any waiver of any breach of any provision constitute a waiver of that provision itself.
- B. Severability: If any provision of this Agreement is held to be invalid or unenforceable, all remaining provisions shall continue in full force and effect.
- C. The Parties acknowledge this Agreement is being executed solely in reliance on their respective judgment, belief and knowledge of the matters set forth and has been voluntarily executed after being read in its entirety, and with the opportunity to consult with legal counsel.
- D. Governing Law: This Agreement shall be construed in accordance with the laws of the State of South Carolina.
- E. No Admission of Liability: This Agreement is not to be construed as an admission of any violation of any federal, state, or local statute, ordinance, or regulation or of any duty owed by DEW to Contractor. There have been no such violations, and DEW specifically denies any such violations.
- F. Counterparts and Facsimiles: This Agreement may be executed, including execution by facsimile signature, in one or more counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.

Section VII. Signatures

In witness whereof, the Parties have executed this Settlement Agreement.

MIDLANDS PRESSURE WASH SERVICES LLC:

Signature: _____ Date: _____

Printed Name: (Title) _____

SC DEPARTMENT OF EMPLOYMENT AND WORKFORCE:

Signature: _____ Date: _____

Printed Name: (Title) _____

P.O. Box 995
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov



Henry McMaster
Governor

William H. Floyd
Executive Director

DEW RESPONSE TO REQUEST FOR RESOLUTION

John St. C. White
Chief Procurement Officer
Re: Midlands Pressure Wash Services, LLC (File No. 2024-125)

The following is the response of the South Carolina Department of Employment and Workforce (DEW) to Midlands Pressure Wash Services LLC's (Midlands) request for resolution of a contract controversy.

DEW contracted with Midlands to provide Soft Cleaning Services on the Robert E. David (RED) and C. Lem Harper (Harper) buildings for a total contract price of \$12,399.00 for both buildings. Following lengthy delays and a formal notice to cure, Midlands satisfactorily soft cleaned the external walls of the RED building only. Midlands did not wash the exterior of the Harper building or satisfactorily wash the windows on either building, leaving the windows on those buildings in either unchanged or worse condition than when Midlands began work on the wall surfaces. Midlands then demanded more money to finish the job for which they had contracted, and DEW rebuffed this unwarranted request. After being provided one final, formal notice to cure, Midlands failed to complete the work. As provided in the contract, DEW sought out and obtained substitute services from the next lowest responsive bidder to complete only the portions of the work that had not been completed by Midlands for a total price of \$18,000.00.

DEW is seeking \$5,601.00 in compensation from Midlands and is asking that Midlands be debarred from future consideration for the award of contracts or subcontracts under S.C. Code Ann. § 11-35-4220 based on their "deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract."

I. Facts

On August 22, 2022, Procurement Officer Kayla Middleton (PO Middleton) issued an Invitation for Bid (IFB) on behalf of DEW soliciting bids for "Soft Cleaning Services for Columbia Campus Buildings." (Exhibit 1 – Original IFB Solicitation #5400023854).

The IFB divided the job into three lots (Red Building, Harper Building, and Midlands SC Works Building) and listed among the Contractor's Responsibilities:

1. The Contractor shall be responsible for pressure washing and glass cleaning and the ability to determine the amount of surface to be cleaned.

...

4. The Contractor shall provide soft washing to remove **all foreign material** to include, but not limited to, mold, mildew, oil, grease, adhesive, sand, and dirt. Surface materials shall include but not be limited to, precast concrete and stucco. Soft Washing needs to be completed on each exterior building material so that all mold, mildew, dirt, and any other debris shall be removed without damage to the surface. Brush cleaning and low or 'soft' pressure cleaning shall be used to avoid damage to building exteriors.

Id. (emphasis added). A pre-bid meeting occurred on or about September 9, 2022, for which questions were submitted in writing. *Id.* Following the receipt of written questions from potential bidders, PO Middleton issued an Amended IFB on September 13, 2022. (Exhibit 2 – Amendment #1). This Amended IFB listed the answers to several bidder questions¹ and amended the original solicitation to provide that work could be performed on Saturday and Sunday. *Id.* No other amendments were made to the requirements. *Id.* PO Middleton issued one additional amendment on September 29, 2022, to extend the deadline to bid through October 3, 2022. (Exhibit 3 – Amendment #2). No changes were made to the relevant work requirements. *Id.*

On October 14, 2022, PO Middleton issued a Statement of Award listing Midlands as the winner of Lots #1 and #2 at a total bid of \$12,399.00 (\$3,499.00 for the RED building and \$8,900.00 for the Harper Building). (Exhibit 4 – Statement of Award). The Statement of Award also set the Maximum Contract Period as October 14, 2022, through December 31, 2022. *Id.* On October 18, 2022, PO Middleton issued a Corrected Statement of Award noting that the bids for the RED building and the Harper building had been inadvertently reversed but not changing the bid total or the award. (Exhibit 5 – Corrected Statement of Award). On November 2, 2022, PO Middleton notified Doug Kirkland, Facilities Manager for DEW, that the protest period had expired on the Statement of Award and that DEW could reach out to the contractor to begin work. (Exhibit 6 – Email Chain 1).

¹ The answers to bidder questions specifically clarified that “[n]o concrete or sidewalks are to be pressure washed.” No questions were received or answered related to squeegee work.

DEW issued a purchase order on November 10, 2022, for Lot 1 and Lot 2 at the total amount of \$12,399.00. (Exhibit 7 – Midlands Purchase Order). No work having been completed by November 30, 2023, Kirkland contacted Midlands via email asking when they planned to conduct the contracted work. (Exhibit 8 – Email Chain 2). Having received no response, Kirkland followed up by email on January 4, 2023. *Id.* Cory Hansford, owner of Midlands, responded January 8, 2023, informing Kirkland that Midlands planned to complete the work January 19-22. *Id.* The work was not completed by January 22, and on January 23, 2023, Hansford again contacted Kirkland to inform him the work had not been completed and they planned to complete work on the weekend of January 27-30, 2023. *Id.* On Sunday, February 5, 2023, Hansford again contacted Kirkland to inform him that Hansford had a family emergency and the work had not been completed. (Exhibit 9 – Email Chain 3). Hansford promised at that time to start the following Thursday (February 9, 2023) and work through the weekend. *Id.*

On March 1, 2023, Kirkland emailed Hansford seeking an explanation for why the work still had not been completed. *Id.* On March 6, 2023, Hansford responded, once again moving the projected work dates to March 18-26, 2023. *Id.* Kirkland responded the same day informing Hansford he was looking to move to the next bidder to get the work completed if Hansford did not complete the work as promised on this newest adjusted schedule. *Id.* Almost two weeks later, on March 19, 2023, Hansford responded, stating they had begun work on the sidewalks and the curb around the Harper building and that they would return later to complete the work on the Harper building. *Id.* Pressure washing the sidewalks, curbs, and retaining walls was not part of contract and was explicitly excluded in Amendment #1. (Exhibit 2). Hansford offered no explanation for why Midlands worked on the sidewalks and curb, which were not included in the scope of work, instead of working on the actual Harper building.

On April 10, 2023, PO Middleton sent Hansford a Cure Letter formally notifying Midlands that the State considered their performance on the contracted work deficient because Midlands had not performed any of the contracted work. (Exhibit 10 – Cure Letter). The letter gave Midlands ten calendar days until April 24, 2023, to complete the work or have the contract terminated for default. *Id.* Hansford emailed a response to PO Middleton the same day stating the work would be complete within ten days and providing a list of purported reasons the work had not already been completed. (Exhibit 11 – Email Chain 4). Finally, on April 19, 2023, over five months after DEW issued the purchase order to Midlands, Hansford emailed Kirkland claiming Midlands had started work. (Exhibit 12 – Email Chain 5). Hansford asserted that Midlands had finished work on the RED building except for the penthouse area and the lower windows and further promising that Midlands would finish the RED building the next day and complete the Harper building over the following day. *Id.* On April 21, 2023, Hansford emailed an invoice to Kirkland for the full contract value on the RED building lot and, for the first

time mentioned that the windows would not be “streak free” because Midlands didn’t squeegee them. (Exhibit 13 – Email Chain 6). No further work has ever been done by Midlands on either the RED or Harper buildings.

On or about April 21, 2023, following the time Midlands alleges they completed the work on the RED building, Kirkland discovered that the top floor windows were covered with residue, grime, dirt, and runoff. (Exhibit 14 – Pictures of Upper Windows). Kirkland further discovered that many of the lower windows had not been cleaned at all. (Exhibit 15 – Pictures of First Floor Windows); (Exhibit 21 – Affidavit of Amy Proveaux). Additionally, no work had been done on the Harper building. The period to cure having expired, Kirkland then went and procured a bid from the next lowest bidder on the original invitation for \$18,000.00 to complete the work left unfinished by Midlands. (Exhibit 13 – Email Chain 6); (Exhibit 16 – Ramsey Invoice for RED Building); (Exhibit 17 – Ramsey Invoice for Harper Building). On May 16, 2023, Kirkland informed Hansford that DEW considered the work incomplete, that it would cost DEW \$8,500.00 to complete the work on the RED building and that, per the contract, DEW was willing to compensate Midlands \$400.00 for the difference in the contract price and what DEW would have to pay to finish the job. (Exhibit 13). Hansford objected, alleging the windows had all been cleaned and that the grime and residue on the upper windows was cloudy water settling and that it was like that because Midlands had not squeegeed the windows. *Id.* During Hansford’s several email responses, he admitted, “We did not mess with the other building [Harper] as we were waiting to get paid on this one.” *Id.* DEW made numerous attempts to get Midlands to perform even after Midlands had defaulted. *Id.*; (Exhibit 18 – Email Chain 7). On May 21, 2023, Hansford emailed Kirkland offering to clean the windows in exchange for an additional \$2,500.00. (Exhibit 18). DEW determined this was not an acceptable compromise and, following several other attempts by DEW to resolve this dispute, PO Middleton issued a contract termination notice on January 10, 2024. (Exhibit 19 – Contract Termination Notice).

II. Contract Terms

The original solicitation provides:

Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) documentation of discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the State’s final acceptance (a/k/a “award), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

(Exhibit 2 – Amendment #1). The contract provides:

If the state terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

Id. The work requirements in the contract specify that Midlands was “responsible for pressure washing and glass cleaning” and was required to “remove all foreign material” from the exterior surfaces of the RED and Harper buildings. *Id.* After numerous delays by Midlands in starting work, and after having been given a final opportunity to cure their deficiencies on the contract, Midlands failed to “remove all foreign material” from the exterior surfaces of the windows on the RED building and failed to perform any of the contracted work on the Harper building. (Exhibits 13, 14, and 15). As a result, the Procurement Officer terminated the contract and DEW acquired the services of the next responsive bidder on the contract in the manner considered appropriate by the Procurement Officer for a total cost of \$18,000.00. (Exhibits 13, 16, and 17). Per the terms of the contract, Midlands is now liable to the state for the excess costs for the supplies or services required to complete the contract, which amounts to \$5,601.00. Further, while Midlands’s work on the RED building might be attributable to shoddy work or negligence, their failure to even attempt to complete the work on the Harper building is clearly deliberate and without good cause. As a result, DEW moves the Chief Procurement Officer to order Midlands to pay DEW \$5,601.00 and to debar Midlands from consideration for award of contracts or subcontracts with the State of South Carolina under S.C. Code § 11-35-4220.

III. Midlands’s Arguments

Midlands bases their entire protest on the allegation that they were told by Kirkland, during an alleged “walk through” not to squeegee the windows. No such pre-bid conversation occurred, and Kirkland never told any potential bidders that they were not to squeegee the windows. (Exhibit 21 – Affidavit of Doug Kirkland). The contract states the requirements for the job unambiguously and Midlands failed to complete those job requirements. Further, the windows on the first floor which could be photographed up close from the exterior show clearly that they were never washed at all, with or without a squeegee. (Exhibit 15). Additionally, Midlands admitted they did none of the contracted work on the Harper building within the time allowed to cure. (Exhibit 13). Finally, any argument that verbal instructions changed the requirements of the contract is barred by both the parol evidence rule and the language of the contract itself.

“If construing or interpreting a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties.” *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 570, 772 S.E.2d 882, 891 (Ct. App. 2015) (internal citations omitted). “If [a contract’s] language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract’s language determines the instrument’s force and effect.” *Id.* “In construing and determining the effect of a written contract, the intention of the parties and the meaning are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument....” *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (internal citations omitted). “If a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms.” *Watson v. Underwood*, 407 S.C. 443, 455, 756 S.E.2d 155, 161 (Ct. App. 2014) (internal citations omitted). “Whe[n] the language of a contract is plain and capable of legal construction, that language alone determines the instrument’s force and effect.” *Id.* (internal citations omitted).

“Under the parol evidence rule, extrinsic evidence is inadmissible to vary or contradict the terms of a contract. However, if a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties.” *HK New Plan Exch. Prop. Owner I, LLC v. Coker*, 375 S.C. 18, 23-24, 649 S.E.2d 181, 184 (Ct. App. 2007) (internal citations and quotations admitted). “Resort to construction by a party is only done when the contract is ambiguous or there is doubt as to its intended meaning.” *Watson*, 407 S.C. at 455, 756 S.E.2d at 161-62. “A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one.” *Id.* at 455, 756 S.E.2d at 161.

The contract terms were unambiguous and required Midlands to “remove all foreign material to include, but not limited to, mold, mildew, oil, grease, adhesive, sand, and dirt” from the exterior surfaces of the building. Residue, dirt, spider webs, grime, and other foreign matter were all left on the windows of the RED building. (Exhibits 16 and 17). Because these contract terms are clear and unambiguous, extrinsic evidence is not allowed to contradict those unambiguous terms. Further, the contract itself disclaims any such extrinsic evidence:

Questions from Offerors (Modified)

- (a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the

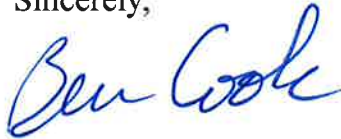
procurement officer, and the solicitation's title and number. **Oral explanations or instructions will not be binding.**

(Exhibit 2, p.11) (emphasis added). Both longstanding legal precedent and the explicit terms of the contract render Midlands's argument a nullity. Kirkland never told Midlands they could not squeegee the windows and Kirkland's instructions would not have changed the content of the contract even if such statements had been made. (Exhibit 21).

IV. Conclusion

DEW contracted with Midlands for services DEW never received. Midlands failed to live up to its obligations under the contract despite DEW allowing Midlands several extra months to complete the work, and it cost DEW an extra \$5,601.00 to complete the work Midlands left undone. DEW is entitled to the benefit of its bargain and Midlands is liable to DEW for those extra expenses. Additionally, because Midlands's failure to complete work on the Harper building was manifestly deliberate, DEW strongly believes Midlands should be debarred from further consideration for contracts or subcontracts with the State of South Carolina.

Sincerely,



Benjamin T. Cook
Contracts Counsel and Agency Privacy Liaison
Office of General Counsel
SC Department of Employment and Workforce
(803) 737-2572
bcook@dew.sc.gov

Exhibit C

From: [Cory Hansford](#)
To: [Grier, Manton](#); [White, John](#)
Subject: Re: [External] Re: Midlands Pressure Wash Request for Resolution of a Contract Controversy (Hearing Times)
Date: Wednesday, April 10, 2024 9:45:19 AM
Attachments: [image001.png](#)
[image001.png](#)

I will not be able to make it today as my whole family is sick. I really don't want to waste anymore time with this matter. Seem like it is going to be one-sided from how it looks and some info I know on the back side, if you want to come up with a fear number since job was completed that would be great , if not just move on. Thanks

On Tue, Mar 26, 2024, 1:55 PM Grier, Manton <mgrier@ogc.sc.gov> wrote:

Dear all:

We will do the hearing on **April 10 at 1pm** on the 6th floor of the Capitol Building, 1201 Main Street.

We will see you here

Thanks

Manton



Manton M. Grier Jr. | Assistant General Counsel

Office of General Counsel | State Fiscal Accountability Authority

1201 Main Street, Suite 420 | Columbia, SC 29201 | Office: (803) 737-1660 | mgrier@ogc.sc.gov

From: Cory Hansford <midlandspws@gmail.com>
Sent: Tuesday, March 26, 2024 11:15 AM
To: White, John <jswhite@mmo.sc.gov>
Cc: Kirkland, Doug <DSKirkland@dew.sc.gov>; Jordan, Steven <SJordan@dew.sc.gov>; Middleton, Kayla <KMiddleton@mmo.sc.gov>; Grier, Manton <mgrier@ogc.sc.gov>; Cook, Ben <BCook@dew.sc.gov>
Subject: Re: [External] Re: Midlands Pressure Wash Request for Resolution of a Contract Controversy (Hearing Times)

April 10th will work thanks

On Tue, Mar 26, 2024, 11:13 AM White, John <jswhite@mmo.sc.gov> wrote:

Dear Mr. Hansford,

I have not heard from you regarding available dates for hearing on this contract controversy. Of the Dates provided by DEW below, I can accommodate the afternoons of April 10 and April 16. Please let me know if you can be available either of these dates.

Sincerely

John White



John St. C. White | Materials Management Officer and State Engineer

Division of Procurement Services | SC State Fiscal Accountability Authority

1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 737-0768 |

From: Cook, Ben <BCook@dew.sc.gov>
Sent: Thursday, March 14, 2024 8:19 AM
To: White, John <jswhite@mmo.sc.gov>
Cc: Kirkland, Doug <DSKirkland@dew.sc.gov>; Jordan, Steven <SJordan@dew.sc.gov>; Middleton, Kayla <KMiddleton@mmo.sc.gov>; Grier, Manton <mgrier@ogc.sc.gov>; Cory Hansford <midlandspws@gmail.com>
Subject: [External] Re: Midlands Pressure Wash Request for Resolution of a Contract Controversy (Hearing Times)

John,

DEW is available at any of the following times for the hearing:

April 9 – 1:00-4:00

April 10 – 1:00-4:00

April 16 – 1:00-4:00

April 17 – 1:00-4:00

Regards,

Benjamin T. Cook

Contracts Counsel and Agency Privacy Liaison

Office of General Counsel



South Carolina Department of Employment and Workforce

PO Box 8597, Columbia, SC 29202

Office: (803) 737-2572 | Mobile: (803) 422-9523

bcook@dew.sc.gov

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